

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DIANE MONTANA and U.S. POSTAL SERVICE,
POST OFFICE, Austin, TX

*Docket No. 99-1302; Submitted on the Record;
Issued July 18, 2000*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of disability on December 2, 1998 due to her May 29, 1998 employment injury.

On August 27, 1998 appellant, then a 37-year-old letter clerk, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she sustained an injury to her right wrist while she was manually casing and pitching mail. Appellant did not stop work. The Office of Workers' Compensation Programs accepted that appellant sustained an employment-related right bicipital tendinitis, right medial epicondylitis and tendinitis of the right wrist.

Accompanying appellant's claim was progress notes dated May 29 to August 21, 1998, three work status reports prepared by Dr. Brent Davis, an orthopedic surgeon, dated August 21 to September 1, 1998 and a narrative statement from appellant. The progress notes indicated right wrist pain and right shoulder pain with a diagnosis of tendinitis of the wrist and elbow. The work status report dated August 21, 1998 indicated right arm strain with a restriction not permitting use of the right hand for a period of five days. The work status report dated August 28, 1998 indicated a right arm strain and resolving right scapular strain with a restriction of minimal use of the right hand for a period of seven days. The work status report dated September 1, 1998 notes right bicep tendinitis and right wrist tendinitis with a restriction not permitting use of the right hand and upper extremities for a period of seven days. Appellant's narrative documents the history of her injury.

Appellant submitted work status reports dated September 8 through September 30, 1998. The work status reports released appellant to work with a recommendation to rotate tasks as necessary. On October 6, 1998 appellant was offered and accepted a limited-duty assignment offer.

Thereafter, appellant submitted three claims for continuing compensation on account of disability Forms CA-8, dated January 5 to 20, 1999; and five-time analysis Forms CA-7 dated December 23, 1998 through January 20, 1999.

Accompanying these claim forms appellant submitted three duty status reports dated October 9 through 23, 1998 signed by Dr. Davis; a note from Dr. Douglas R. Elenz, an orthopedic physician, dated December 1, 1998; and a progress note from Dr. Elenz dated December 15, 1998. The duty status reports indicated a diagnosis of tendinitis of the right arm due to overuse with a notation by the doctor that appellant should rotate jobs as necessary with no use of the right arm. Dr. Elenz's note dated December 1, 1998 indicated that appellant would be unable to work for a period of three weeks.¹ Dr. Elenz's progress note dated December 15, 1998 indicated diffuse right upper extremity pain. He noted that he could not give a specific diagnosis to explain appellant's current symptoms.

By letter dated January 12, 1999, the Office informed appellant that she must file a notice of recurrence of disability (Form CA-2a), in order to pursue her claim for compensation for wage loss resulting from the accepted employment-related condition. The Office also requested that appellant provide a statement regarding any possible change in her light-duty job such that appellant would be unable to perform these duties and a narrative report from a physician which described objective findings to show that appellant's condition had worsened and that this condition prohibited appellant from performing the light-duty job.

On January 28, 1999 appellant filed a Form CA-2a, notice of recurrence of disability. Appellant indicated a recurrence of pain due to employment-related injuries sustained in May 1998. Appellant stopped work on December 2, 1998 and did not return. Appellant indicated that her recurrence of symptoms began on December 2, 1998.

In support of her claim, appellant submitted a duty status report prepared by Dr. David K. Harris, a physical medicine and rehabilitation specialist, dated January 29, 1999; two claim for continuing compensation Forms CA-8 dated February 5 and 19, 1999; two-time analysis forms (CA-7A) dated February 5 and 19, 1999; an undated medical report from Dr. Davis received on February 1, 1999; and a narrative statement prepared by appellant. The duty status report dated January 29, 1999 indicated a diagnosis of medial epicondylitis and cervical scapular pain and recommended appellant not resume employment for four weeks. The medical report from Dr. Davis documented the history of appellant's injury and noted appellant's right elbow symptoms flared up in September and October. He noted in November appellant presented with persistent pain and inflammation in the elbow and recurrent pain in the wrist. Appellant's narrative statement notes that her condition has not improved and has prevented her from working.

By decision dated February 23, 1999, the Office denied appellant's claim for recurrence of disability on the grounds that she did not submit sufficient medical evidence to establish

¹ In a letter dated December 8, 1998 to Dr. Elenz, the employing establishment indicated that they would accommodate any restriction the physician thought necessary so that the appellant could return to work. The record indicates that the physician did not respond to the Office's letter.

appellant was totally disabled from engaging in a modified work assignment, or that the work assignment had been changed and no longer met the medically imposed work restrictions.

The Board finds that appellant has not met her burden of proof in establishing that she had a recurrence of disability on December 2, 1998 as a result of her May 29, 1998 injury.

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 establish 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.²

In support of her claim, appellant submitted a note from Dr. Elenz dated December 1, 1998, which indicated appellant would be unable to work for a period of three weeks. The note did not provide an objective finding by him regarding appellant's condition nor did it relate her disability to her accepted employment injury. Dr. Elenz's December 15, 1998 progress note indicated appellant's primary complaint of diffuse right upper extremity pain had not abated after two weeks of not working. He also stated that he could not provide a specific diagnosis to explain appellant's current complaints. Dr. Elenz stated that, had appellant's complaint's represented overuse syndrome, the pain would have resolved after use of a dosepak and not working. He did not specifically indicate in either report that there was a change in the nature of appellant's physical condition, arising from the employment injury, which prevented appellant from performing his light-duty position. Rather, Dr. Elenz stated that he could not provide a specific diagnosis to explain appellant's current complaints.

In a letter dated January 19, 1999, the Office specifically advised appellant of the type of factual and medical evidence necessary to establish her claim for recurrence. The Office requested a statement regarding changes in appellant's light-duty job which would hinder her from performing these duties, as well as a narrative report from a physician describing objective findings which showed how appellant's employment-related condition had worsened and rendered appellant disabled.

Appellant submitted a narrative dated January 27, 1999, in which she indicated her condition was not a recurrence. Appellant noted that her condition has not improved and has not permitted her to work. Appellant acknowledged that the employing establishment provided her with a light-duty position which conformed to her medical restrictions. Appellant did not indicate that there was a change in the nature and extent of the injury-related condition or of the light-duty job requirements which would prohibit her from returning to her light-duty position. Appellant also submitted an undated medical report from Dr. Davis which provided a summary of appellant's condition since May 29, 1998. Dr. Davis noted certain of appellant's work duties and advised that appellant presented herself November 3, 1998 with marked increase in pain and tenderness, whereby the doctor placed her out of work. Dr. Davis did not specifically address

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

whether appellant's disability resulted from her employment injury or the light-duty work requirements. Likewise, Dr. Harris, in a January 29, 1999 report, did not specifically address whether appellant's employment injury caused or aggravated any disability.

Appellant has not met her burden of proof in establishing that there was a change in the nature or extent of the injury-related condition or a change in the nature and extent of the light-duty requirements which would prohibit her from performing the light-duty position she assumed after she returned to work.³

The decision of the Office of Workers' Compensation Programs, dated February 23, 1999, is hereby affirmed.

Dated, Washington, D.C.
July 18, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

³ With appellant's request for an appeal, appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c).