

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of PATRICIA A. JOHNSON and DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE, Covington, Ky.

*Docket No. 97-1255; Submitted on the Record;  
Issued February 11, 1999*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether appellant has established any ongoing disability after July 24, 1996 which is causally related to her accepted December 18, 1989 employment injuries to her mouth and left shoulder.

On December 18, 1989 a notice of traumatic injury and claim was filed on behalf of appellant, then a 35-year-old group manager, alleging that she injured her nose, mouth, top teeth, hands and left leg when she fell over a mail receptacle. By decision dated October 15, 1990, the Office of Workers' Compensation Programs accepted appellant's claim for contusion of the nasal ridge and molar area, but denied her contention that she injured her left shoulder in the fall. However, in a decision dated February 8, 1991, the Office also accepted appellant's claim for contusions to the left shoulder and wrist and later approved left shoulder impingement and surgeries for appellant's left shoulder. On August 12, 1991 appellant returned to work. The Office approved compensation for all periods of temporary total disability and disability related to the approved surgeries.

On June 3, 1993 appellant filed a claim for recurrence of disability beginning April 14, 1993. The Office approved this claim and additional arthroscopic surgery for appellant. In August 1994 appellant returned to work in a light-duty capacity, but stopped work almost immediately due to pain. In October 1994 appellant returned to light-duty work and resumed regular-duty work after approximately four weeks. On November 1, 1995 appellant filed a second claim for recurrence of disability, indicating that she stopped work on June 1, 1995. On February 21, 1996 the Office approved additional arthroscopic surgery to the left shoulder. Appellant filed a claim for continuing compensation and received additional compensation for temporary total disability through May 11, 1996.

In a decision dated July 24, 1996, the Office denied appellant's claim for further compensation on the grounds that the medical evidence established that she had no residuals of her employment injuries after May 22, 1996 and could return to full and unrestricted duty.

Appellant returned to work on September 16, 1996. By decision dated February 6, 1997, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was not sufficient to modify the prior decision.

The Board finds that appellant has not established any wage loss due to continuing disability after July 24, 1996 which is causally related to her accepted employment injuries.

Section 8102(a) of the Federal Employees' Compensation Act<sup>1</sup> sets forth the basis upon which an employee is eligible for compensation benefits. That section provides:

“The United States shall pay compensation as specified by this subchapter for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty....”

In general the term “disability” under the Act means “incapacity because of injury in employment to earn the wage which the employee was receiving at the time of such injury.”<sup>2</sup> This meaning, for brevity, is expressed as “disability for work.”<sup>3</sup> Appellant is entitled to compensation for wage loss on and after July 24, 1996 if she was still disabled; *i.e.*, if she was unable to earn the wages that she was receiving on December 18, 1989.

In the present case, the Office relied on the opinion of appellant's treating physician, Dr. David G. Reilly, an orthopedist, to determine that appellant was no longer disabled from her date-of-injury occupation. By letter dated June 18, 1996, the Office requested information from Dr. Reilly, including whether appellant could return to her date-of-injury position on a full-time basis without restrictions. A review of the record indicates that Dr. Reilly became appellant's treating physician on or about November 21, 1995 when she requested that he replace Dr. Robert Burger as her treating physician. In a work capacity form dated June 24, 1996, Dr. Reilly reported that appellant had no restrictions after May 22, 1996 and could work eight hours a day. Appellant submitted several medical reports dated January 20, May 10 and June 14, 1995 from her former treating physician, Dr. Burger, who provided restrictions for appellant and indicated that appellant had difficulty performing her work despite the restrictions. However, these reports are not contemporaneous with the Office's July 1996 decision or the June 1996 report of Dr. Reilly which was written after appellant had a final surgery on her left shoulder. Thus, this evidence cannot overcome the report by appellant's current treating physician who had knowledge of appellant's full medical history. Appellant also submitted reports by Dr. Duane Bellamy, a Board-certified anesthesiologist. In his June 1996 report, Dr. Bellamy noted some restriction in range of motion and diagnosed chronic pain syndrome. He noted that appellant was working full time, would benefit from physical therapy, individual psychotherapy, and biofeedback to help her control her muscular tightness and spasm at work. This medical report does not establish that appellant had ongoing disability from work as the physician does not specifically address the degree of disability and makes medical recommendations that suggest

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<sup>1</sup> 5 U.S.C. § 8102(a).

<sup>2</sup> *John W. Normand*, 39 ECAB 1378 (1988); *Gene Collins*, 35 ECAB 544 (1984).

<sup>3</sup> *John W. Normand*, *supra* note 2; *Clarence D. Glenn*, 29 ECAB 779 (1978).

ways to help appellant with her work, rather than indicating that she is not capable of said work. In his September 1996 report, Dr. Bellamy essentially reiterated his earlier conclusions and added that he feared future injury if appellant returned to a full-time position. This report is not sufficient to modify the earlier decision in this claim as the possibility of future injury or disability is not sufficient to establish that appellant had currently ongoing disability.<sup>4</sup> The record also contains a report dated September 9, 1996 by Dr. Reilly in which he provides restrictions for appellant, including no work above the shoulder and no lifting over 20 pounds for approximately 3 to 6 months. However, as Dr. Reilly does not provide any rationale for the change in his opinion that appellant could return to work without restrictions and no objective or medical evidence to support his new conclusions, this report is not rationalized and does not establish that appellant had an ongoing disability related to her accepted employment injuries. Appellant has not established any ongoing disability after July 24, 1996 that was causally related to her accepted employment injuries.

The decisions of the Office of Workers' Compensation Programs dated February 16, 1997 and July 24, 1996 are hereby affirmed.

Dated, Washington, D.C.  
February 11, 1999

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

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<sup>4</sup> See *Mary A. Geary*, 43 ECAB 300 (1991); *Gaetan F. Valenza*, 39 ECAB 1349 (1988); *Richard T. Devito*, 32 ECAB 1868 (1981).