

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MONETTE DAVIS and U.S. POSTAL SERVICE,  
POST OFFICE, Inglewood, Calif.

*Docket No. 97-2699; Submitted on the Record;  
Issued April 28, 1999*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant has met her burden of proof to establish that she sustained a recurrence of disability during the period June 25 through August 6, 1996 and August 29 through September 5, 1996 that was causally related to her June 23, 1996 employment injury.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to meet her burden of proof to establish that she sustained a recurrence of disability during the period June 25 through August 6, 1996 and August 29 through September 5, 1996 that was causally related to her June 23, 1996 employment injury.

On July 25, 1996 appellant, then a flat sorter clerk, filed a claim for an occupational disease (Form CA-1) assigned A13-1109099 alleging that she first became aware that her shoulder strain was caused or aggravated by her employment on June 23, 1996.<sup>1</sup> Appellant stated that she was keying mail when her shoulder started to hurt.

By letter dated September 20, 1996, the Office accepted appellant's claim for a nondisabling left shoulder strain.

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<sup>1</sup> Previously, on August 20, 1993, appellant filed a Form CA-1 assigned number A13-1023715 for a back injury sustained on August 15, 1993. On September 9, 1993 the Office of Workers' Compensation Programs accepted appellant's claim for thoracic strain. By decision dated December 28, 1994, the Office denied appellant's claim for compensation for the period March 9 through December 13, 1994. By decision dated February 1, 1996, the hearing representative affirmed the Office's decision. By decision dated March 21, 1996, the Office denied appellant's claim for compensation for the period May 17 through 25, 1995. Appellant filed a claim assigned number A13-1069689 for a left shoulder injury sustained on March 30, 1995. On June 24, 1996 appellant filed a claim for a recurrence of disability (Form CA-2a) of the August 15, 1993 employment injury indicating that she sustained a shoulder strain. By letter dated July 10, 1996, the Office advised appellant to file a claim for an occupational disease (Form CA-2) because her claim for a left shoulder condition was not related to the accepted back condition. Appellant then filed the instant Form CA-2 on July 25, 1996.

In an October 15, 1996 letter, the Office offered appellant limited-duty work effective that date based on her medical restrictions. On October 17, 1996 appellant rejected the employing establishment's job offer. On October 18, 1996 appellant accepted the job offer which included a two-week extension of her physical restrictions.

On May 28, 1997 appellant filed a claim for compensation on account of continuing disability (Form CA-8) for the period June 25 through August 6, 1996. On the same date, appellant filed a Form CA-8 for the period August 29 through September 5, 1996.

By letter dated June 30, 1997, the Office advised appellant that since no compensation had been paid in her case, she could not file a claim for continuing disability. Rather, the Office advised appellant to file a claim for compensation on account of traumatic injury or occupational disease (Form CA-7). Further, the Office advised appellant that there was no medical evidence of record from an authorized treating physician certifying any periods of disability due to her employment injury. Additionally, the Office advised appellant that the medical evidence of record was insufficient to establish that there was a change in the nature and extent of her injury-related condition or a change in the nature and extent of the light-duty work requirements. The Office then advised appellant to submit such evidence.

By decision dated July 23, 1997, the Office denied appellant's claim for compensation for the periods June 25 through August 6, 1996 and August 29 through September 5, 1996. The Office found no medical evidence of record establishing an objective change in appellant's medical condition that prevented her from performing light-duty work.

An employee returning to light duty, or whose medical evidence shows the ability to perform light duty, has the burden of proof to establish a recurrence of temporary total disability by the weight of substantial, reliable and probative evidence and to show that he or she cannot perform the light duty.<sup>2</sup> As part of her burden, the employee must show a change in the nature and extent of the injury-related conditions or a change in the nature and extent of the light-duty requirements.<sup>3</sup>

In the present case, appellant has neither shown a change in the nature and extent of her injury-related condition or a change in the nature and extent of the light-duty requirements. The record shows that following the June 23, 1996 employment-related left shoulder strain, appellant returned to work in a light-duty capacity with certain work restrictions effective October 15, 1996. The record does not establish, nor does appellant allege, that the claimed recurrence of total disability was caused by a change in the nature or extent of the light-duty job requirements.

Two supplemental attending physician's reports (Form CA-20a) dated May 27, 1997 and signed by a person whose signature is illegible for Dr. Van B. Tran, an internist, represent the only medical evidence of record that addresses appellant's disability during the period June 25 through August 6, 1996 and August 29 through September 5, 1996. The report regarding

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<sup>2</sup> *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

<sup>3</sup> *Id.*

appellant's disability during the period June 25 through August 6, 1996 revealed a diagnosis of left shoulder strain, that appellant's present condition was due to the injury for which compensation was claimed by placing a check mark in the box marked "yes" and that appellant was totally disabled for usual work by placing a check mark in the box marked "yes." Similarly, the other report concerning appellant's disability during the period August 29 through September 5, 1996 revealed the same findings with the exception of a diagnosis of neck and shoulder pain, and left shoulder strain. Any medical evidence relied upon by the Office to resolve an issue must be in writing and signed by a physician.<sup>4</sup> Inasmuch as the record does not indicate that the person who signed the Forms CA-20a is a physician, they are insufficient to establish appellant's burden.

Because there is no medical evidence of record establishing that appellant sustained a recurrence of disability during the period June 25 through August 6, 1996 and August 29 through September 5, 1996 that was causally related to her June 23, 1994 employment injury, the Board finds that appellant has failed to satisfy her burden of proof.

The July 23, 1997 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.  
April 28, 1999

George E. Rivers  
Member

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

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<sup>4</sup> See *James A. Long*, 40 ECAB 538, 541 (1989).