

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GLENDA F. PATRICK and U.S. POSTAL SERVICE,
POST OFFICE, Dallas, Tex.

*Docket No. 97-103; Submitted on the Record;
Issued November 16, 1998*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established a recurrence of disability on May 30, 1995 causally related to her accepted employment injuries.

In the present case, appellant filed a claim on May 8, 1990, alleging that she sustained injuries as a result of her federal employment. The Office of Workers' Compensation Programs accepted overuse syndrome of the right shoulder, tendinitis of the right shoulder and impingement syndrome as causally related to employment. On November 12, 1995 appellant filed a claim for recurrence of disability commencing May 30, 1995. Appellant indicated that she had been working in a light-duty position since her original injury.

By decision dated April 30, 1996, the Office denied the claim on the grounds that appellant had failed to meet her burden of proof. Appellant requested reconsideration, and by decision dated July 25, 1996, the Office reviewed the case on its merits and denied modification of the prior decision.

The Board finds that appellant has not established a recurrence of disability commencing May 30, 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.¹

¹ *Terry R. Hedman*, 38 ECAB 222 (1986).

In the present case, appellant has not alleged a change in the light-duty job on May 30, 1995, nor has she submitted probative medical evidence which establishes a change in the nature and extent of the injury-related condition on or after May 30, 1995. An attending physician, Dr. Martin R. Kaplan, an osteopath, stated in a June 12, 1995 report, that appellant had “recurrent pain from a cervical herniated disc and upper extremity impingement syndrome since May 8, 1990. She has missed much work because of continued reagravation of her condition according to her, due to work she is qualified to do at the [employing establishment].” The Board notes that Dr. Kaplan does not specifically discuss disability commencing May 30, 1995, and his brief statement as to causal relationship appeared to implicate appellant’s light-duty job duties.² If appellant was claiming an aggravation of her condition due to continuing employment duties, this would constitute a claim for a new injury, as the Office explained to appellant in a letter dated October 4, 1995.³ Appellant filed a claim for recurrence of disability and the June 12, 1995 report does not provide probative evidence supporting a recurrence of disability causally related to the accepted employment injuries.

The remainder of the medical evidence is also insufficient to meet appellant’s burden of proof. A June 14, 1995 form report (Form CA-20) from Dr. Kaplan indicates that appellant was able to return to work on May 18, 1995. In a July 26, 1995 form report (Form CA-20a), the dates of disability are unclear, since the period for which compensation is claimed was reported as May 30, 1995 to the present, but there is also a box checked that appellant was able to return to work on June 12, 1995. Moreover, there is no reasoned opinion relating any disability commencing May 30, 1995 to the accepted employment injuries. Dr. Kaplan did submit a detailed report dated March 26, 1996; this report, however, discusses the degree of permanent impairment rather than the issues raised in a claim for a recurrence of disability commencing May 30, 1995.

In the absence of probative medical evidence establishing a change in the nature and extent of the accepted injuries on or after May 30, 1995, the Board finds that appellant has not established a recurrence of disability in this case.

² In a prior report dated April 16, 1995, Dr. Kaplan had reported low back pain due to pushing heavy mail carts.

³ A recurrence of disability includes a work stoppage caused by a spontaneous material change in the employment-related condition without an intervening injury. If the disability results from new exposure to work factors, an appropriate new claim should be filed; *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3 (January 1995).

The decisions of the Office of Workers' Compensation Programs dated July 25 and April 30, 1996 are affirmed.

Dated, Washington, D.C.
November 16, 1998

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member