

**United States Department of Labor
Employees' Compensation Appeals Board**

R.S., Appellant

and

**U.S. POSTAL SERVICE, GENERAL MAIL
FACILITY, Little Rock, AK, Employer**

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**Docket No. 11-1267
Issued: February 27, 2012**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 28, 2011 appellant filed a timely appeal from a November 16, 2010 decision of the Office of Workers' Compensation (OWCP) denying her claim for wage-loss compensation for the period after August 28, 2010 and from a January 24, 2011 nonmerit decision of OWCP that denied her request for reconsideration. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUES

The issues are: (1) whether appellant sustained a recurrence of total disability commencing August 28, 2010 causally related to her October 26, 1991 injury; and (2) whether OWCP properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

On appeal, appellant contends that she has submitted all of her paperwork and that she is no longer working due to the National Reassessment Program (NRP).

FACTUAL HISTORY

On October 29, 1991 appellant filed a traumatic injury claim alleging that, on October 26, 1991, while pulling wire cages full of magazines, she felt something pull in her neck, shoulder and upper back. She noted that she sustained a sharp and constant pain at the base of her neck and on left shoulder blade. OWCP accepted appellant's claim for cervical strain and left shoulder strain.

On March 23, 1998 the employing establishment offered appellant a light-duty position as a rehabilitation clerk and she accepted that position. On July 24, 2008 appellant accepted a position as a rehabilitation clerk. The physical requirements of the position were sitting and standing up to eight hours, lifting not to exceed 20 pounds, occasional walking and simple grasping up to six hours intermittently. By letter dated March 2, 2010, the employing establishment asked appellant to provide current information with regard to her medical restrictions.

By letter dated August 6, 2010, a supervisor at the employing establishment indicated that, following the guidelines established by the NRP, they were unable to identify any available necessary tasks for appellant within her restrictions.

On August 16, 2010 appellant filed a notice of recurrence alleging that, due to the NRP, the employing establishment had no more work for her. On September 30, 2010 she filed a claim for compensation for wage loss commencing August 28, 2010 causally related to the October 28, 2010 injury. The employing establishment noted on the claim form that appellant is in Complete Day as work status due to the NRP effective August 16, 2010.

In an October 18, 2010 work capacity evaluation, Dr. Joe D. Daugherty, Board-certified in family medicine, indicated that appellant was able to work with restrictions on lifting, pushing and pulling, and that consideration should be given to a position that does not require continuous lifting pushing and pulling. In an October 22, 2010 duty status report, he noted that she was restricted to lifting 5 pounds continuously and 10 pounds intermittently, could sit for four hours, could stand for two hours continuously and six hours intermittently, could not climb or kneel, could bend/stoop and twist for four hours at a time, could do intermittent simple grasping for two hours at a time and could not do fine manipulation. In response to questions sent by the employing establishment, on March 4, 2010, Dr. Daugherty indicated that appellant had shoulder pain and cervical spine radiculopathy and had reached maximum healing.

By decision dated November 16, 2010, OWCP denied appellant's claim for wage loss as the medical evidence did not support that her disability from her modified position was related to the accepted conditions from her claim.

In a December 10, 2010 report, Dr. Daugherty stated that appellant's original injury was the basis for the limitations related to her job. He noted that the cervical strain with injury was in

1991 and that she had no prospects for recovery and that the present restrictions must remain permanent.

On December 20, 2010 appellant requested reconsideration. By decision dated January 24, 2011, OWCP denied reconsideration.

LEGAL PRECEDENT

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.² The term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force) or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.³ If the disability results from new exposure to work factors, the legal chain of causation from the accepted injury is broken and a new claim should be filed.⁴

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 a 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.⁵ OWCP procedures provide that a recurrence of disability can be caused by withdrawal of a light-duty assignment made specifically to accommodate an employee if the withdrawal is not due to misconduct or nonperformance of job duties.⁶

In *K.S.*,⁷ the Board found that the claimant established that she sustained an employment-related recurrence of disability when her modified transportation clerk position was withdrawn by her employer as part of an NRP and there was no indication that the modified work position was withdrawn due to misconduct or nonperformance of job duties.

² See 20 C.F.R. § 10.5(x). See also *Hubert Jones, Jr.*, 57 ECAB 467 (2006).

³ *Id.*

⁴ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3 (March 2011). See also *Cecelia M. Corley*, 56 ECAB 662 (2005); *Donald T. Pippin*, 54 ECAB 63 (2003).

⁵ See *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁶ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(1)(c) (March 2011).

⁷ Docket No. 08-2105 (issued February 11, 2009).

ANALYSIS

Appellant claimed that she sustained a recurrence of total disability when her light-duty position as a rehabilitation clerk was withdrawn due to NRP. She alleged a recurrence of disability and filed claims for compensation for wage loss commencing August 28, 2010.

In a letter dated August 6, 2010, the employing establishment notified appellant that, pursuant to the NRP, there was no longer any work available for her and her light-duty position was withdrawn. There is no evidence that the position was withdrawn due to misconduct or nonperformance of job duties. The Board finds that appellant has established that she sustained a recurrence of total disability when her modified work assignment was withdrawn by her employer as part of an NRP.⁸

OWCP found that appellant did not meet her burden of proof for continuing disability compensation due to the fact that Dr. Daugherty did not justify the more restricted job limitations, which were the reason she was no longer working. However, Dr. Daugherty did not submit the reports noting further limitations until October 18, 2010, over two months after appellant was released from her light-duty position due to the NRP. Accordingly, there is no merit to the finding that appellant bore the burden to justify the recurrence of disability. Appellant's position was not withdrawn due to increased medical limitations but rather due to the NRP.

CONCLUSION

The Board finds that appellant met her burden of proof to establish that she sustained an employment-related recurrence of total disability on August 28, 2010.⁹

⁸ See *A.N.*, Docket No. 11-394 (issued October 26, 2011).

⁹ In light of the disposition of this issue, the reconsideration issue is moot.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 24, 2011 and November 16, 2010 are reversed.

Issued: February 27, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board