United States Department of Labor
Employees' Compensation Appeals Board

YVONNE LONG, Appellant	)	
and	)	**Docket No. 06-289**
	)	**Issued: May 18, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Jersey City, NJ, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 21, 2005 appellant filed a timely appeal from the August 12, 2005 merit decision of the Office of Workers' Compensation Programs, which denied her claim of a recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the recurrence issue.

ISSUE

The issue is whether appellant sustained a recurrence of disability on December 26, 2003 causally related to her accepted employment injury.

FACTUAL HISTORY

On April 12, 1999 appellant, then a 46-year-old labor custodian, filed a claim alleging that her work duties aggravated a 1997 injury to her left foot and leg. The Office accepted her claim for a torn medial meniscus in the left knee and authorized surgery. The Office later accepted a consequential torn medial meniscus in the right knee. Appellant received compensation for disability. On April 30, 2003 she began working limited-duty full time.

On April 16, 2004 appellant filed a claim alleging that she sustained a recurrence of disability on December 26, 2003: "I was sent home from my limited-duty job on December 26, 2003 because [the employing establishment] no longer could accommodate me." The employing establishment advised that appellant stopped working on December 26, 2003 because that was the effective date of her disability retirement.

The Office held a conference call with the employing establishment injury compensation specialist (ICS). The ICS advised that the employing establishment did not remove appellant's light or limited duty on December 26, 2003. In fact, the employing establishment fully expected appellant to return to work on December 27, 2003. The ICS confirmed that the light- or limited-duty position remained open and available to appellant. The ICS stated that appellant had submitted her papers for disability retirement, her application was accepted and she elected to retire on December 26, 2003. Appellant's work stoppage, she explained, had nothing to do with the employing establishment's refusing to continue to accommodate her medical restrictions.

In a decision dated August 4, 2004, the Office denied appellant's claim of a recurrence of disability.

Appellant requested a hearing before an Office hearing representative. She submitted a May 20, 2005 statement from a coworker, who attested to the fact that appellant's supervisor told appellant on many occasions that he did not have a job for her "and the best thing for her to do is to go out on disability." At the hearing, which was held on May 23, 2005, appellant argued that the ICS was not privy to her conversations with her supervisor. She argued that her account, corroborated by the statement of her coworker, should carry the weight of the evidence and establish a withdrawal of the limited-duty assignment.

Following the hearing, appellant's supervisor submitted a statement dated July 6, 2005. He explained that he was not her direct supervisor but rather the manager of the department. Appellant stated that it was after a June 18, 2005 fitness-for-duty examination that he asked appellant if she had ever considered disability retirement. He told her it was an option she should seriously consider. He did not take her to the personnel office or force her to go there, nor did he help or advise her how to complete her forms. The manager noted that he had always approved appellant's requests for restricted work and that the last such request was approved for light duty to November 21, 2003: "After that date, [appellant] did not request any further light-duty work."

In a decision dated August 12, 2005, the Office hearing representative affirmed the denial of appellant's claim of recurrence. The hearing representative found that appellant's employment ended on December 26, 2003 due to her acceptance of disability retirement, as opposed to a withdrawal of a modified-duty assignment.

LEGAL PRECEDENT

The United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.[1]

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[1] 5 U.S.C. § 8102(a).

When an employee is disabled from the job she held when injured on account of employment-related residuals and she returns to a light-duty position, or the medical evidence of record establishes that 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, showing that she cannot perform such light duty. As part of her 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]

A recurrence of disability includes certain kinds of work stoppages that occur after an employee has returned to work from a period of disability. It 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. This withdrawal must have occurred for reasons other than misconduct or nonperformance of job duties.[3]

ANALYSIS

Appellant argues that she sustained a recurrence of disability because the employing establishment withdrew a light-duty assignment on or about December 26, 2003, which would represent a change in the nature and extent of her light-duty job requirements. And she argues that the circumstances of this work stoppage remain uncontroverted. But the employing establishment disputes her account of events. The employing establishment ICS confirmed that light- or limited-duty remained open and available to appellant and that she was fully expected to return to work on December 27, 2003. Appellant's work stoppage had nothing to do with the employing establishment's refusing to continue to accommodate her medical restrictions. Rather, appellant stopped work because she elected to retire on December 26, 2003.

Further, the manager of the department stated that, after approval of light duty from October 23 to November 21, 2003, appellant simply never requested additional light-duty work.[4]

The Board can find no evidence that the employing establishment withdrew a light-duty assignment, nor does it appear that the employing establishment notified appellant that there was no work available consistent with her limitations on or about December 26, 2003. The employing establishment once issued such a notice on August 7, 2003, but temporary light duty was found the very next day and appellant accepted the offer. No such similar notice appears on or about the date of the claimed recurrence.

The record does show that the manager of the department requested a fitness-for-duty examination on June 5, 2003 and, at that time, he stated that no light-duty work was currently available in the maintenance craft within appellant's restrictions. Suspecting that her restrictions

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

[3] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b(1)(c) (May 1997).

[4] On November 18, 2003 appellant requested temporary light duty from November 21 to December 21, 2003. A day-by-day breakdown of her hours shows that she continued to work eight hours a day through December 26, 2003, with eight hours of sick leave on December 10, 2003 and eight hours of leave without pay on December 24, 2003. This breakdown indicates that appellant's disability retirement became effective December 27, 2003.

were permanent, he recommended disability of some sort. However, appellant accepted a temporary light-duty assignment that very same day. While the June 18, 2003 fitness-for-duty medical assessment was "recommend disability retirement due to her medical problems," appellant continued to request, and the employing establishment continued to provide, temporary light-duty assignments.

So there is no evidence in this case that the employing establishment withdrew a light-duty assignment, as appellant contends, nor is there evidence that the employing establishment denied a request for light duty or otherwise notified appellant that light duty within her restrictions was no longer available on or about December 26, 2003. Appellant stopped work at that time because she took disability retirement, and it is well settled that an award of benefits for disability retirement purposes does not establish disability for compensation purposes under the Federal Employees' Compensation Act.[5]

The Board affirms the denial of appellant's claim that she sustained a recurrence of disability on or about December 26, 2003.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish by the weight of the reliable, probative and substantial evidence a recurrence of disability on or about December 26, 2003. The record does not support that the employing establishment caused her work stoppage by withdrawing a light-duty assignment.

[5] *Hazelee K. Anderson*, 37 ECAB 277 (1986). In *Anderson*, the Board explained that the findings of other administrative agencies have no bearing on proceedings under the Act, which is administered by the Office and the Board. A determination made for disability retirement purposes is not determinative of the extent of physical disability or impairment for compensation purposes.

ORDER

IT IS HEREBY ORDERED THAT the August 12, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 18, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board