

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NAJWA ABOUL-HOSN and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Fresno, Calif.

*Docket No. 97-2467; Submitted on the Record;
Issued June 4, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue is whether appellant has established that she sustained a recurrence of disability on or after February 19, 1997 causally related to her accepted April 9, 1994 employment injury.

In the present case, the Office of Workers' Compensation Programs has accepted that appellant, a seasonal mail clerk for the Internal Revenue Service sustained right wrist tendinitis in the performance of her employment on or about April 9, 1994. On January 8, 1995 appellant accepted a light-duty position as a tax examining clerk, also a seasonal position. In May 1995 all employees of the employing establishment were offered a voluntary furlough. On May 17, 1995 appellant signed a statement acknowledging that she was aware that light duty was still available, but that she opted to take the voluntary furlough. On September 5, 1995 the Office made a retroactive loss of wage-earning capacity determination that appellant's actual earnings in the tax examining clerk position, which exceeded her date-of-injury wages, fairly and reasonably represented her wage-earning capacity.

On February 26, 1997 appellant filed a notice of recurrence of disability. Appellant explained that when she returned to light duty, she had performed desk work which required a lot of writing and handling of paper work and that she was in constant pain. The Office denied appellant's notice of recurrence of disability by decision dated April 28, 1997.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee 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 to show that he or she 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.¹

In the present case, as appellant's light-duty work would have continued except for her acceptance of a voluntary furlough, it is appellant's burden to establish a change in the nature and extent of the injury-related condition, such that medically she could no longer perform her light work and was in fact totally disabled. In support of her recurrence claim, appellant submitted medical reports from Dr. Donn Cobb, a family practitioner and Dr. Jonathon G. Wiens, Board-certified in preventative medicine.

On May 13, 1996 Dr. Wiens opined that appellant's diagnosis was right extensor tendonsynovitis. He stated that appellant appeared to be permanent and stationary as appellant had had this condition for quite some time. He opined that appellant was temporarily partially disabled, with the limitations Dr. Cobb had previously specified of repetitive hand motions limited to four hours a day. In a report dated August 29, 1996, Dr. Cobb stated that appellant's condition was essentially the same as it had been all along. He indicated that appellant continued to have tenderness in the extensor tendon of the right thumb, which had not abated in any way from the original injury. Dr. Cobb opined that appellant's condition was permanent and stationary and that he did not believe she would be able to return to her regular employment as a data processor. In a March 12, 1997 report, Dr. Cobb explained that appellant had been seen February 18, 1997, at which time she had stated that she had continued to have pain in her right wrist and thumb. He also stated that she had reported that she had just returned from Europe and that she had been carrying a small bag on the airplane, which severely aggravated the pain and that she was forced to visit a physician overseas due to the pain. Dr. Cobb indicated that appellant diagnosis remained tendinitis into the thumb. He indicated that appellant had not satisfactorily recovered from the original injury as she had had continuing symptoms involving the right thumb. He concluded that appellant's current condition was related to the original injury, but that it was unclear as to the objective reasons for that connection. Finally, he indicated that his restrictions remained the same and that he had returned appellant to work with very limited use of the right hand, basically no pinching or gripping with the right hand. However, he explained that there appeared to be no objective medical reason for that restriction other than appellant's complaints of pain.

The Board finds that appellant has not met her burden of proof to establish a recurrence of total disability.

In the present case, appellant returned to light-duty work following her employment injury. Appellant stopped working in her light-duty position in May 1995 when she accepted a voluntary lay-off. Appellant filed this notice of recurrence of disability in February 1997. None of the medical reports from Dr. Cobb or Dr. Wiens explain whether appellant in fact sustained a change in her injury-related condition, such that she could not perform her light-duty position. Dr. Cobb opined that appellant could not return to her "regular work" as a data processor and apparently imposed new restrictions of repetitive hand movement limited to four hours a day. The record does not substantiate, however, that appellant's "regular work" or her light-duty

¹ *Richard E. Konnen*, 47 ECAB 388 (1996).

position was as a data processor. Also Dr. Cobb did not explain whether the work restrictions of only four hours a day repetitive hand movement was medically required because of a change in the injury-related condition, or was due to appellant's continuing pain complaints. Furthermore, neither of appellant's physicians explained how medically her right thumb condition was a progression of the accepted employment injury. In this regard, Dr. Cobb noted that it was unclear why objectively appellant's current right thumb condition would be causally related to the accepted wrist injury. As appellant did not submit medical evidence substantiating a change in the nature and extent of the injury-related condition, such that medically she could no longer perform her light work and was in fact totally disabled, she did not meet her burden of proof to establish a recurrence of total disability.

The decision of the Office of Workers' Compensation Programs dated April 28, 1997 is hereby affirmed.

Dated, Washington, D.C.
June 4, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member