

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LULA FORD and U.S. POSTAL SERVICE,
POST OFFICE, Jersey City, NJ

*Docket No. 99-2291; Submitted on the Record;
Issued December 8, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
VALERIE D. EVANS-HARRELL

The issue is whether appellant sustained a recurrence of disability on or about January 15, 1999, causally related to her April 26, 1991 employment injury.

On May 6, 1991 appellant, then a 46-year-old mailhandler, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she sustained an injury to her right shoulder as a result of her federal employment. Appellant identified April 26, 1991 as the date she first became aware of her condition. She ceased working on April 28, 1991 and returned to light-duty work on July 8, 1991. The Office of Workers' Compensation Programs accepted appellant's claim for cervical neuritis and she received appropriate wage-loss compensation.

On January 29, 1999 appellant filed a notice of recurrence of disability (Form CA-2a) alleging that she sustained a recurrence of disability on January 15, 1999 causally related to her April 26, 1991 employment injury. Appellant ceased working on January 19, 1999 and returned to limited duty on January 22, 1999.¹ In support of her claim, appellant submitted a January 19, 1999 note from her treating physician, Dr. James S. Paolino, a Board-certified internist, who indicated that appellant was unable to work due to cervical sprain.

Appellant stopped work again on February 10, 1999 and filed another Form CA-2a that day in which she identified January 15, 1999 as the date of recurrence. Her claim was accompanied by a February 10, 1999 note from Dr. Paolino that indicated appellant was unable to work because of cervical neuropathy. Dr. Paolino further noted that a return to work date had not been determined.

¹ At the time of her claimed recurrence, appellant was working in a limited-duty capacity as a modified mailhandler.

In response to the Office's request for additional information, appellant submitted two personal statements describing the circumstances that gave rise to her claimed recurrences of disability. She also submitted a March 1, 1999 report from Dr. Paolino, who stated appellant suffered an acute exacerbation of a chronic neuropathy in her neck attributable to her April 26, 1991 employment injury. He noted that appellant's current problems were "a progression of the initial condition with noncomplicating and worsening neuropathy." He further noted that appellant had currently lost the use of her right arm.

By decision dated May 25, 1999, the Office denied appellant's claims for recurrences of disability.

The Board has duly reviewed the case record on appeal and finds that the case is not in posture for a decision.

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

Proceedings under the Federal Employees' Compensation Act are not adversarial 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.³ Although Dr. Paolino's reports do not contain sufficient rationale to discharge appellant's burden of proving by the weight of the reliable, substantial and probative evidence that she sustained a recurrence of disability causally related to her April 26, 1991 employment injury, they raise an uncontroverted inference of causal relationship sufficient to require further development of the case record by the Office.⁴

On remand the Office should refer appellant, the case record, and a statement of accepted facts to an appropriate medical specialist for an evaluation and a rationalized medical opinion on whether appellant's claimed recurrence of disability is causally related to her April 26, 1991 employment injury. After such further development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

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

³ *William J. Cantrell*, 34 ECAB 1223 (1983).

⁴ *See John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

The May 25, 1999 decision of the Office of Workers' Compensation Programs is hereby set aside and the case is remanded for further proceedings consistent with this opinion.

Dated, Washington, DC
December 8, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Valerie D. Evans-Harrell
Alternate Member