

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOANNE S. STEELE and U.S. POSTAL SERVICE,
POST OFFICE, Farmingdale, N.Y.

*Docket No. 96-485; Submitted on the Record;
Issued May 1, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant sustained recurrences of disability from September 20 to October 7, 1992 and from January 29 to March 1, 1993 causally related to her October 9, 1990 employment injury.

The Office of Workers' Compensation Programs accepted that appellant sustained a cervical strain and a thoracic muscle spasm on November 9, 1990 by pushing a bulk mail container. Appellant received continuation of pay or compensation for disability for her intermittent absences from work from November 9, 1990 until she returned to light duty casing mail six hours per day on February 25, 1991. On November 4, 1991 appellant again stopped work and the Office paid compensation for total disability from that date until appellant returned to light duty on March 23, 1992. This light duty consisted of certified notices, express bagging, window duties, and answering phones. The limitations were no lifting over 20 pounds, no reaching over the shoulder for more than 4 hours, and a 1-hour limit on pushing and pulling.

On September 30, 1992 appellant again stopped work; she filed a claim for a recurrence of disability due to her November 9, 1990 employment injury. Appellant returned on October 7, 1992.

On January 8, 1993 appellant was assigned light duty consisting of certified notices, postage due, business replies, window duties, answering phones and other duties within her medical limitations. Her limitations were no lifting over 10 pounds, sitting and walking no more than 6 hours per day, and no pushing, pulling, squatting or kneeling.

On January 29, 1993 appellant again stopped work; she filed a claim for a recurrence of disability due to her November 9, 1990 employment injury. Appellant returned to light-duty work on March 1, 1993.

By decision dated September 25, 1993, the Office found that appellant had not demonstrated that she sustained recurrences of disability beginning September 1992 and January 1993 causally related to her November 9, 1990 employment injury. This decision was affirmed by an Office hearing representative in an October 18, 1994 decision, and the Office refused to modify its decision in a September 14, 1995 decision.

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

In the present case, appellant performed only light-duty positions after returning to work following her employment injury on November 9, 1990. Appellant therefore has the burden of showing that the nature and extent of her injury-related condition changed so that she could no longer perform her light-duty assignment.² The Board finds that appellant has not met her burden of proof for her claims for recurrences of disability from September 30 to October 7, 1992 or from January 29 to March 1, 1993.

With regard to appellant's claim for a recurrence of disability from September 30 to October 7, 1992, appellant submitted a report dated September 30, 1992 from Dr. Ron Lieberfarb, an internist, stating that she had an acute neck sprain and could not work from September 30 to probably October 6, 1992. This report is not sufficient to meet appellant's burden of proof because it contains no findings on examination or other basis for Dr. Lieberfarb's opinion that appellant could not work, and because it does not show any change in appellant's employment-related condition. In a report dated October 6, 1992, Dr. Michael P. Carroll, a Board-certified orthopedic surgeon, stated that appellant's "symptoms are consistent with the MRI [magnetic resonance imaging] findings and this is her problem." Dr. Carroll did not state whether he considered appellant disabled for work, and his report therefore lends no support to appellant's claim for a recurrence of disability.

Appellant's attending physician, Dr. Thomas K. Szulc, a Board-certified anesthesiologist, examined appellant on October 5, 1992. In a form report dated October 5, 1992, Dr. Szulc indicated appellant was partially disabled. In a report dated October 26, 1992, Dr. Szulc noted that, when she was seen on October 5, 1992, appellant was "complaining of severe pain in the neck and right shoulder associated with difficulty in movement of her neck and headaches." Dr. Szulc noted that appellant, on examination, was "anxious and depressed," and recommended laser therapy, psychological assessment, stress management, and biofeedback. In this report, Dr. Szulc did not indicate that he considered appellant disabled for her light-duty position. In a

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

² Appellant has not alleged and there is no evidence showing that the requirements of her light-duty assignment changed so that she could no longer perform it.

report dated April 25, 1995, Dr. Szulc noted that appellant told him on October 5, 1992 that her “recurrence of the symptoms [was] precipitated by heavy work load at the post office in September 1992.” Dr. Szulc, however, did not state that he considered appellant disabled for her light-duty position during the period from September 30 to October 7, 1992. Appellant has not met her burden of proof for this period.

With regard to the claimed recurrence of disability from January 29 to March 1, 1993, appellant contended that the results of laser therapy instituted by Dr. Szulc were not good because she was “defeating the purpose of the treatment by working also. I was to rest. So the doctor took me out of work to finish the [first] 10 treatments approved.” This contention finds little support in the medical evidence. In a form report dated January 26, 1993, Dr. Szulc indicated appellant was undergoing laser treatment and was totally disabled; in another form report dated January 26, 1993, Dr. Szulc indicated appellant was partially disabled. Dr. Szulc also indicated appellant was partially disabled on form reports dated January 29, 1993, February 10, 1993, and February 23, 1993. In form reports dated February 12 and 23, 1993, Dr. Szulc indicated appellant was totally disabled for her usual work. None of these reports showed a change in appellant’s injury-related condition that would prevent her from performing her light-duty position. In his April 25, 1995 report, Dr. Szulc stated that appellant “had another recurrence in January 1993 and underwent additional laser therapy treatment with good improvement and was advised to return to light-duty work in February 1993.” This report also does not show that appellant’s injury-related condition changed so that it prevented her from performing her light-duty assignment. Appellant has not met her burden of proof.

The decisions of the Office of Workers’ Compensation Programs dated September 14, 1995 and October 18, 1994 are affirmed.

Dated, Washington, D.C.
May 1, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member