

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHERYL A. WEAVER and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Trenton, NJ

*Docket No. 98-607; Submitted on the Record;
Issued January 24, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that appellant was not entitled to continuing compensation benefits as of September 13, 1995; and (2) whether the Office properly refused to reopen the case for merit review.

In the present case, the Office accepted that appellant sustained a lumbosacral strain in the performance of duty on June 1, 1991. Appellant returned to work for one day on September 12, 1995 in a light-duty position. She filed a notice of recurrence of disability (Form CA-2a) commencing September 13, 1995.

By decision dated December 18, 1995, the Office denied appellant's claim for compensation commencing September 13, 1995. This decision was affirmed by an Office hearing representative in a decision dated March 11, 1997. In decisions dated June 4 and September 8, 1997, the Office determined that the evidence was insufficient to warrant reopening the case for merit review.

The Board has reviewed the record and finds that appellant is entitled to continuing compensation commencing September 13, 1995.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. After it has determined that an employee has disability causally related to her federal employment, the Office may not terminate compensation without establishing that the disability ceased or that it is no longer related to the employment.¹ Generally, the Office can meet this burden by showing that the employee returned to work, even if that work is light duty rather than the date-of-injury position, if thereafter the employee earns

¹ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979).

no less than she had before the employment injury.² A short lived and unsuccessful attempt to return to duty, however, does not automatically discharge the Office's burden to justify termination of compensation.³

In this case, appellant returned to work for only one day.⁴ The Office placed the burden of proof for continuing compensation on appellant, citing *Terry R. Hedman*.⁵ As noted above, however, a short-lived return to work does not shift the burden of proof. The Board has held that *Hedman* is not applicable when there is a brief return to work and the medical evidence does not establish that appellant could continue to perform the light-duty job.⁶ In the present case, the medical evidence does not establish that appellant's employment-related disability had ceased. According to the Office's December 18, 1995 decision, an attending physician, Dr. Robert Silverbrook, indicated in a November 21, 1995 report that appellant suffered an exacerbation of her back injury when she returned to work.⁷ The CA-20a form reports from Dr. Silverbrook indicated that appellant continued to remain disabled due to an employment-related condition.

The Board finds no probative medical evidence establishing that appellant's employment-related condition had ceased by September 13, 1995, or that her inability to perform the light-duty job was not related to her employment injury. It remains the Office's burden of proof to terminate compensation, and the Board finds that the Office has not met its burden in this case.

² *Billy G. Sinor*, 35 ECAB 419 (1983).

³ *Janice F. Migut*, 50 ECAB ____ (Docket No. 96-1861, issued December 1, 1998) (appellant returned to work for two days; the burden remained on the Office to justify termination of benefits).

⁴ The light-duty job was apparently a part-time job at six hours per day.

⁵ 38 ECAB 222 (1986) (providing that 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 establishes that light duty can be performed, the employee has the burden to establish by the weight of reliable, probative and substantial evidence a recurrence of total disability. As part of this burden of proof, 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).

⁶ *Carl C. Graci*, 50 ECAB ____ (Docket No. 98-497, issued September 24, 1999) (appellant returned to a light-duty job for two hours).

⁷ The Board was unable to locate the November 21, 1995 report in the case file. On return of the record, the Office should ensure that the report is included in the case record.

The decisions of the Office of Workers' Compensation Programs dated September 8, June 4 and March 11, 1997 are reversed.

Dated, Washington, D.C.
January 24, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member