

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHELE A. LOWERY and U.S. POSTAL SERVICE,
WASHINGTON GENERAL MAIL FACILITY, Washington, DC

*Docket No. 99-90; Submitted on the Record;
Issued September 26, 2000*

DECISION and ORDER

Before DAVID S. GERSON, PRISCILLA ANNE SCHWAB,
VALERIE D. EVANS-HARRELL

The issue is whether appellant met her burden of proof in establishing that she had a recurrence of total disability beginning December 20, 1997 that was causally related to her accepted employment-related condition.

On June 30, 1994 appellant, then a 35-year-old mail distribution clerk, filed a claim for carpal tunnel syndrome and bilateral peripheral sensory neuropathy. She related her condition to the continuous sorting of mail manually, which caused pain in her neck, shoulders, arms, wrists and hands. She stated that she first related the condition to her employment on August 20, 1992. The Office of Workers' Compensation Programs accepted appellant's claim for fibromyalgia.

In a May 17, 1996 form report, Dr. Felton Anderson, a cardiologist, indicated that appellant had been partially disabled since August 20, 1992 and was totally disabled for the period February 25 through May 5, 1995. He noted appellant was able to return to light-duty work on May 5, 1995.

In a May 20, 1996 report, Dr. Jonathan Adelson, a Board-certified rheumatologist, indicated that appellant was totally disabled due to fibromyalgia beginning April 19, 1996 and would remain off work for two months. In a May 28, 1996 duty status report, he reported that appellant was totally disabled for the period March 29 through June 30, 1996 and would be partially disabled for the period beginning July 1, 1996. In a July 23, 1996 duty status report, Dr. Adelson indicated that appellant returned to work on July 8, 1996 and stated that she should work no more than four hours a day. The Office paid compensation for the periods appellant did not work retroactive to February 25, 1995.

In a March 5, 1997 report, Dr. Adelson stated that appellant currently was working on light duty, four hours a day. He concluded that appellant would never be able to return to her full-duty position as a distribution clerk. Dr. Adelson indicated that appellant could sit for an hour a day, stand for an hour a day and walk for ½ hour a day. He stated that she could lift up to

10 pounds for 3 to 4 hours a day. Dr. Adelson related appellant's condition to repetitive motion. He diagnosed fibromyalgia, aggravated by an immune complex disease.

Appellant filed claims for continuing compensation (CA-8 form) for four hours a day, indicating that she was working four hours a day. In two January 9, 1998 CA-8 forms, appellant filed claims for total disability for the period December 6, 1997 through January 2, 1998. In a January 23, 1998 CA-8 form, appellant filed a claim for total disability for the period January 3 through 16, 1998.

In a February 5, 1998 letter, an Office claims examiner noted the claim forms for the period December 20, 1997 through January 16, 1998 were for total disability but indicated that the medical evidence of record showed that appellant could work four hours a day. The claims examiner stated that he had processed the claims as if for compensation for four hours a day for the period in question. He informed appellant that she was not entitled to temporary total disability compensation unless she submitted medical evidence to support a claim for total disability for any period after November 1, 1997. In a March 6, 1998 CA-8 form, appellant indicated that she returned to part-time work on January 23, 1998.

In a December 5, 1997 office note, Dr. Adelson reported that appellant complained of severe pain in the shoulders, wrists, left buttock and hip areas and the cervical and lumbar areas. He diagnosed flare up of nerve root irritation in the cervical and lumbar regions of the spine, multiple joint pain and fibrositis. Dr. Adelson indicated that appellant's sick leave was extended to December 11, 1997. In a December 24, 1997 office note, he stated that appellant described a return of severe pain in multiple sites including both wrists, both shoulders and the cervical and lumbar regions. Dr. Adelson indicated that he injected medication into the affected areas and returned appellant to her current regimen.

In a February 11, 1998 report, he indicated that he had been submitting periodic medical reports for appellant following office visits. Dr. Adelson stated that appellant would have exacerbations and remissions of her condition. He commented that there might be times when she would be unable to work. Dr. Adelson indicated that when appellant was at base line, she would be able to work four hours a day but, when her condition flared up, she might have to miss work. In an accompanying report, he repeated appellant's work restrictions, indicating that she could work four hours a day.

In an April 13, 1998 decision, the Office denied appellant's claim for recurrence of total disability on December 20, 1997 on the grounds that she had not established that she was totally disabled from employment.

The Board finds that appellant has not established that she had a recurrence of total disability for the period December 20, 1997 through January 16, 1998.

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she 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 show that 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 this case, appellant did not show any change in her light-duty assignment. The medical evidence showed that she complained of increased pain during office visits on December 5 and 24, 1997. In his December 5, 1997 report, Dr. Adelson extended appellant's sick leave to December, 11, 1997. In the December 24, 1997 report, he made no mention of whether appellant was totally disabled due to her employment-related condition. Dr. Adelson stated in his February 11, 1998 report that appellant would have occasional flare-ups of her accepted fibromyalgia during which she might not be able to work. This report, however, is general in nature with no specific reference to the period in question. Dr. Adelson did not present any rationalized medical evidence that would explain why appellant was totally disabled from December 20, 1997 through January 16, 1998 and describe how the total disability during this period was due to the accepted employment-related condition of fibromyalgia. Dr. Adelson's reports, therefore, have little probative value and are insufficient to establish that appellant had an employment-related recurrence of total disability during the period at issue.

The decision of the Office of Workers' Compensation Programs, dated April 13, 1998, is hereby affirmed.

Dated, Washington, DC
September 26, 2000

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member

Valerie D. Evans-Harrell
Alternate Member

¹ *George DePasquale*, 39 ECAB 295 (1987); *Terry R. Hedman*, 38 ECAB 222 (1986).