

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LETICIA REGALADO and U.S. POSTAL SERVICE,
BULK MAIL CENTER, Richmond, CA

*Docket No. 99-1714; Submitted on the Record;
Issued August 1, 2000*

DECISION and ORDER

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

The issue is whether appellant has met her burden of proof in establishing that she sustained a recurrence of disability on or about January 8, 1996, causally related to her March 26, 1992 employment injury.

The Board has duly reviewed the case record on appeal and finds that appellant has not met her burden of proof in establishing that she sustained a recurrence of disability causally related to her March 26, 1992 employment injury.

On April 11, 1992 appellant, then a 30-year-old mailhandler, sustained an injury to her left arm while in the performance of duty on March 26, 1992. The Office of Workers' Compensation Programs accepted appellant's claim for tendinitis of the left arm. Appellant continued to work following her March 26, 1992 injury, albeit in a limited-duty capacity. She ceased working for the employing establishment at some point during calendar year 1994.¹

On January 8, 1996 appellant filed a notice of recurrence of disability (Form CA-2a) alleging that she sustained a recurrence of disability causally related to her March 26, 1992 injury. She did not identify a specific date of recurrence. Appellant explained that the pain she experienced as a result of her March 26, 1992 injury had "never stopped." She further noted that, in addition to pain in her left arm, she was currently experiencing pain in her right arm. At the time she filed her notice, appellant did not submit any medical evidence in support of her claim for recurrence of disability.

By letter dated March 13, 1996, the Office advised appellant of the need for additional factual and medical information in order to render a determination regarding her claim for

¹ The record does not include any additional information regarding the circumstances of appellant's departure or the date she was last employed. Appellant advised the Office that, as of November 5, 1997, she had yet to resume any type of gainful employment.

recurrence of disability. The Office subsequently received an April 8, 1996 statement from appellant wherein she indicated that she was never given any time off following her original injury. She further indicated that the pain she was currently experiencing was in the exact location of her prior injury, except that it was much stronger. Appellant, however, did not submit any medical evidence in response to the Office's March 13, 1996 request.

By decision dated April 28, 1998, the Office denied appellant's claim on the basis that appellant failed to demonstrate that the claimed recurrence was causally related to the accepted injury of March 26, 1992.

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 of establishing 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 employment-related condition or a change in the nature and extent of the light-duty job requirements.²

In the instant case, it is not entirely clear why appellant ceased working in 1994. Additionally, appellant has not alleged that there was a change in the nature and extent of her light-duty job requirements and the record does not support such a finding. With respect to a showing of a change in the nature and extent of her employment-related condition, while appellant alleged that her pain had never subsided, but had intensified and she was also experiencing pain in her right arm, appellant did not provide any recent medical evidence in support of her allegation. The most recent medical opinion of record predates appellant's January 8, 1996 notice of recurrence by more than two years. This report, dated December 9, 1993, was prepared by appellant's then-treating physician, Dr. Richard A. Rubenstein, a Board-certified neurologist. At that time, Dr. Rubenstein noted that, while appellant continued to report occasional to intermittent symptoms in both arms, her symptoms did not require medication and her examination remained benign. He also noted that he advised appellant to continue in her usual and customary position on permanent modified duty.³ This report, however, is not relevant to her claim of disability commencing on or about January 1996. Appellant has not provided any other medical evidence indicating that her condition has deteriorated since Dr. Rubenstein's last reported examination in December 1993. Consequently, appellant has failed to establish either a change in the nature and extent of her light-duty assignment or a change in the nature and extent of her accepted employment-related condition. The Office, therefore, properly denied appellant's claim for recurrence of disability.

The April 28, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

² *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222 (1986).

³ The permanent modified duty position that appellant accepted on October 15, 1993 was provided in response to Dr. Rubenstein's recommendation that appellant be permitted to work within certain prophylactic restrictions so as to avoid the possibility of future injury.

Dated, Washington, D.C.
August 1, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member