

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOE ANN HORTON and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Spartansburg, SC

*Docket No. 97-2206; Submitted on the Record;
Issued October 7, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant sustained a recurrence of total disability on October 19, 1995 causally related to her September 19, 1995 employment injury.

On September 19, 1995 appellant, then a 60-year-old rural letter carrier, sustained a left shoulder injury in the performance of duty. She accepted a light-duty position on September 20, 1995. Her duties included counting and filing forms and the position did not require lifting, straining or pulling.

In form reports dated October 19 and 24, 1995, Dr. Robert Cochran, Jr., a Board-certified general surgeon, diagnosed a muscle strain of the left shoulder and indicated that appellant could perform light-duty work.

On October 24, 1995 appellant filed a claim alleging that she sustained a recurrence of total disability on October 19, 1995 which she attributed to her September 19, 1995 employment injury. Her supervisor indicated that her limited duty included cutting out address corrections from magazines to send to publishers and that was performed sitting at a table.

In a report dated November 14, 1995, Dr. Cavert K. McCorkle, a neurosurgeon, provided a history of appellant's condition and related that she had been working light duty for three weeks but could not continue to perform the work. He indicated that appellant had experienced numbness in her left arm since undergoing a mastectomy. Dr. McCorkle provided findings on examination and diagnosed an acute musculoskeletal spine strain.

In a disability certificate dated November 28, 1995, Dr. Cochran indicated that appellant was disabled as of October 19, 1995.

In a form report dated November 28, 1995, Dr. Cochran noted that appellant had a normal bone scan and degenerative changes of the cervical spine and diagnosed possible bursitis and a possible pinched nerve and indicated by checking the block marked "yes" that the

condition was causally related to her employment. He indicated that appellant was totally disabled commencing October 19, 1995.

By decision dated January 16, 1996, the Office of Workers' Compensation Programs denied appellant's claim for a recurrence of total disability.

In a report dated October 20, 1995, Dr. M. Durham related appellant's complaint that she had been under stress at work and in her personal life and had gone back to work on limited duty but felt that she could not perform her job. Dr. Durham stated:

“[Appellant] would like to go ahead and retire. She is eligible for early retirement but she will lose a lot of her benefits if she takes early retirement. [Appellant] would like to be able to get disability to retire on so that she [will not] lose her benefits and wanted to know how she should go about being evaluated for that.... She also is under a lot of stress at home. [Appellant's] stepmother just died and her sister ... is slowly declining at a hospital waiting for a nursing house bed.”

He diagnosed grief reaction.

In a report dated December 14, 1995, Dr. Cochran related that appellant had been under his care for management of her breast cancer which was diagnosed and treated in April 1994 and noted that she was continuing medication. He related that he saw her on September 20, 1995 following an injury to her left shoulder and arm at work and noted that she subsequently developed severe pain in her left shoulder, neck and upper back regions.

On February 15, 1996 appellant requested an examination of the written record.

In a report dated February 21, 1996, Dr. Frank E. Gonda, a family practitioner, related that appellant had asked him to write a note to the employing establishment stating that she needed to begin her workday 30 minutes earlier because of the effects of chemotherapy on her left arm and that he agreed to the request. He stated that he later learned that she had never received any chemotherapy. Dr. Gonda stated that on February 20, 1996, appellant told him that she had requested the note because she had swelling in her left arm and also because she wanted to get home earlier from work to care for her sister.

By decision dated May 13, 1996, the Office denied modification of its January 16, 1996 decision.

By letter dated September 4, 1996, appellant requested an examination of the written record and submitted additional evidence.

In a report dated April 23, 1996, Dr. McCorkle provided a history of appellant's condition and findings on examination and diagnosed acute musculoskeletal injury. He indicated that appellant could work with restrictions.

In a report dated May 2, 1996, Dr. Cochran related that appellant had persistent pain in her left arm and shoulder. He stated that appellant was most recently seen on April 25, 1996 for

a routine breast check and that she still had some pain in her trapezius and neck muscles and pain in her shoulder. Dr. Cochran stated that he did not feel that appellant could perform any gainful work at that time due to decreased range of motion and severe pain in her left arm.

By decision dated April 10, 1997, the Office denied modification of its May 13, 1996 decision.

The Board finds that appellant has failed to meet her burden of proof to establish that she sustained a recurrence of total disability on October 19, 1995 causally related to her September 19, 1995 employment injury.

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 establishes 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 either 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 the instant case, appellant has failed to establish either a change in the nature or extent of her light-duty requirements or a change in her accepted injury-related condition.

In this case, on September 19, 1995 appellant sustained a left shoulder injury in the performance of duty. She accepted a light-duty position on September 20, 1995 which consisted of counting and filing forms and the position did not require lifting, straining or pulling. Subsequently she alleged that she sustained a recurrence of total disability which she attributed to her employment injury.

In form reports dated October 19 and 24, 1995, Dr. Cochran diagnosed a muscle strain of the left shoulder and indicated that appellant could perform light-duty work. As he opined that appellant could perform light-duty work, these reports do not establish that appellant was totally disabled due to her employment injury.

In a report dated November 14, 1995, Dr. McCorkle provided a history of appellant's condition and related that she had been working light duty for three weeks but could not continue to perform the work. He indicated that appellant had experienced numbness in her left arm since undergoing a mastectomy. Dr. McCorkle provided findings on examination and diagnosed an acute musculoskeletal spine strain. However, since he did not opine that appellant was totally disabled due to a change in the nature or extent of her employment-related left shoulder strain or a change in the nature or extent of her light-duty requirements, this report does not discharge appellant's burden of proof.

In a disability certificate dated November 28, 1995, Dr. Cochran indicated that appellant was disabled as of October 19, 1995. However, he did not indicate the cause of the disability and therefore this document does not support appellant's claim for a recurrence of total

¹ See *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Stuart K. Stanton*, 40 ECAB 859, 864 (1989).

disability. Furthermore, Dr. Cochran had earlier indicated that appellant could perform light-duty work as of October 19, 1995. Therefore it is not clear as to whether Dr. Cochran was stating in this certificate that appellant was partially or totally disabled. Due to these deficiencies, this certificate does not support appellant's claim for a recurrence of total disability.

In a form report dated November 28, 1995, Dr. Cochran noted that appellant had a normal bone scan and degenerative changes of the cervical spine and diagnosed possible bursitis and a possible pinched nerve. He indicated by checking the block marked "yes" that the condition was causally related to her employment. Dr. Cochran indicated that appellant was totally disabled commencing on October 19, 1995. However, he did not opine that appellant was totally disabled due to a change in the nature or extent of her employment injury or her light-duty requirements. Dr. Cochran's diagnoses of possible bursitis and a pinched nerve are not only speculative but these conditions are not accepted conditions in this case. The accepted condition is a left shoulder strain. Due to these deficiencies, this report is not sufficient to discharge appellant's burden of proof.

In a report dated October 20, 1995, Dr. Durham related appellant's complaint that she had been under stress at work and in her personal life due to a death in the family and family medical problems and had gone back to work on limited duty but felt that she could not perform her job. He diagnosed grief reaction. Dr. Durham did not opine that appellant was totally disabled for work. He merely related appellant's desire to get "disability" retirement because she did not want to lose any job benefits. As Dr. Durham did not opine that appellant was totally disabled due to a change in the nature of her employment-related left shoulder injury or a change in the nature or extent of her light-duty job requirements, this report is not sufficient to discharge appellant's burden of proof.

In a report dated April 23, 1996, Dr. McCorkle indicated that appellant could work with restrictions. As he did not indicate that appellant was totally disabled, this report does not support appellant's claim for a recurrence of total disability.

In a report dated May 2, 1996, Dr. Cochran related that appellant had persistent pain in her left arm and shoulder and that she was most recently seen on April 25, 1996 for a routine breast check. He noted that she still had some pain in her trapezius and neck muscles and pain in her shoulder. Dr. Cochran stated that he did not feel that appellant could perform any gainful work at that time due to decreased range of motion and severe pain in her left arm. However, he did not indicate whether appellant's symptoms were due to her employment injury or residuals from her nonwork-related mastectomy. If Dr. Cochran believed that the symptoms were related to the employment injury, he provided no medical rationale to support this opinion. Therefore, this report is not sufficient to establish that appellant sustained a recurrence of total disability on October 19, 1995 causally related to her September 19, 1995 employment injury.

The April 10, 1997 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
October 7, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member