U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDWARD L. TAYLOR and U.S. POSTAL SERVICE,
POST OFFICE, Los Angeles, CA

Docket No. 99-1018; Submitted on the Record;
Issued August 7, 2000

DECISION and ORDER

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

The issues are: (1) whether appellant has established a recurrence of disability causally related to his employment injury; and (2) whether the Office of Workers' Compensation Programs properly determined that appellant abandoned his request for a hearing.

In the present case, appellant filed a occupational injury claim (Form CA-2) on May 22, 1986, alleging that he sustained a left shoulder injury causally related to factors of his employment as a mail carrier. The Office accepted that appellant sustained a musculoligamentous strain of the cervical spine. The record indicates that appellant worked light duty from May 1986 to March 1987, when he stopped working. With respect to compensation for wage loss, appellant submitted a Form CA-7 claim for compensation for periods of disability from January 27, 1986 to March 31, 1987. The record also contains a notice of recurrence of disability dated September 20, 1990, for the period commencing June 27, 1987. There is no indication that the Office issued any contemporaneous final decisions with respect to these claims.

In an undated letter received by the Office in 1997, appellant requested that his case be reopened. Appellant submitted medical evidence from February 1997 through February 1998 regarding treatment for back pain.

By decision dated April 23, 1998, the Office determined that appellant had not established a recurrence of disability. By decision dated November 19, 1998, the Office determined that appellant had abandoned his request for a hearing.

The Board has reviewed the record and finds that appellant has not established a recurrence of disability.

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]

As noted above, appellant requested in 1997 that his case be reopened. He did not further discuss his claim. The Office apparently considered his letter to be a claim for a recurrence of disability based on his current condition. The Board notes that appellant had submitted in September 1990 a Form CA-2a, reporting the date of recurrence of disability as June 27, 1987. With respect to a claim for a recurrence of disability on or after June 27, 1987, the Board finds that appellant has not submitted probative medical evidence establishing his claim. The evidence from 1997 to 1998 consists of treatment notes for lower back pain; none of these reports contains a reasoned medical opinion as to a period of disability causally related to the accepted employment injury. The Board also finds that the medical evidence previously submitted is not sufficient to establish a recurrence of disability on or after June 27, 1987. For example, in a report dated January 4, 1990, Dr. Fayegh Vakili, an orthopedic surgeon, stated that after his employment injury appellant had been performing modified duty, but according to appellant he was assigned heavy lifting which aggravated his symptoms. Dr. Vakili did not provide specific details as to when this may have occurred. If appellant is claiming that his light-duty job had changed and he was forced to work outside his restrictions, he must provide a more detailed allegation describing the specific time period and a clear description of the change in actual work duties.[2] The Board finds that the record does not contain sufficient factual or medical evidence to establish a recurrence of disability in this case.

The Board also notes that the record indicates appellant filed a Form CA-7 in 1989 for periods of disability from January 27, 1986 to March 31, 1987. Upon return of the case record, the Office should issue a final decision with respect to any outstanding claims for compensation benefits.

The Board further finds that the Office properly determined that appellant abandoned his request for a hearing.

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

[2] If appellant is relating his disability not to a change in light duty but to the performance of his regularly assigned light duties, this would require filing a claim for a new injury; *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3 (January 1998).

20 C.F.R. § 10.137 provides in pertinent part:

> "A claimant who fails to appear at a scheduled hearing may request in writing 10 days after the date for the hearing that another hearing be scheduled. Where good cause is shown, another hearing will be scheduled. The failure of the claimant to request another hearing within 10 days, or the failure to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing."

In the present case, the Office's Branch of Hearings and Review sent a letter dated August 27, 1998, advising appellant that a hearing was scheduled for October 27, 1998. The letter was sent to appellant's address of record, 2321 Barre Street, Norfolk Virginia 23502. Appellant states that he did not receive the letter because it was addressed to his old address instead of his current address at 2804 Victoria Avenue. The Board is unable, however, to find any evidence that appellant properly had notified the Office of a change in address. The April 23, 1998 Office decision was sent to the 2321 Barre Street address and appellant's letter requesting a hearing does not attempt to notify the Office of a new address, nor is there any probative evidence of record establishing that appellant had properly notified the Office of a change in address. The August 27, 1998 notice of hearing appears to have been sent to appellant's address of record and, therefore, it cannot be considered misaddressed. Appellant did not appear for the scheduled hearing, or provide reasons for not appearing within 10 days. Accordingly, the Board finds that appellant abandoned his request for a hearing.

The decisions of the Office of Workers' Compensation Programs dated November 19 and April 23, 1998 are affirmed.

Dated, Washington, D.C.
August 7, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member