

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EILEEN M. WITHROW and U.S. POSTAL SERVICE,
POST OFFICE, Stow, OH

*Docket No. 03-919; Submitted on the Record;
Issued May 21, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has met her burden of proof in establishing that she sustained a recurrence of disability on or after November 16, 1998 as a result of her July 3, 1997 employment injury.

This is the third appeal in this case. In decisions dated January 26, 2001 and June 3, 2002, the Board found that appellant had failed to meet her burden of proof in establishing that she sustained a recurrence of disability on or after November 16, 1998 due to either a change in the nature and extent of her limited-duty job requirements or a recurrence of total disability. The facts and circumstances of the case as set forth in the Board's prior decisions and are adopted herein by reference.¹

Following the Board's June 3, 2002 decision, appellant, through her attorney, requested reconsideration on January 12, 2003 and submitted additional medical evidence. By decision dated January 27, 2003, the Office of Workers' Compensation Programs reviewed appellant's claim on the merits and declined modification of the prior decisions.

The Board finds that appellant has failed to meet her burden of proof in establishing that she sustained a recurrence of disability on or after November 16, 1998 as a result of her July 3, 1997 employment injury.

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

¹ Docket No. 99-2041 (issued January 26, 2001); Docket No. 02-77 (issued June 3, 2002).

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 requirements.²

Following the Office's August 21, 2001 decision, appellant submitted a series of medical reports from Dr. J.P. Bressi, an osteopath, mentioning a shocking-type pain in her back and legs including December 16, 2002. These notes do not provide a history of injury, a clear diagnosis and opinion that appellant's current condition is due to her accepted employment injury and that this injury renders her totally disabled. Due to these deficiencies, these reports are not sufficient to meet appellant's burden of proof in establishing a recurrence of disability.

In a report dated September 27, 2001, appellant's attending physician, Dr. James P. Klejka, a physiatrist, provided physical findings including severe tenderness to light palpitation, give away weakness on strength testing and limited range of motion in the spine. He diagnosed L3-4 and L4-5 disc herniations with severe back and leg pain and myofascial back pain. Dr. Klejka provided appellant's work restrictions of standing for 15 minutes at a time, sitting up to 1 hour at a time, lifting up to 10 pounds occasionally and no bending, stooping, squatting, crawling or climbing. Dr. Klejka did not offer an opinion on the causal relationship between appellant's diagnosed conditions and her employment and did not offer any medical reasoning for appellant's work restrictions. Without a history of injury and an opinion on the causal relationship between appellant's diagnosed condition and her employment supported by medical rationale, this report is not sufficient to meet appellant's burden of proof in establishing that appellant's current condition is due to her employment and that her accepted condition has undergone a material change rendering her disabled for her light-duty position.

In a report dated December 20, 2001, Dr. Bressi stated that appellant was totally disabled due to her chronic low back pain secondary to a herniated disc from her July 3, 1997 employment injury. He stated that appellant would have chronic pain for the rest of her life and that she could not work even at the sedentary level. Dr. Bressi did not mention that appellant has two documented herniated discs, L4-5, which was accepted as due to her employment injury and L3-4, which has not been established as employment related. As Dr. Bressi did not differentiate between appellant's conditions and as he did not provide medical findings or reasoning in support of his conclusion that appellant was totally disabled, his report is not sufficient to meet appellant's burden of proof.

As appellant has not submitted sufficient rationalized medical opinion evidence to establish that she has experienced a material change in her accepted employment condition rendering her totally disabled for her light-duty position, the Office properly denied her claim.

² *Terry R. Hedman*, 38 ECAB 222 (1986).

The January 27, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
May 21, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member