

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARLENE E. GUNSTANSON and U.S. POSTAL SERVICE,
POST OFFICE, Boyd, TX

*Docket No. 98-1472; Submitted on the Record;
Issued March 29, 2001*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant is entitled to compensation for disability from employment after April 12, 1997 causally related to her accepted employment injury.

On November 16, 1995 appellant, then a 42-year-old rural carrier associate, filed an occupational disease claim for tendinitis of the left ankle which she attributed to factors of her federal employment. The Office of Workers' Compensation Programs accepted appellant's claim for tendinitis of the left ankle. Appellant stopped work on November 1, 1995.

In a report dated April 12, 1996, Dr. R.J. Ford, a Board-certified orthopedic surgeon, found that appellant could return to modified employment with restrictions on driving with the left foot and standing over 30 minutes. In a duty status report dated April 26, 1996, he limited appellant from driving with her left foot, standing over 30 minutes or lifting over 25 pounds.

In a report dated May 1, 1996, Dr. William Blair, a Board-certified orthopedic surgeon and Office referral physician, diagnosed posterior tibialis tendinitis of the left foot. He recommended that appellant use a right-hand drive vehicle and change to orthopedic footwear. Dr. Blair stated:

“At the present time, I would not impart any significant limitations other than correction to the physical aspects of her vehicle and shoe wear. The examinee should not engage in duties which require stretching/straining of the left ankle, which would include utilization of her inadequate vehicle and walking for long distances on uneven or broken ground.”

Dr. Blair noted that an evaluation of appellant's work restrictions indicated that she could perform medium to heavy work. He related:

“[Appellant] is capable of traveling to and from work, being at work and performing appropriate activities. With the above modifications, I believe there is no reason why she cannot continue to carry out her usual duties as a rural carrier associate -- auxiliary route.”

Appellant returned to employment as a modified rural carrier on May 6, 1996. The position limited appellant from driving with the left foot, standing over 30 minutes, or lifting more than 25 pounds 5 hours per day.

In an office visit note dated May 10, 1996, Dr. Ford opined that he concurred with Dr. Blair's restrictions.¹

By decision dated July 23, 1996, the Office found that appellant had no loss of wage-earning capacity effective May 6, 1996 based on its finding that the position of modified auxiliary rural carrier fairly and reasonably represented her wage-earning capacity.

In an office visit note dated March 18, 1997, Dr. Ford noted that appellant continued to have pain in her posterior tibialis tendon when walking for extended periods and recommended that she “continue her present job description on a permanent basis.”

In a letter dated March 19, 1997, the employing establishment requested that Dr. Ford discuss whether appellant could return to her regular employment as a rural carrier if she used proper footwear and a right-hand drive vehicle. The employing establishment noted that appellant did not have a walking mail route.

In a March 25, 1997 response, Dr. Ford related:

“I [have] received your note in regards to [appellant] and have reviewed the assessment of Dr. Blair. It should be noted that molded orthotics with medial forefoot posting have been attempted in the past with marginal results. There [is] not really a specific shoe other than a shoe with an arch support which could possibly be of benefit. She has actually been wearing a shoe with a good arch support. I would agree with Dr. Blair as long as [she] is restricted from repetitive use of the left foot that she could be placed in whatever position you deem appropriate.”

On April 2, 1997 the employing establishment instructed appellant to resume her regular duties. The employing establishment noted that appellant had modified her vehicle such that it did not require driving with her left foot.

¹ Dr. Ford also noted that appellant had fallen and fractured the distal fibula of the left foot. In a letter dated August 1, 1996, appellant attributed her stress fracture on June 3, 1996 to “walking on the side of my foot for 18 months because of the tendinitis.”

In a duty status report dated April 10, 1997, Dr. Ford restricted appellant from standing more than 15 minutes per hour. By letter dated April 25, 1997, the employing establishment again instructed appellant to resume her regular duties and informed her that it would accommodate her standing limitations while she cased mail.

On July 11, 1997 appellant submitted a claim for compensation on account of disability (Form CA-8), requesting compensation from April 12 through July 11, 1997.

By decision dated October 6, 1997, the Office denied appellant's claim on the grounds that the evidence failed to establish that she was disabled from employment after April 12, 1997 due to her June 1995 employment injury.

The Board finds that appellant has not met her burden of proof to establish that she was disabled beginning April 12, 1997 causally related to her accepted employment injury.

Where an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.²

In this case, appellant sustained tendinitis of the left ankle due to factors of her federal employment. She subsequently returned to work as a modified auxiliary rural carrier, which the Office determined fairly and reasonably represented her wage-earning capacity. Dr. Blair, the Office referral physician, determined that appellant had no restrictions other than wearing supportive footwear, driving a right hand vehicle and not stretching or straining her left ankle. On March 25, 1997 Dr. Ford found that she could return to any position deemed appropriate by the employing establishment as long as she did not use her left foot repetitively. The employing establishment noted that appellant could deliver her route in a right-hand drive vehicle, that her attending physician had indicated that she wore appropriate footwear and that she could sit to case mail. The employing establishment offered appellant her regular position beginning April 1997 after determining that it was in accordance with her limitations. While appellant alleged that she was not released to her regular employment, the medical evidence of record establishes that she could perform the duties of her regular position with the above modifications. Appellant has not submitted any medical evidence establishing that she was disabled from employment beginning April 12, 1997 and thus she has not met her burden of proof.³

The decision of the Office of Workers' Compensation Programs dated October 6, 1997 is hereby affirmed.

² *Terry R. Hedman*, 38 ECAB 222 (1986).

³ The Board notes that subsequent to the Office's October 6, 1997 decision, the Office received additional medical evidence. The Board, however, cannot consider evidence that was not before the Office at the time of its final decision; *see* 20 C.F.R. § 501.2(c).

Dated, Washington, DC
March 29, 2001

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member