

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROBERT KAMER and U.S POSTAL SERVICE,  
POST OFFICE, Poplar Bluff, Mo.

*Docket No. 96-1169; Submitted on the Record;  
Issued March 13, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether appellant has established a recurrence of disability commencing November 20, 1995, causally related to a November 4, 1992 employment injury.

In the present case, the Office of Workers' Compensation Programs accepted that appellant sustained a low back strain while pulling a sack of mail in the performance of duty on November 4, 1992. Appellant returned to work in a light-duty job in May 1993, gradually increasing his hours from two per day to eight hours per day. On June 23, 1994 appellant filed a claim for a new injury, to his back while distributing trays of mail. The Office accepted the claim for a low back strain and appellant returned to work on July 12, 1994.

On November 21, 1995 appellant filed a notice of recurrence of disability commencing November 20, 1995, causally related to the November 4, 1992 employment injury. By decision dated January 22, 1996, the Office denied the claim on the grounds that the medical evidence was insufficient to establish a recurrence of disability causally related to the November 4, 1992 employment injury.

The Board has reviewed the record and finds that appellant has not established a recurrence of disability commencing November 20, 1995.

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 establishes that light duty can be performed, the employee has the burden to establish by the weight of reliable, probative and substantial evidence a recurrence of total disability. As part of this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the light-duty requirements.<sup>1</sup>

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<sup>1</sup> *Terry R. Hedman*, 38 ECAB 222 (1986).

The Board notes initially that it is limited to reviewing evidence that was before the Office at the time of the January 22, 1996 decision.<sup>2</sup> In this case, there was additional medical evidence of record that is stamped as received by the employing establishment's compensation unit on January 22, 1996, but there is no indication that this evidence was received by the Office as of January 22, 1996. The Board cannot review on this appeal evidence that was submitted to the Office after January 22, 1996.<sup>3</sup>

With respect to the evidence that was submitted to the Office prior to the January 22, 1996 decision, the Board finds that it is of little probative value on the issue presented. The record contains brief notes from the attending physician, Dr. B.N. Till, a family practitioner, indicating that appellant was under his care from November 20, 1995 and would be able to return to work by December 15, 1995. Dr. Till does not provide a reasoned opinion, based on a complete background, discussing causal relationship between disability commencing November 20, 1995 and the accepted employment injury. It is, as noted above, appellant's burden to submit sufficient evidence to establish his claim. The Board finds that appellant has not met his burden of proof in this case.

The decision of the Office of Workers' Compensation Programs dated January 22, 1996 is affirmed.

Dated, Washington, D.C.  
March 13, 1998

Michael J. Walsh  
Chairman

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member

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<sup>2</sup> 20 C.F.R. § 501.2(c).

<sup>3</sup> The Record indicates, for example, that evidence was faxed to the Office on January 26, 1996.