U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CALVIN G. WILSON and U.S. POSTAL SERVICE,
POST OFFICE, Little Rock, Ark.

Docket No. 97-1029; Submitted on the Record;
Issued March 8, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability beginning July 25, 1996 causally related to his November 12, 1993 employment injury.

The Office accepted that appellant sustained a contusion of the head and a cervical strain on November 12, 1993 when he hit his head on the door rail of his postal vehicle. Appellant returned to work on November 15, 1993. The Office accepted that appellant sustained a recurrence of disability due to his November 12, 1993 injury during the period from March 31 to April 11, 1994 and approved leave buy back for this period. Appellant returned to work on April 12, 1994 performing light duty with no lifting over 10 pounds. Appellant also stopped work from June 27 to July 8, 1995, when he returned to sedentary work at the employing establishment.[1] On March 1, 1996 the Office issued appellant a schedule award for a 10 percent permanent loss of use of the right arm and a 6 percent permanent loss of use of the left arm. The schedule award was paid from January 29, 1996 to January 12, 1997.

On July 25, 1996 appellant again stopped work; he subsequently filed a claim for a recurrence of disability beginning that date due to his November 12, 1993 employment injury. In a report dated July 25, 1996, appellant's attending physician, Dr. Harold B. Betton, a Board-certified family practitioner, described the nature of appellant's present impairment as "patient has cervical disc disease and can't drive from Fort Smith to LR [Little Rock] and can't bear his work even before his transfer." In a report dated August 22, 1996, Dr. Betton stated: "(1) this patient lives 156 miles from his job; (2) cervical disc disease and herniations

[1] Appellant filed a claim for compensation for this period, but the case record does not indicate whether compensation was paid.

contraindicate his travel to this extent; (3) if patient could commute 50 or less miles to work he could work." In a letter dated August 30, 1996, the employing establishment stated: "limited-duty work is available at his duty station in Little Rock, AR. Work has always been available. [Appellant] voluntarily moved to another area outside of his duty status work station. He was not transferred to another duty status work station."

By decision dated November 26, 1996, the Office found that the evidence failed to establish a recurrence of disability, as it failed to indicate appellant was unable to work his assigned limited-duty position.

The Board finds that appellant has not established that he sustained a recurrence of disability beginning July 25, 1996 causally related to his November 12, 1993 employment injury.

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.[2] The term "disability" under the Federal Employees' Compensation Act means "incapacity because of injury in employment to earn the wage which the employee was receiving at the time of such injury."[3]

In the present case, appellant's inability to work and earn wages is not because of his employment injury. With the exception of two brief periods encompassing a total of less than three weeks, appellant worked at the employing establishment with no loss of wages from the date of his injury, November 12, 1993, until he stopped work on July 25, 1996. Appellant did not stop work on July 25, 1996 because he was unable to perform the duties of the position he then held; his attending physician indicated he could perform these duties. Instead, his inability to work and earn wages was due to the fact that he had moved so far away from the site of his job that he could not commute to the job. Even if his inability to commute the additional distance is due to residuals of his employment injury, as indicated by appellant's attending physician, disability within the meaning of the Act is not established.[4]

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

[3] *Vivian L. Monahan*, 36 ECAB 684 (1985); *Billy G. Sinor*, 35 ECAB 419 (1983).

[4] *See Gus N. Rodes*, 46 ECAB 518 (1995). (The Board found that a recurrence of disability was not shown in a situation where the employee could not perform the job he held when injured but refused to relocate to accept a job within his physical capabilities.)

The decision of the Office of Workers' Compensation Programs dated November 26, 1996 is affirmed.

Dated, Washington, D.C.
March 8, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member