

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM H. KONG and U.S. POSTAL SERVICE,
POST OFFICE, Jamaica, NY

*Docket No. 01-1740; Submitted on the Record;
Issued February 25, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant's recurrence of disability on March 30, 2001 is causally related to his accepted employment-related condition.

On September 27, 1999 appellant, then a 51-year-old postal clerk, filed a claim asserting that he developed an allergic reaction to the dust generated in his work area. Appellant first noticed his condition around March 1, 1999, but did not stop work until September 27, 1999. On March 13, 2000 the Office of Workers' Compensation Programs accepted appellant's claim for aggravation of asthma and paid compensation for all periods of temporary total disability.

On April 3, 2000 appellant's treating physician, Dr. Norman N. Lee, released him to work with no physical limitations, but with the permanent restriction that he could only work in a less dusty environment, such as the letter case location. By letter dated December 12, 2000, the employing establishment offered appellant a limited-duty assignment as a modified mail processor, involving the manual distribution of letter-sized pieces of mail while resting on a rest bar. The job would be located in a less dusty area of the plant. On December 19, 2000 appellant accepted the offer and returned to work.

On April 7, 2001 appellant filed a Form CA-7 claim for compensation for 24 hours of leave without pay for the period March 30 to April 6, 2001, alleging that he was not allowed to work by management. On April 9, 2001 appellant also filed a claim for a recurrence of disability, Form CA-2a, reiterating that he was unable to work from March 30 to April 6, 2001. Appellant indicated that he had not actually suffered a recurrence of physical disability, but had been sent home by management. The claim form contained a statement from the employing establishment confirming that appellant had been working limited duty when he had been sent home because no work was available in the section where appellant was assigned, or in any other position that met his medical restrictions.

In a decision dated May 19, 2001, the Office found that appellant had recently been reemployed in the limited-duty position of modified mail processor effective December 12, 2000

with wages of \$662.91 per week and that this position fairly and reasonably represented his wage-earning capacity. The Office reduced appellant's monetary compensation to zero based on his ability to earn wages in his new position.

In a separate decision also dated May 19, 2001, the Office denied appellant's claim for a recurrence of disability on the grounds that the Office had issued a retroactive wage-earning capacity decision finding that appellant's reemployment as a modified mail processor fairly and reasonably represented his wage-earning capacity, and that, therefore, he was not entitled to compensation for wage loss.

The Board finds that this case is not in posture for a determination of whether appellant's recurrence of disability on March 30, 2001 is causally related to his accepted employment-related condition.

The Office's procedure manual, in effect at the time of the May 19, 2001 decisions, states that where a claimant stops work after reemployment and "no formal loss of wage-earning capacity decision has been issued, the [Office] must ask the claimant to state his or her reasons for ceasing work and make a suitability determination on the job in question. If the job is considered suitable, ... the claimant ... has the burden of proving total disability ... and [the Office should] invite the claimant to submit a Form CA-2a," notice of employee's recurrence of disability and claim for pay/compensation. "*If the reasons stated by the claimant amount to an argument for a recurrence, the [Office] should develop and evaluate the medical and factual evidence upon receipt of the Form CA-2a.*"¹

The Board finds that, under the circumstances of this case, where appellant stopped work and filed a claim for a recurrence of disability prior to the issuance of the Office's May 19, 2001 wage-earning capacity decision, the Office should have complied with its own procedures and analyzed appellant's claim as a case of recurrence, not one of loss of wage-earning capacity. The Office's procedure manual notes that in *Terry R. Hedman* the Board held that a partially disabled claimant who returns to a light-duty job has the burden of proving that he or she cannot perform the light duty, if a recurrence of total disability is claimed. The Board held that the claimant 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

The evidence in this case establishes that appellant was sent home on the dates in question because there was no light-duty work available which complied with his medical restriction that he work in a less dusty environment. Therefore, appellant has *prima facie* met his burden of proof under *Hedman* to show a change in the nature and extent of his light-duty work.³ The Board will reverse the Office's May 19, 2001 loss of wage-earning capacity decision and set

¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.9(b) (December 1995).

² 38 ECAB 222 (1986).

³ *Jackie B. Wilson*, 39 ECAB 915 (1988). "Disability" under the Act means the "incapacity because of injury in employment to earn the wage which the employee was receiving at the time of such injury." *George J. Kemble*, 35 ECAB 370 (1983); *Billy G. Sinor*, 35 ECAB 419 (1983).

aside the May 19, 2001 decision denying appellant's claim for a recurrence of disability and remand the case for proper development in accordance with Office procedures. After such further development as may be necessary, the Office shall issue an appropriate final decision on whether appellant's disability for the period March 30 to April 6, 2001 is causally related to his accepted employment-related condition.

The Office of Workers' Compensation Programs' May 19, 2001 loss of wage-earning capacity decision is reversed and the May 19, 2001 decision denying appellant's claim for a recurrence of disability is set aside and the case remanded for further action consistent with this opinion.

Dated, Washington, DC
February 25, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member