U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAULETTE R. HILLER and U.S. POSTAL SERVICE,
POST OFFICE, New York, N.Y.

Docket No. 97-1109; Submitted on the Record;
Issued January 25, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issues are: (1) whether appellant has established that she sustained a recurrence of total disability on June 26 or 28, 1996; and (2) whether the Office of Workers' Compensation Programs properly refused to authorized a change of physicians.

The Office accepted that appellant sustained a fracture of her left fibula when she slipped and fell on ice while delivering mail on March 2, 1996. Appellant received continuation of pay from March 3 to April 16, 1996, followed by compensation for temporary total disability until her return to limited duty on June 26, 1996.

By letter dated June 20, 1996, appellant requested that the Office approve a change of physicians. On June 26, 1996 appellant filed a claim for a recurrence of disability beginning at 10:00 a.m. that day. Her regular workday began at 5:30 a.m. On July 5, 1996 she filed another claim for a recurrence of disability, indicating that she stopped work on June 28, 1996 at 10:00 a.m. Appellant did not return to work until September 4, 1996 and she filed claims for compensation for the period from July 2 to August 30, 1996.

By decision dated January 6, 1997, the Office found that appellant had not met her burden of proof to establish a recurrence of total disability on June 26 or 28, 1996 and that she failed to meet the requirements to change physicians.

The Board finds that appellant has not met her burden of proof to establish that she sustained a recurrence of disability on June 26 or 28, 1996.

Appellant's attending physician from the time of her March 2, 1996 injury, Dr. Ernest D. Seldman, a Board-certified orthopedic surgeon, indicated in a June 18, 1996 report that appellant could return to work on June 24, 1996 performing "light-duty -- office duty!!" Dr. S. Chow, a physician for the employing establishment, stated on June 25, 1996 that appellant could perform sedentary work. The work offered by the employing establishment and accepted by appellant on

June 26, 1996 was sedentary, consisting of casing mail and writing up accountable mail using a rest bar or stool, with no standing.

In support of her claims for recurrences of disability on June 26 or 28, 1996, appellant submitted reports from Dr. Laxmidhar Diwan, a Board-certified orthopedic surgeon, who first examined her on July 2, 1996. In a note dated July 2, 1996, Dr. Diwan indicated appellant could return to work on August 12, 1996. The remarks portion of this note stated: "Needs to be out of work, ankle is not fully healed." In a report dated August 1, 1996 on an Office form, Dr. Diwan indicated that appellant was totally disabled from March 5 to August 11, 1996 and that she could resume her regular work on August 12, 1996. In reports dated August 15 and 29, 1996 on Office forms, Dr. Diwan indicated appellant was totally disabled for her usual work. In a note dated August 29, 1996, Dr. Diwan indicated that appellant could return to full duty on September 4, 1996.

Although a claimant's burden of proof is lesser in situations where a recurrence of disability is claimed shortly after he or she returns to work following the original injury,[1] the claimant still has the burden of proof to establish that he or she could not perform the duties of the position held at the time of the alleged recurrence of disability.[2] Dr. Diwan's reports are not sufficient to meet appellant's burden of proof. These reports contain no findings on examination to justify total disability and do not show awareness that appellant was performing sedentary duty with no standing at the time of the alleged recurrences of disability. Dr. Diwan's reports indicate that appellant was disabled from performing her usual duties as a letter carrier, but do not address whether she was able to perform the sedentary work she was performing at the time of her alleged recurrences of disability. Appellant has not met her burden of proof.

The Board further finds that the Office properly refused to authorize a change of physicians.

In her June 20, 1996 letter requesting approval of a change of physicians, appellant stated that she was being returned to work even though her ankle had not completely healed and that she would like to return to work as a letter carrier. In a June 20, 1996 letter addressed to the

[1] The Office's procedure manual provides that, where a recurrence of disability is filed within 90 days after the claimant returns to work, "[t]he claimant is not required to produce the same evidence as for a recurrence claimed long after apparent recovery and return to work. Therefore, in cases where recurring disability for work is claimed within 90 days or less from the first return to duty, the focus is on disability rather than causal relationship." Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.6a (January 1995).

[2] 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. *Terry R. Hedman*, 38 ECAB 222 (1986). Federal (FECA) Procedure Manual, Chapter 2.1500.6b states that, in claims for recurrences of disability within 90 days of return to work, the Office should ask the employee to submit a medical report "which describes the duties which the employee cannot perform and the demonstrated objective medical findings that form the basis for the renewed disability for work."

Secretary of Labor, appellant stated that someone had called Dr. Seldman and intimidated him into saying she could return to work and into not giving her a prescription for a pain killer she requested. Appellant has not shown that she received less than adequate or proper treatment from Dr. Seldman, an appropriate medical specialist in her case and the Office acted properly in refusing to authorize a change of physicians.[3]

The decision of the Office of Workers' Compensation Programs dated January 6, 1997 is affirmed.

Dated, Washington, D.C.
January 25, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

[3] *Clara R. Morgan*, 39 ECAB 305 (1987); *see Pearlie M. Brown*, 40 ECAB 1090 (1989).