

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JERRY L. DEAN and U.S. POSTAL SERVICE,
POST OFFICE, Santa Ana, Calif.

*Docket No. 96-1463; Submitted on the Record;
Issued April 6, 1998*

DECISION and ORDER

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

The issue is whether appellant has established that he had a recurrence of disability beginning October 22, 1995 causally related to his March 15, 1993 employment injury.

The Board has duly reviewed the case record in the present appeal and finds that appellant has not sustained his burden of proof to establish that he had a recurrence of disability.

On March 15, 1993 appellant filed a claim for a traumatic injury occurring on that date in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for lumbar sprain. Appellant returned to limited-duty employment following his injury.¹

On December 13, 1995 appellant filed a notice of recurrence of disability alleging that on October 22, 1995 he sustained a recurrence of disability causally related to his March 15, 1993 employment injury. Appellant related that, after returning to work following his original employment injury, his back continued hurting such that he required physical therapy, chiropractic care and anti-inflammatory medication. Appellant did not stop work following the alleged recurrence of disability.

By letter dated January 4, 1996, the Office informed appellant of the evidence required to establish his claim. Appellant, however, submitted no further evidence.²

¹ On November 3, 1994 appellant filed a claim for a schedule award. By decision dated November 18, 1994, the Office found that appellant was not entitled to a schedule award because the medical evidence did not establish that he sustained a permanent impairment of a scheduled member due to his employment injury.

² The Board notes that appellant submitted evidence which was received by the Office subsequent to its February 6, 1996 decision. The Board cannot consider this evidence as the Board's review of the case is limited to the evidence of record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

By decision dated February 6, 1996, the Office denied appellant's claim on the grounds that the evidence failed to establish that he had a medical condition causally related to his March 15, 1993 employment injury.

Where an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee 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 to show that he or 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.³

In the present case, appellant sustained lumbar strain due to an injury on March 15, 1993, following which he returned to work in a limited-duty capacity. There is no evidence in the record establishing any change in the nature and extent of appellant's light-duty position as a cause of his claimed disability after October 22, 1995. Appellant has not submitted any relevant medical evidence which would establish that he sustained a recurrence of disability on October 22, 1995 causally related to his accepted employment injury. Appellant, thus, has not met his burden of proof in establishing his claim.

The decision of the Office of Workers' Compensation Programs dated February 6, 1996 is hereby affirmed.

Dated, Washington, D.C.
April 6, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

³ *Terry R. Hedman*, 38 ECAB 222 (1986).