

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CANDELARIO CALDERON JR. and U.S. POSTAL SERVICE,
FORT BLISS STATION, El Paso, TX

*Docket No. 99-274; Submitted on the Record;
Issued August 17, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof to establish that he sustained a recurrence of disability on or after January 20, 1998, causally related to his accepted employment injuries.

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a recurrence of disability on or after January 20, 1998, causally related to his accepted employment injuries, such that he can no longer perform his full-time light-duty job.

The Office of Workers' Compensation Programs accepted that on March 3, 1991 appellant, then a 45-year-old distribution clerk, developed bilateral heel spurs requiring a left heel spur excision, as a result of his employment duties. On May 24, 1994 the Office accepted that he developed left carpal tunnel syndrome and bilateral epicondylitis and on May 9, 1997 the Office accepted that on April 11, 1997 appellant sustained employment-related strains to his cervical and lumbar spine, both knees and both wrists. Appellant was off work for intermittent periods due to his employment injuries. Following a course of treatment for his most recent injuries, on October 9, 1997 appellant's treating physician, Dr. Arthur C. Bieganowski, Jr., a Board-certified neurologist, released him to return to limited duty, eight hours a day. Based on the results of an October 10, 1997 work capacity evaluation, Dr. Bieganowski specified that in an eight-hour day, appellant could not kneel, climb or reach above the shoulder, but could sit continuously for two hours at a time and could walk or stand continuously for one hour. He further indicated that appellant could bend and stoop intermittently for one hour at a time, and could perform continuous pushing and pulling for four hours and simple grasping for eight hours. Finally, Dr. Bieganowski indicated that appellant could occasionally lift up to 50 pounds and could frequently lift up to 20 pounds but only up to the shoulder level. In a Form CA-17 report dated December 4, 1997, Dr. Jacob S. Heydeman, appellant's treating Board-certified orthopedic surgeon, indicated that appellant was capable of continuous sitting up to six hours a day and continuous standing and walking up to two hours a day.

Effective October 31, 1997, the employing establishment offered appellant a full-time modified-duty assignment, which he accepted. The offer provided that appellant would work as a growth coordinator four to six hours a day, would box mail one to two hours a day and would clear carriers one to two hours a day and that all duties would be within appellant's physical restrictions. In accepting the job offer, he agreed to bring to his supervisor's immediate attention any duties which he believed to be outside of the restrictions assigned to him by his attending physician.

Appellant stopped work on January 20, 1998. There is a report of telephone call in the record dated April 10, 1998, which states that a three way conversation had taken place between the appellant, the Office and the employing establishment, at which it was discussed that appellant had been performing job duties outside his job description. On April 21, 1998 appellant filed a Form CA-7 claiming compensation for total disability from January 20, 1998 forward. By letter dated May 1, 1998, the Office informed appellant that if he had stopped work because he contended the light-duty job had changed such that it no longer met the restrictions set by his physician, then he must furnish a statement in full explanation and submit any available supporting evidence, such as coworkers' statements. The Office further informed appellant that if he had stopped work because of a worsening of his employment-related condition, then he must submit a complete narrative report from his treating physician, in which the physician described the objective findings which convinced him that appellant's condition had worsened and explained why he could no longer perform the duties he was performing when he stopped work.

On May 12, 1998 appellant filed a claim (Form CA-2a) alleging that he sustained a recurrence of disability on January 20, 1998 characterized by a worsening of his condition due to the failure of the employing establishment to provide work within his physical restrictions. He further submitted a narrative statement in which he reiterated that the employing establishment had violated the walking and standing restrictions set by his treating physicians, and further stated that while he felt the record contained sufficient narrative medical reports to support his claim, he would be submitting additional medical evidence.

By decision dated September 1, 1998, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability on or around January 20, 1998 causally related to his employment injuries.

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.¹ As part of his 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.²

¹ *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

² *Id.*

In the present case, appellant has not shown a change in the nature and extent of the light-duty requirements. The record shows that on October 27, 1997 he returned to work in a full-time, limited-duty capacity with certain work restrictions. Appellant worked until January 20, 1998, when he stopped, alleging that the employing establishment had never provided him with the agreed upon sit down job and that as a result his heel spurs had worsened. While he submitted several narrative statements, in which he stated that the employing establishment had not complied with the restrictions set by his physician, he did not furnish, as requested by the Office in its May 1, 1998 letter, a statement in full explanation of his assertions or submit any available supporting evidence, such as co-workers' statements. Appellant did not state what duties he performed between his return to work on October 27, 1997 and his work stoppage on January 29, 1998 or explain why he felt these duties were outside of the restrictions set by his physicians. In a June 2, 1998 letter to appellant's Senator, the Office explained that it remained unclear to the Office why, after working in the position for more than 60 days, appellant had stopped working on January 20, 1998. The Office referenced the three-way telephone conversation of April 10, 1998 and noted that, while appellant continued to assert that his duties were outside of his physical restrictions, the employing establishment had directly refuted this allegation. In addition, the record contains a letter from the employing establishment dated January 23, 1998, which states that sit down work was provided for appellant due to his foot condition. Therefore, the record does not establish that the claimed recurrence of total disability was caused by a change in the nature or extent of the light-duty job requirements.

Appellant has also not shown that he was disabled due to a change in the nature or extent of his accepted employment-related injuries. In the present case, he has not submitted any medical evidence which establishes that his claimed condition on or around January 20, 1998 was causally related to his any of his accepted employment injuries. The relevant medical evidence pertaining to appellant's alleged January 20, 1998 recurrence of disability consists primarily of the periodic reports from appellant's treating physicians, Drs. Bieganowski and Heydeman. In his report dated January 9, 1998, Dr. Heydeman notes that appellant reports that with increased walking he has been having increasing heel and bilateral knee pain. He further stated that the treatment plan included rest and keeping appellant out of the workplace, limiting his walking and providing therapy. In an accompanying Form CA-17, attending physician's report, Dr. Heydeman indicated that appellant was "unable to return to work until January 30, 1998" and was "unable to do sitting job." In a narrative report dated January 30, 1998 and an accompanying Form CA-17 report of the same date, however, he simply states that appellant's feet remained unchanged and that he is unable to return to work. In a subsequent report dated February 20, 1998, Dr. Heydeman notes that appellant reports that with prolonged standing and walking he is having increasing pain, which improves with rest and modification of the activity. He further stated: "He has tried exercises. He has tried surgery. He has tried medication, I think that he is just not able to return back to his previous level of employment with the standing and walking that is required." In a follow-up report dated April 3, 1998, Dr. Heydeman further notes that appellant is having worsening pain in both feet and was having difficulty getting about. He stated that appellant had a lot of scarring on the plantar aspect of his heel where prior injections were done and that this was probably adding to his condition. Dr. Heydeman further stated that appellant was not able to work and that he would recommend retirement. In a letter to the Office dated May 26, 1998, he stated that appellant was having severe problems with his feet, having undergone surgery with unsuccessful results and that he continued to have pain and difficulty

walking. Dr. Heydeman stated that appellant could not walk long distances or stand for long periods of time and that therefore he was unable to work for the employing establishment. He concluded that appellant was disabled due to multiple problems with his knees, back, neck, feet and elbow. In his final narrative report of record dated July 24, 1998, Dr. Heydeman stated that nothing had changed. The remainder of his reports consist of completed CA-17 forms and CA-20 forms which indicate that appellant is totally disabled due to his employment-related conditions but offer no additional information.

Appellant also submitted reports from Dr. Bieganowski, his treating neurologist. In a narrative report dated February 4, 1998, Dr. Bieganowski stated that appellant had returned to work but was finding it difficult because of the increased severe pain in his knees. He noted that acupuncture, physical therapy and medications had been used in an effort to keep appellant at work, but that this might not be possible. Upon examination, Dr. Bieganowski noted significant pain to palpation in both knees and a mild amount of swelling. While he concluded that appellant was continuing to work as he could, appellant in fact had already stopped work. In a follow-up report dated April 13, 1998, Dr. Bieganowski noted that appellant had suffered multiple injuries at work, including neck, back, hand, arm, elbow, knee and foot injuries, and due to pain in these areas of his body, it was difficult for him to perform any significant work function. He noted that appellant was constantly in and out of work secondary to exacerbation of his employment-related conditions and that he could not be considered a candidate to return to any type of work function either now or at any time in the future. Dr. Bieganowski concluded that appellant was totally disabled and would require medical care for the rest of his life. His remaining reports consist of completed CA-17 and CA-20 forms, on which he indicates that appellant is disabled due to his employment-related medical conditions but does not offer any additional relevant information.

Finally, appellant submitted a March 6, 1998 report from Dr. John S. Jackson, an osteopath to whom appellant was referred by Dr. Bieganowski. In his report, Dr. Jackson noted that appellant had been employed as a distribution clerk but had not worked since January 1998 due to the condition of his heels. He further stated: "His duties consist of walking, standing, constant use of hands, arms, wrists, constant lifting, holding, constant weightbearing of knees, climbing, kneeling, squatting and stooping. All of these movements will aggravate his condition. He is not able to work due to his pain."

While the medical evidence from Drs. Heydeman, Bieganowski and Jackson lends support to a finding that appellant continues to have pain from his accepted injuries, which intermittently increases, appellant has submitted no medical evidence, supported by medical rationale and objective findings, that his condition has worsened to any degree. As appellant has failed to establish that he had a change in the nature or extent of his modified duties and did not submit a rationalized medical report based on a complete factual and medical background establishing a change in the nature or extent of his employment-related conditions such that he can no longer perform his full-time limited-duty job, the Board finds that he has failed to discharge his burden of proof.³

³ *Alberta S. Williamson*, 47 ECAB 569 (1996).

Consequently, the decision of the Office of Workers' Compensation Programs dated September 9, 1998 is hereby affirmed.

Dated, Washington, D.C.
August 17, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member