

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**PATRICIA A. BOLEN, Appellant**

**and**

**U.S. POSTAL SERVICE, POSTAL &  
DELIVERY CENTER, Kalamazoo, MI,  
Employer**

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**Docket No. 03-1800  
Issued: June 4, 2004**

*Appearances:*

*Daniel Sullivan, for appellant*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Alternate Member  
MICHAEL E. GROOM, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On July 1, 2003 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated March 24, 2003. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue on appeal is whether appellant sustained a recurrence of disability due to her accepted employment injury for the period February 26 to May 12, 2002.

**FACTUAL HISTORY**

On April 15, 1997 appellant, a 47-year-old postal clerk, filed an occupational disease claim alleging that her bilateral hand and arm pain were employment related.<sup>1</sup> By decision dated July 31, 1997, the Office denied appellant's claim on the basis that the medical evidence was

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<sup>1</sup> This was assigned claim number 09-0427872.

insufficient to establish a causal relationship between her alleged condition and employment factors.

On April 27, 1999 appellant filed an occupational disease claim alleging that her bilateral arm condition was due to the repetitive activity of her job. The record indicates that appellant did not stop work.

On March 3, 2000 appellant filed an occupational disease claim alleging that her neck pain and bilateral arm pain were due to the repetitiveness of her employment duties on February 2, 1999.<sup>2</sup> The Office accepted appellant's claim for left medial epicondylitis, bilateral epicondylitis, bilateral villondullar synovitis and neck strain. Appellant's claim was subsequently expanded to include the condition of right lateral epicondylitis.

On September 18, 2001 Dr. Bryan D. Visser, an attending Board-certified physiatrist, released appellant to limited-duty work with restrictions on reaching with arms, pinching, gripping and a 15 pound double arm lifting limit. He also stated appellant "should rotate jobs every 2 hours."

On November 5, 2001 appellant accepted the offer of a permanent light-duty position as a modified distribution clerk working eight hours per day effective November 17, 2001. Appellant was assigned to the manual letter aisle and the restrictions of the position included a 15-pound carrying limit, intermittent grasping and gripping and rotating jobs every two hours. Her duties included pulling bins for dispatch, sorting letters in cases and sitting for eight hours in a light duty chair. Appellant's physical restrictions also included a two hour limit on reaching.

On February 28, 2002 appellant filed a claim for a recurrence of disability beginning February 26, 2002 due to her accepted employment injury. On the claim (Form CA-7) filed on March 26, 2002, appellant requested compensation for hours she was not working since she had reduced her light-duty work hours to four hours per day.

Dr. Visser, in a February 25, 2002 report, diagnosed overuse syndrome, possible carpal tunnel syndrome and lateral epicondylitis. He reported appellant's complaints of tingling in her hands, particularly the right hand, and noted that appellant stated that she was losing the grip of her right hand and had difficulty in opening her hand. Appellant related that she did not believe she was capable of working "as many hours as she has worked before" and was "not quite sure she is able to work." Physical findings included normal manual muscle test, 2/4 reflexes in the upper extremities, "tender on palpation over the lateral epicondyles bilaterally," no joint effusion, and "some pain with flexion and extension of wrists." Dr. Visser stated that appellant's restrictions would remain the same, but that he would lower the number of hours she could work.

In a March 4, 2002 attending physician's report (Form CA-20), Dr. Visser noted a history of overuse syndrome due to repetitive sorting. He diagnosed lateral epicondylitis which he attributed to her repetitive work duties. Dr. Visser noted that he first treated appellant on

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<sup>2</sup> This was assigned claim number 09-0452825. On May 18, 1999 the Office doubled claim numbers 09-0427872 and 09-0452825 with 09-0427872 as the master file number.

November 9, 1998 and was partially disabled. He indicated appellant could work from four to eight hours a day.

In a letter dated March 28, 2002, the Office advised appellant of the information required to support her recurrence claim.

In an April 9, 2002 report, Dr. Visser diagnosed chronic lateral epicondylitis and wrist synovitis which he attributed to appellant's repetitive pinching and gripping employment duties. He opined that appellant could only work four hours per day with occasional gripping and pinching or be taken off work. A physical examination revealed normal muscle test, reflexes and nerve conduction studies and an unremarkable magnetic resonance imaging scan. Dr. Visser noted that her October 16, 2001 studies were normal "with the exception of a minor diminution of the median motor evoked response." He reported that appellant was "tender on palpation of the lateral epicondyles bilaterally," had pain in her wrist on flexion-extension and "exhibited difficulty in closing her hands." He noted that there was swelling on the palmer and dorsum surface of her hand, but no effusion was noted.

By decision dated April 29, 2002, the Office denied appellant's recurrence of disability claim. The Office found that the reports of Dr. Visser did not explain the reasons for appellant's decreased work hours.

On May 13, 2002 appellant returned to her full-time light-duty position. Appellant filed a claim for partial compensation for the period May 14 to 24, 2002 since the employing establishment only provided her three hours of work during this period. The Office accepted appellant's claim for compensation and paid her for the five hours per day she was not working during the period May 14 to 24, 2002.

Appellant submitted a May 10, 2002 report by Dr. Visser, which the Office received on May 20, 2002. He noted that appellant was working four hours per day and that she could return to working eight hours per day with the previous physical restrictions.

Appellant's representative requested reconsideration by letter dated July 29, 2002.

On August 9, 2002 the Office received an undated letter from appellant requesting reconsideration.

By decision dated October 15, 2002, the Office denied modification of the April 29, 2002 decision denying her recurrence of disability claim.

In an undated letter, appellant's representative requested reconsideration and argued that appellant had a recurrence of disability due to management requiring her to work outside of her restrictions. In support of her request, appellant submitted a May 21, 2002 statement by Daniel Sullivan, a union representative; a copy of the July 29, 2002 reconsideration request; an affidavit from James Adams, manager of distribution; an undated statement by appellant; a copy of her limited-duty job assignment and a January 16, 2003 report by Dr. Visser.

Appellant stated that she accepted the limited-duty job even though it “involved repetitive reaching, grasping and pinching” for 8 hours when she was restricted to 2 hours and 40 minutes of repetitive pinching, grasping and reaching. Appellant stated that she worked four to five hours a day sorting letters in the letter aisle and two hours sorting flats at a manual flat section. She stated that “the tingling, numbness and stiffness” worsened in her hands, particularly the right hand from December 2001 until the pain became unbearable in February 2002. In February 2002 she related that her physician reduced her work hours from eight to four hours a day.

In a January 6, 2002 affidavit, Mr. Adams stated that, after appellant accepted her November 17, 2001 light-duty assignment, she worked six hours in a regular work assignment which involved sorting letters and flats. He noted that appellant was limited to 2 hours and 40 minutes of reaching with her arms, gripping and pinching with her hands. Mr. Adams stated that, after learning appellant was working outside her medical restrictions, a new limited-duty job was offered to appellant on May 28, 2002.

By decision dated March 24, 2003, the Office denied modification of the prior decisions denying her recurrence of disability claim.

### **LEGAL PRECEDENT**

When an employee, who is disabled from the job held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or she can perform the light-duty position, the employee has the burden of establishing by the weight of the reliable, probative and substantial evidence a recurrence of total disability and 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.<sup>3</sup>

### **ANALYSIS**

In the instant case, Dr. Visser released appellant to limited duty work on September 18, 2001 with restrictions on reaching with arms, pinching, gripping and a 15-pound double arm lifting limit and that she “should rotate jobs every 2 hours.” Based upon Dr. Visser’s report, the employing establishment offered appellant a permanent light-duty position as a modified distribution clerk working eight hours per day. She was assigned to the manual letter aisle and the restrictions of the position included a 15-pound carrying limit, intermittent grasping and gripping and rotating jobs every two hours. Her duties included pulling bins for dispatch, sorting letters in cases and sitting for eight hours in a light-duty chair. Appellant’s physical restrictions also included a two-hour limit on reaching. In support of her contention that there was a change in the nature and extent of her light-duty job requirements appellant submitted an affidavit dated January 6, 2002, Mr. Adams, the manager of distribution, stated that appellant had been working 6 or more hours sorting mail and flats and that he was aware that appellant’s physical restrictions limited her to no more than 2 hours and 40 minutes a day of gripping and pinching with her

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<sup>3</sup> Laurie S. Swanson, 53 ECAB \_\_\_\_ (Docket Nos. 01-1406 & 02-765, issued May 2, 2002).

hands and reaching with her arms. He also noted that, after being made aware appellant was working outside her restrictions, a new limited-duty job offer was made to appellant on May 28, 2002. The new job duties complied with her physical limitations on repetitive gripping and grasping of letters and reaching with her arms to 2 hours and 40 minutes. Appellant noted in her undated statement that she worked four to five hours per day sorting letters in the aisle sorter which required repetitive reaching, pinching and grasping. Appellant has thus met her burden of showing that there was a change in the nature of her light-duty job as she was required to work outside her restrictions. Additionally, appellant submitted medical evidence supporting her contention that there was a change in the nature and extent of her light-duty job requirements. Dr. Visser's February 25, 2002 report noted physical findings including "some pain with flexion and extension of wrists" and tenderness "on palpation over the lateral epicondyles bilaterally. He then reduced the number of hours appellant could work while keeping the restrictions the same. In a March 4, 2002 report, Dr. Visser noted a history of overuse syndrome due to sorting and attributed appellant's lateral epicondylitis to her repetitive work duties. Dr. Visser, in an April 9, 2002 report, attributed appellant's chronic lateral epicondylitis and wrist synovitis to her repetitive gripping and pinching employment duties. Moreover, he opined that appellant could only work four hours per day with occasional gripping and pinching or be taken off work.

### **CONCLUSION**

The Board finds that appellant has established that there was a change in the nature of her light-duty work as she was required to work outside her restrictions.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated March 24, 2003 is reversed.

Issued: June 4, 2004  
Washington, DC

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member