U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLOTTE BENNETT and U.S. POSTAL SERVICE,
POST OFFICE, Newark, Del.

Docket No. 96-2087; Oral Argument Held December 2, 1997;
Issued February 10, 1998

Appearances: *Charlotte Bennett, pro se*; *Miriam D. Ozur, Esq.*,
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issues are: (1) whether appellant has established that she was totally disabled beginning April 25, 1995 due to her November 14, 1988 employment injury; and (2) whether the Office of Workers' Compensation Programs properly determined that appellant abandoned her request for a hearing.

The Office accepted that appellant sustained a herniated disc at C5-6 on November 14, 1988, and paid her compensation for temporary total disability until she returned to limited duty for four hours per day on March 8, 1995. On May 7, 1995 appellant filed a claim for a recurrence of total disability beginning April 25, 1995. The Office denied this claim by decision dated July 25, 1995, finding that there was "no evidence to support that the claimant is totally disabled due to the original injury of November 14, 1988."

When 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.[1]

A description of the limited-duty position appellant accepted on March 7, 1995 and began to perform on March 8, 1995 was sent to her attending physician, Dr. Conrad King, a Board-certified internist. On March 7, 1995 Dr. King indicated appellant could perform the

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

duties of this position. The duties of this position did not exceed the limitations of no lifting over 10 pounds, no carrying of mailbags, and no casing of mail set forth by another of appellant's attending physicians, Dr. William M. King, an osteopath, in a March 13, 1995 report.

In support of her claim that she was totally disabled beginning April 25, 1995, appellant submitted three reports on Office forms from Dr. William King.[2] On a CA-17 form dated April 27, 1995, Dr. King listed clinical findings of "paraspinal myospasm R & L trapezius," diagnosed cervical herniated nucleus pulposus, and stated that appellant was "totally disabled and unemployable at this time." On a CA-20 form dated April 27, 1995, Dr. King diagnosed cervical sprain with herniated nucleus pulposus and "severe exacerbation of signs and symptoms." On a CA-17 form dated May 11, 1995, Dr. King indicated that appellant was totally disabled beginning April 25, 1995. These reports are insufficient to meet appellant's burden of proving a recurrence of total disability because they contain no rationale explaining how appellant's myospasm or her severe exacerbation of signs and symptoms are related to her November 14, 1988 employment injury.[3] Appellant has not established a change in her condition, causally related to her employment injury, that would prevent her from performing her limited-duty position.

The Board further finds that the Office properly found that appellant abandoned her request for a hearing.

The Office's regulation on postponement or abandonment of hearings[4] states in pertinent part:

> "(a) A scheduled hearing may be postponed or cancelled at the option of the Office, or upon written request of the claimant if the request is received by the Office at least three days prior to the scheduled date of the hearing and good cause for the postponement is shown."
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> "(c) A claimant who fails to appear at a scheduled hearing may request in writing within 10 days after the date set for the hearing that another hearing be scheduled. Where good cause for failure to appear is shown, another hearing will be scheduled. The failure of the claimant to request another hearing within 10 days ... shall constitute abandonment of the request for a hearing."

In the present case, the Office, pursuant to appellant's August 12, 1995 request for a hearing, sent to appellant's last known address a notice on March 20, 1996 that a hearing was scheduled for April 16, 1996. Appellant did not appear at the time and place of the scheduled

[2] Appellant later submitted a November 21, 1995 narrative report from Dr. King, but this report cannot be considered by the Board on appeal, as the Board's review is limited to the evidence before the Office at the time of its final decision.

[3] *Cynthia M. Judd*, 42 ECAB 246 (1990).

[4] 20 C.F.R. § 10.137.

hearing, did not request postponement of the hearing prior to the scheduled date of the hearing, and did not request in writing within 10 days after the date set for the hearing that another hearing be scheduled. Under these circumstances, the Office, pursuant to its regulation quoted above, properly found, in its April 26, 1996 decision, that appellant abandoned her request for a hearing.

The decisions of the Office of Workers' Compensation Programs dated April 26, 1996 and July 25, 1995 are affirmed.

Dated, Washington, D.C.
February 10, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member