U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ELIZABETH PATE and U.S. POSTAL SERVICE,
POST OFFICE, Atlanta, Ga.

Docket No. 97-1384; Submitted on the Record;
Issued January 27, 1999

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issues are: (1) whether appellant met her burden of proof in establishing that she sustained a recurrence of disability on or after September 14, 1996; and (2) whether the Office of Workers' Compensation Programs properly determined appellant's wage-earning capacity.

The Board had duly reviewed the case on appeal and finds it not in posture for decision.

Appellant filed a claim on May 9, 1995 alleging that she had developed shoulder conditions due to factors of her federal employment. The Office accepted appellant's claim for left rotator cuff syndrome on June 27, 1995 and right rotator cuff syndrome on February 12, 1996. Appellant returned to light-duty work on March 22, 1996. On September 4, 1996 the employing establishment offered appellant a new light-duty position which she accepted on September 6, 1996. Appellant filed a claim for compensation on October 4, 1996 requesting wage-loss compensation from September 14 through September 27, 1996. By decision dated December 5, 1996, the Office denied appellant's claim for recurrence of disability on or after September 14, 1996.

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establish that she 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 show that 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 requirements.[1]

In this case, appellant returned to work in a light-duty position on March 25, 1996. Appellant sustained intermittent periods of disability from April 17 through May 10, 1996.

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

Appellant's attending physician, Dr. Xavier A. Duralde, a Board-certified orthopedic surgeon, released appellant to work on May 9, 1996. He indicated she should not work above the shoulder, lift no more than five pounds and should not push nor pull. On May 23, 1996 Dr. Duralde stated that appellant should not use her right arm and no activities above the shoulder. Dr. Duralde listed appellant's work restrictions on June 20, 1996 as no use of the right arm, sitting, standing, and walking for eight hours intermittently; kneeling, bending and stooping for two hours intermittently; no pushing or pulling, simple grasping and fine manipulation for eight hours; and no reaching above the shoulder. On August 5, 1996 Dr. Duralde indicated that appellant could continue to work at her present level.

On September 6, 1996 appellant accepted a new light-duty position with the employing establishment. This position required lifting up to five pounds, no reaching above the shoulder, no use of the right arm, sitting, standing and walking for eight hours, climbing, kneeling, bending, and stooping for two hours and no pushing and pulling. Appellant's duties included tearing covers from publications.

In a note dated September 17, 1996, Dr. Duralde noted appellant's history of injury and stated that appellant had recently changed jobs. He stated, "She is now doing a job where she needs to grip a magazine and rip the cover off. Since doing this she has noticed increased pain in both her of shoulders left greater than right." Dr. Duralde performed a physical examination and concluded, "This patient's pain appears to be secondary to a recent overuse from her job change." He recommended a function capacities evaluation.

Appellant has submitted evidence that her light-duty position changed. Furthermore, Dr. Duralde's report opines that appellant's change in duty requirements, specifically the necessity that she tear the covers from magazines increased the pain in her shoulders. This report contains a history of injury, diagnosis and an opinion that appellant's accepted condition was exacerbated by a new employment duty. While this report is not sufficient to meet appellant's burden of proof, it does raise an uncontroverted inference of causal relation between appellant's accepted employment injuries and an exacerbation of her diagnosed condition and is sufficient to require the Office to undertake further development of appellant's claim.[2]

On remand the Office should request an additional report from Dr. Duralde regarding appellant's period of disability due to the change in her work requirements. After this and such other development as the Office deems necessary the Office should issue an appropriate decision.

Following the Office's December 5, 1996 decision denying appellant's claim for recurrence, the Office issued a December 6, 1996 decision terminating her compensation as she had no loss of wage-earning capacity in the May 9, 1996 position of modified distribution clerk. Due to the Board's determination that appellant's claim should be adjudicated as a recurrence of disability and specifically remanded for further development on this issue, the Board finds that the wage-earning capacity determination was premature and hereby set aside that decision.

[2] *John J. Carlone*, 41 ECAB 354, 358-60 (1989).

The decisions of the Office of Workers' Compensation Programs dated December 6 and 5, 1996 are hereby set aside and remanded for further development consistent with this opinion.[3]

Dated, Washington, D.C.
January 27, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

[3] Following appellant's appeal to the Board on February 6, 1997, the Office issued additional decisions regarding appellant's entitlement to a schedule award waiver of an overpayment. As these decisions were not issued within one year prior to the appeal to the Board, the Board lacks jurisdiction to consider these decisions. 20 C.F.R. § 501.3(d)(2).