

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CARRIE B. ARSENAULT and U.S. POSTAL SERVICE,
POST OFFICE, Wyandotte, Mich.

*Docket No. 96-782; Submitted on the Record;
Issued April 8, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has established that disability commencing on or after June 17, 1992 was causally related to an October 27, 1990 employment injury.

In the present case, appellant filed a claim alleging that she sustained injuries in the performance of duty on October 27, 1990 when she picked up some magazines from the floor. The Office of Workers' Compensation Programs accepted the claim for a lumbosacral strain and a herniated nucleus pulposus at L5-S1. Appellant returned to work in a light-duty position on October 24, 1991, and stopped working on June 17, 1992. By decision dated July 1, 1993, the Office determined that appellant had not established that disability commencing June 17, 1992 was causally related to the October 27, 1990 employment injury. In a decision dated November 22, 1995, an Office hearing representative affirmed the July 1, 1993 decision.

The Board has reviewed the record and finds that appellant has not established that disability commencing June 17, 1992 was causally related to the October 27, 1990 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 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

In this case, the medical evidence is not sufficient to establish that disability on or after June 17, 1992 was causally related to the employment injury. In a report dated July 31, 1992, Dr. Max K. Newman, a specialist in physical medicine, provided a history and results on

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

examination, diagnosing residuals of a nerve root compression of S1 on the right, post laminectomy, and degenerative disc disease of the cervical spine, with probable involvement of C6-7 on the right. He did not discuss disability commencing June 17, 1992. In a report dated October 3, 1992, Dr. Newman noted that appellant had stopped working on June 17, 1992. He stated that “the neck problems obviously were generated by the postural problems of the low back, and an underlying osteoarthritis of the cervical spine,” without providing further explanation.

In a report dated March 27, 1993, Dr. Newman noted the duties of appellant’s light-duty job and stated that she was being subjected to repetitive microtrauma, and “for a previous asymptomatic degenerative arthritis of the cervical spine, this produces both an exacerbation, and when continuing is an aggravation of the arthritic process.” Dr. Newman reported that his examination “still indicated symptomatic involvement of the cervical and lumbar spines, both causally related to employment.” In a report dated April 13, 1993, Dr. Newman reviewed his treatment of appellant and stated in pertinent part: “the reason for the work stoppage was precipitated by the problems in terms of the repetitive microtrauma with the aggravation of the underlying osteoarthritis of the cervical spine, and the fact that she could not continue her employment after June 11, 1992. It was not due to the October 1990 injury, since she had returned back to work, and was functioning in her regular job.”

Dr. Newman related disability commencing June 17, 1992 with a cervical condition that was aggravated by repetitive microtrauma after appellant returned to work following her October injury, rather than to the October 27, 1990 employment injury. In a deposition dated March 22, 1995, Dr. Newman again indicated that appellant had a cervical condition causally related to repetitive activity at work. The issue presented on this appeal, however, is whether disability commencing June 17, 1992 was causally related to the accepted October 27, 1990 employment injury. If appellant is claiming an injury resulting from repetitive activity in her light-duty job from October 1991 through June 1992, then this would constitute a new injury and require the filing of an appropriate claim.

With regard to the October 27, 1990 employment injury, Dr. Newman does not support a recurrence of disability commencing June 17, 1992. There is no probative medical evidence of record establishing causal relationship between disability on or after June 17, 1992 and the October 27, 1990 employment injury. For example, in an April 20, 1993 report, Dr. Myron M. LaBan, a specialist in physical medicine, indicated that as of October 1992 he would have been reluctant to allow appellant to stand on her feet more than one hour, but he does not discuss causal relationship between any restrictions and the October 27, 1990 employment injury. The Board accordingly finds that appellant has not met her burden of proof in this case.

The decision of the Office of Workers' Compensation Programs dated November 22, 1995 is affirmed.

Dated, Washington, D.C.
April 8, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member