United States Department of Labor
Employees' Compensation Appeals Board

GARY G. STAMPO, Appellant	)	
and	)	**Docket No. 03-2175**
	)	**Issued: June 21, 2004**
U. S. POSTAL SERVICES, POST OFFICE, Verona, PA, Employer	)	

Appearances:
Jeffery P. Zeelander, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On September 8, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated September 5, 2003 finding that appellant failed to establish that he sustained a recurrence of total disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish that he sustained a recurrence of total disability effective February 11, 2000.

FACTUAL HISTORY

On February 13, 1992 appellant, then a 43-year-old letter carrier, sustained a traumatic injury to his left knee while in the performance of his federal duties. Appellant was placed on temporary total disability. Appellant returned to restricted modified duty as a distribution clerk on August 19, 1999 when he worked for 30 minutes before stopping. He returned to work on November 10, 1999 and worked for one and one half days before stopping again.

This case has been before the Board on two previous occasions.[1] In a March 12, 2000 decision, the Board affirmed the Office's denial of recurrence claims dated August 30 and November 10, 1999 finding that appellant failed to establish that his medical condition was related to the accepted injury. In an April 7, 2003 decision, the Board reversed the Office decisions dated January 21 and August 19, 2000 finding that the Office improperly terminated appellant's compensation on the grounds that he refused an offer of suitable work under 5 U.S.C. § 8106(c)(2). Specifically, the Board found that the Office failed to provide appellant proper notice of his opportunity to return to work after his November 10, 1999 recurrence claim was denied on January 21, 2000. The facts and the findings of the Board's decision are incorporated into this decision by reference.

The record also contains a recurrence claim that is the subject of this appeal. In his April 18, 2001 recurrence claim, appellant argued that, on February 11, 2000, after learning that the Office denied his November 10, 1999 recurrence, he requested, but was denied by the employing establishment, work within his medical restrictions. The record contains a January 28, 2000 progress note from appellant's rehabilitation counselor, Tim Mahler, indicating that he spoke to the employing establishment after the recurrence was denied and was informed that the rehabilitation job was no longer available to appellant. However, the record also contains a January 21, 2000 letter to the Office from Mary Keck, the employing establishment's injury compensation specialist, who wrote that the modified job offer made to appellant was still available. In a March 7, 2000 letter from the employing establishment, appellant was told that entitlement to the previously offered rehabilitation assignment ended when the Office terminated his benefits on January 21, 2000 after he refused/abandoned suitable employment. Appellant was informed that he had three options, to voluntarily change to another craft, apply for disability retirement or resign from the employing establishment. In a May 3, 2000 letter, the employing establishment proposed removing appellant from the employing establishment for failing to report as scheduled. The letter further noted that subsequent to the January 21, 2000 decision the employing establishment was no longer required to offer appellant a rehabilitation assignment. In a May 23, 2000 letter, appellant was terminated from the employing establishment.

In response to repeated attempts by appellant for a status update, the Office wrote in a January 23, 2002 letter that appellant was not entitled to a recurrence or schedule award under the penalty provision of section 8106 of the Federal Employees' Compensation Act. In a July 21, 2003 letter to appellant, the Office wrote that suitable work had been available to him and he refused it, therefore, appellant did not sustain a recurrence. In another letter dated July 21, 2003 to appellant, the Office asked appellant if he ever returned to work between his work stoppage of November 9, 1999 and his removal from the employing establishment; and if he did not work, did the employing establishment make work available within his restrictions. In a third July 21, 2003 letter, the Office asked the employing establishment if suitable work was offered to appellant after his work stoppage on November 9, 1999. In a July 28, 2003 letter, the employing establishment responded to the Office that work was available to appellant after his work stoppage and submitted several documents supporting that it was; including letters dated

[1] Docket No. 00-2769 (issued March 12, 2002) and Docket No. 02-2222 (issued April 7, 2003).

August 19 and 26, 1999 that show that the Office offered and appellant accepted the light-duty job, the May 3, 1999 proposal of removal and the January 21, 2000 letter to the Office.

In a July 23, 2003 letter, appellant argued that the Board's April 7, 2003 decision established that the employing establishment refused to provide appellant with modified work after the January 21, 2000 decision. In a September 5, 2003 decision, the Office denied appellant's recurrence claim finding that appellant submitted no evidence to support that his medical condition worsened effective February 11, 2000 and that appellant refused to work and was removed from the employing establishment for that reason.

LEGAL PRECEDENT

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he 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 show that he 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]

ANALYSIS

In the present case, the Board's April 7, 2003 decision found that the employing establishment incorrectly failed to provide appellant with light-duty work after his recurrence claim was denied. Appellant also submitted evidence, including letters from the employing establishment, his own statement and that of his rehabilitation counselor, showing that the employing establishment withdrew its offer of light-duty work after the recurrence was denied.

This situation is addressed by the Office's procedural manual, which states that a recurrence of disability includes a work stoppage caused by "withdrawal of a light-duty assignment made specifically to accommodate the claimant's condition due to the work-related injury."[3] As the employing establishment withdrew the job offer it had constructed to meet appellant's work-related injuries appellant has met his burden of proof to establish a recurrence of total disability effective January 28, 2000, the date the employing establishment determined it would withdraw the light-duty job offer it had made to appellant.

CONCLUSION

Appellant has met his burden of proof to establish a recurrence of total disability.

[2] *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

[3] Federal (FECA) Procedural Manual, Part 2 -- *Claims, Recurrences*, Chapter 2.1500.3b (January 1995).

ORDER

IT IS HEREBY ORDERED THAT the September 5, 2003 decision of the Office of Workers' Compensation Programs is reversed.

Issued: June 21, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member