

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHRISTOPHER F. FOGG and U.S. POSTAL SERVICE,
POST OFFICE, Baton Rouge, LA

*Docket No. 98-398; Submitted on the Record;
Issued October 4, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained a recurrence of total disability from June 24 through June 28, 1996.

The Board has duly reviewed the case on appeal and finds that appellant failed to meet his burden of proof in establishing that he sustained a recurrence of total disability from June 24 through June 28, 1996.

Appellant filed a claim alleging that, on October 29, 1993, he experienced low back pain when he fell in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for herniated disc L4-5, L5-S1 and lumbar discectomy. Appellant returned to light duty on May 1, 1995. By decision dated July 20, 1995, the Office found that the position of modified letter carrier represented appellant's wage-earning capacity. The employing establishment offered appellant a different light-duty position on February 28, 1996. Appellant accepted this position and began work on March 30, 1996.

Appellant filed a notice of recurrence of disability on July 1, 1996 after stopping work on June 24, 1996. Appellant returned to light-duty work on July 1, 1996. By decision dated September 3, 1996, the Office denied appellant's claim finding that his current disability was not causally related to his accepted employment injury. Appellant requested an oral hearing and by decision dated July 24, 1997, the hearing representative affirmed the Office's September 3, 1996 decision.

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he 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 he 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 Furthermore, appellant has the burden of establishing by the weight of the substantial, reliable, and probative evidence, a causal relationship between his recurrence of disability commencing June 24, 1996 and his October 29, 1993 employment injury.² This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.³

The employing establishment offered appellant a limited-duty position on February 28, 1996 which required him to lift up to 60 pounds. Appellant's physician, Dr. Thomas V. Bertuccini, a Board-certified neurosurgeon, stated, on March 11, 1996 that it was unreasonable to ask appellant to deal with the lifting requirements of the offered position. Dr. Bertuccini completed a work restriction evaluation on March 21, 1996 and indicated that appellant should not lift over 20 pounds. Appellant accepted the light-duty position on March 30, 1996 which exceeded his physician's restrictions. Appellant continued to work in this position until June 24, 1996.

In support of his claim for a change in the nature and extent of his employment-related duties, appellant submitted several notes and reports from Dr. John W. Stafford, a general practitioner. On June 24, 1996 Dr. Stafford diagnosed low back pain and recommended bed rest. He noted that appellant attributed his condition to additional bending and twisting in his new light-duty position. Dr. Stafford completed a duty status report, diagnosed low back pain and indicated that appellant was unable to work on June 24, 1996. In reports dated June 28, July 14 and 26, 1996, Dr. Stafford released appellant to return to work on July 1, 1996 and indicated that he could work four hours a day with no twisting or bending and alternating sitting and standing. On July 12, 1996 Dr. Stafford noted that appellant attributed his condition to the chair he used at work. In notes dated July 13, 1996, Dr. Stafford recommended a different type of chair for appellant and that appellant could work eight hours a day.

The medical evidence submitted by appellant is not sufficiently well rationalized to establish a change in the nature and extent of his injury-related condition. Dr. Stafford did not offer any physical findings or medical rationale in support of his conclusion that appellant was totally disabled from June 24 through June 28, 1996.

In this case, appellant also attributed his recurrence of disability to a change in the nature and extent of his light-duty requirements, specifically that he was required to bend and twist more in the March 30, 1996 position than his previous position. The February 28, 1996 position description included only occasional bending and no twisting was mentioned. There is no position description for the May 1, 1995 position included in the record. The only previous position description is dated January 5, 1994 and predates appellant's accepted surgery. As

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

² *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-9 (1982).

³ *See Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

appellant has not submitted the necessary factual evidence to establish a change in the nature and extent of his light-duty job requirements he has failed to meet his burden of proof.

The July 24, 1997 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
October 4, 1999

George E. Rivers
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member