

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA K. WAGNER and U.S. POSTAL SERVICE,
POST OFFICE, St. Louis, MO

*Docket No. 97-2774; Submitted on the Record;
Issued September 7, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained a recurrence of disability commencing January 17, 1997, causally related to her accepted employment-related back injuries.

The Office of Workers' Compensation Programs accepted that appellant sustained lumbar strain and a herniated nucleus pulposus at T12-L1, and it subsequently accepted a bilateral L4-5 hemisemilaminectomy with medial facetectomy and a partial medial excision of the pedicle at T12-L1. Appellant returned to work with certain daily physical activity duty restrictions: sitting for 5 hours; walking for 4 hours intermittently; standing for 2 hours intermittently; lifting 10 pounds for 8 hours intermittently; and no bending, twisting, squatting or climbing. A special chair with a back support was required, with sitting and standing at appellant's discretion, and her restrictions were amended on August 27, 1996 to add that the chair legs must not extend further than the chair seat, and that the chair must provide upper back support as well as lower back support, and must have arms to support appellant's upper body.

On March 7, 1997 appellant filed a CA-2a claim for recurrence of disability claiming that on January 17, 1997 she was casing mail when she developed a pain in her low back with pain going down her leg.

By letter dated May 23, 1997, the Office requested further information.

In response, appellant alleged that the employing establishment forced her to "work outside" of her physical activity restrictions. Appellant claimed that after her January 17, 1997 recurrence she struggled through the next few days working until she could no longer tolerate the pain, was off from January 23 through February 11, 1997, and finally got a doctor's appointment on March 3, 1997. Appellant alleged that, because of her physical activity restrictions, she could not case 10 to 20 percent of the mail, and was told to throw the mail that she could not case into a cardboard tray that was put on her left-hand side sitting on top of a waste basket. Of the mail

she cased, appellant alleged that 10 to 20 percent of it was put into the case in front of her, and 80 to 90 percent of the mail was thrown into the cardboard tray sitting on the waste basket on her extreme left. She indicated that therefore 80 to 90 percent of the time she was twisting to her extreme left, which she was totally restricted from doing, according to her treating physician. Appellant provided diagrams on her workstation and the twisting and reaching maneuver she was required to perform for 80 to 90 percent of the mail.

By report dated May 15, 1997, appellant's treating physician, Dr. Linda J. Smith, an osteopath, stated on March 3, 1997 appellant presented with increasing back pain for the previous three weeks secondary to a recurrence at work. She diagnosed chronic back pain post laminectomy with exacerbation of injury, and she responded that appellant reported a reinjury to her back which resulted in low back pain with radiation to the bilateral lower extremities on January 16, 1997.¹ Dr. Smith opined that this lumbar injury was an aggravation of her underlying condition which consisted of chronic spinal stenosis as well as chronic disc disease of the lumbar vertebra. She opined that as long as appellant was performing a lot of rotational-type movement at work, this aggravation would not resolve, and that the condition had worsened over the last six months.

By letter dated July 10, 1997, the employing establishment insisted that appellant was not working as she had claimed, and that she was "working within her restrictions." The employing establishment did not comment upon appellant's allegations of having to twist in her chair to throw 80 to 90 percent of the mail into the cardboard box on her extreme left, or her illustrations of her work area demonstrating the location of the box.

By decision dated July 31, 1997, the Office denied appellant's recurrence claim finding that she failed to establish a change in her physical condition or a change in her duty requirements.

The Board finds that this case is not in posture for decision.

An employee returning to light duty, or whose medical evidence shows the ability to perform light duty, has the burden of proof to establish a recurrence of temporary total disability by the weight of reliable, probative and substantial evidence and to show that he or she cannot perform the light duty.² As part of this burden, the employee must show a change in the nature and extent of the injury-related conditions or a change in the nature and extent of the light-duty requirements.³

In this case, appellant has alleged that the employing establishment put her into a situation where she was required to twist to throw 80 to 90 percent of the mail that she cased, which is clearly a totally restricted activity of her modified light duty. The employing

¹ Since appellant worked the midnight shift she began work on the 16th of January and ended her shift on the 17th of January.

² *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

³ *Id.*

establishment merely denied that she was being “worked outside her restrictions” without commenting on the accuracy of her account of having to throw 80 to 90 percent of the mail to her extreme left, and without contradicting her sketched diagrams which clearly demonstrate what her assigned activities actually were. Appellant’s specific allegations remain uncontrodicted.

Appellant also provided medical evidence supporting that she reinjured her back during the January 16 to 17, 1997 work shift, and that the twisting movements she was required to perform aggravated her post-operative residual back conditions.

Proceedings under the Act are not adversary in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.⁴ This holds true in recurrence claims as well as in initial traumatic and occupational claims. In the instant case, although none of appellant’s statements of recurrence or treating physicians’ reports contain sufficient documentation or medical rationale sufficient to completely discharge appellant’s burden of proving by the weight of reliable, substantial and probative evidence that she sustained a recurrence of total disability on January 16 to 17, 1997, or experienced residuals which required her to leave her federal employment, causally related to her June 24, 1982 and subsequent injuries and surgeries, they constitute substantial, uncontradicted evidence in support of appellant’s recurrence claim and raise an uncontroverted inference of causal relationship between her allegedly disabling complaints and periods of disability and her original traumatic injuries and surgeries, that is sufficient to require further development of the case record by the Office.⁵ Additionally, there is no opposing medical evidence in the record.

⁴ *William J. Cantrell*, 34 ECAB 1223 (1983).

⁵ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978); *see also Cheryl A. Monnell*, 40 ECAB 545 (1989); *Bobby W. Hornbuckle*, 38 ECAB 626 (1987) (if medical evidence establishes that residuals of an employment-related impairment are such that they prevent an employee from continuing in the employment, he is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity).

Consequently, the decision of the Office of Workers' Compensation Programs dated July 31, 1997 is hereby set aside and the case is remanded for further factual and medical development in accordance with this decision of the Board.

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

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member