U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GERALDO G. PEREZ and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Pearland, TX

Docket No. 02-567; Submitted on the Record;
Issued August 9, 2002

DECISION and ORDER

Before COLLEEN DUFFY KIKO, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability causally related to his accepted work injury.

Appellant's claim filed on November 7, 1997 was accepted for thoracic strain and contusion after a truck door fell on his back during loading and appropriate compensation was paid. Appellant, a mail carrier, was released to return to work for four hours a day after x-rays showed no fractures or dislocation of the thoracic spine. Subsequently, Dr. Dale Sutherland, a chiropractor, diagnosed a subluxation of the thoracic spine and prescribed therapy. Appellant filed a claim for a schedule award.

In a report dated December 9, 1997, Dr. David G. Vanderweide, a Board-certified orthopedic surgeon, stated that x-rays showed some lateral subluxation at T12-L1 and some degenerative changes through the mid to upper lumbar spine. He diagnosed contusion and strain of the lumbar spine. A magnetic resonance imaging (MRI) scan of the lumbar spine on February 12, 1998 revealed a disc hernia at L2-3 with nerve root irritation, a small disc hernia at L5-S1 and moderate degenerative stenosis at L4-5.

The Office of Workers' Compensation Programs referred appellant to Dr. Harold J. Brelsford, a Board-certified orthopedic surgeon, who opined in an April 14, 1998 report that appellant sustained a contusion and sprain involving the lower thoracic and lumbar spine and sacroiliac joints and still had synovitis of those joints. Appellant increased his hours to full time on April 13, 1998.

On September 15, 1998 Dr. Vanderweide reported that appellant had been doing quite well until two months ago when he took time off and missed his physical therapy sessions. He added that appellant was complaining of incapacitating lumbar pain and released him to light duty. On November 23, 1998 Dr. Vanderweide reported a normal neurological examination and no need for future treatment.

On March 18, 1999 Dr. Vanderweide stated that appellant's date of maximum medical improvement was September 23, 1998 and found a three percent permanent impairment of the whole person based on range of motion deficiencies in the lumbar spine. He found "no evidence" of significant pain, sensory deficit or motor impairment of the lower extremities resulting from his job-related back injury.

The Office denied appellant's claim for a schedule award on June 3, 1999. On June 4, 1999 the Office terminated appellant's compensation on the grounds that his earnings from the limited-duty position fairly and reasonably represented his wage-earning capacity. Appellant requested an oral hearing, which was set for November 16, 1999. By decision dated November 30, 1999, the Office determined that appellant had abandoned his request.[1]

On August 17, 1999 appellant accepted a rehabilitation position as a city carrier. On July 11, 2000 appellant filed a notice of recurrence of disability alleging that he had pain on the left side of his leg and was being forced to work beyond his physical limitations. On July 17, 2000 the employing establishment controverted the claim, stating that appellant had accepted the rehabilitation job and never claimed he could not do it until he was informed that he had no rights to the mail route he used to handle and that it would be given to another carrier. The employing establishment added that appellant had been working on part of the route within his limitations.

On September 29, 2000 the Office denied appellant's claim for a recurrence of disability. Appellant requested a hearing, which was held on April 9, 2001. He testified that he had to stand and sit more than medically permitted and that he had to work overtime to ensure that all his duties were done. Appellant admitted that the employing establishment did not require him to work overtime.

The hearing representative asked the employing establishment to comment on appellant's testimony. On April 24, 2001 the employing establishment responded that appellant's rehabilitation job, which he accepted on August 23, 1999, permitted sitting up to eight hours a day. Appellant had no complaints until his former route was put up for bid at the request of the union because appellant was in a rehabilitation position. When informed that he could not keep the route, appellant said he could not perform his duties and filed a recurrence of disability claim.

Appellant submitted statements from two coworkers, who related that he was worked beyond his physical restrictions. On June 28, 2001 the hearing representative found that appellant had failed to establish that his recurrence of disability was causally related to the 1997 injury.

The Board finds that appellant has failed to meet his burden of proof that he sustained a recurrence of disability causally related to his accepted work injuries.

[1] Appellant did not appeal any of these decisions.

When an employee, who is disabled from the job he or she held when injured, returns to a limited or light-duty position or the medical evidence establishes that the employee can perform the duties of such a position, the employee has the burden to establish by the weight of reliable, probative and substantial evidence, a recurrence of total disability.[2] As part of this burden, the employee must show a change in the nature and extent of the light-duty job requirements or a change in the nature and extent of the injury-related condition.[3]

In this case, appellant accepted a limited-duty job on September 23, 1998, having been released to work full time by Dr. Vanderweide, who imposed limitations of lifting 10 to 20 pounds continuously, 20 to 100 pounds intermittently and sitting for 1 hour a day, standing for 2 ½ hours a day and walking for 4 ½ hours a day.

Subsequently, the employing establishment offered a rehabilitation position, which appellant accepted on August 17, 1999. The physical requirements of this position were listed as lifting up to 20 pounds continuously, 70 pounds intermittently, sitting for 8 hours a day, standing for 2 ½ hours, walking for 4 ½ hours and driving a vehicle for 4 hours.

Appellant claimed that the employing establishment changed the requirements of the rehabilitation position but provided no evidence supporting any change in the nature or extent of his duties. The statements from the two coworkers regarding appellant's duties indicated that he had to stand up to four hours casing mail and then had to sit up to three hours delivering. But appellant was capable of sitting up to eight hours a day. And he himself stated that he had to case for three hours a day. Further, the employing establishment noted that appellant had no problem performing his duties until he was informed that his previous route would be put up for bidding. While appellant may have worked overtime hours, he admitted that he was not required by the employing establishment to accept overtime. Therefore, he volunteered to work overtime.[4]

Appellant has submitted no medical evidence showing any change in the nature and extent of his accepted work injuries. The July 11 and August 12, 2000 letters from Dr. William C. Watters, III, a Board-certified orthopedic surgeon, stated that appellant's current symptoms were "a direct result" of the 1997 injury and that a June 20, 2000 MRI scan showed a small hernia at L4-5, which was possibly an exacerbation or recurrence of the work injury.

While the 1999 job offer exceeded the limitations imposed by Dr. Vanderweide on September 21, 1998, appellant accepted the offer, thus validating his ability to perform the required duties. And Dr. Watters provided no rationale in his July 11, 2000 statement explaining

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

[3] *Glenn Robertson*, 48 ECAB 344, 352 (1997).

[4] *See Carlos A. Marrero*, 50 ECAB 117, 119 (1998) (finding that appellant failed to submit evidence supporting his contention that his light-duty position was no longer available and therefore failed to show a change in the nature and extent of the position's requirements).

how appellant's current symptoms resulted from his work injury. Therefore, the Board finds that appellant has failed to establish that he sustained a recurrence of disability.[5]

The June 28, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
August 9, 2002

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

[5] *See Bernard Snowden*, 49 ECAB 144, 151 (1997) (finding that the medical evidence submitted in support of appellant's recurrence of disability due to his mental condition had little probative value because it failed to address specific employment factors).