

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINDA E. WILLIAMS and DEPARTMENT OF VETERANS AFFAIRS,
BRONX VETERANS ADMINISTRATION MEDICAL CENTER, Bronx, NY

*Docket No. 99-712; Submitted on the Record;
Issued June 14, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant established that she sustained a recurrence of disability causally related to factors of her employment.

On March 26, 1997 appellant, then a 48-year-old food service worker, filed a claim for compensation stating that she had lateral epicondylitis of the right elbow due to operating the cash register. In an April 28, 1997 form report, Dr. Crockett indicated that appellant could not perform any heavy lifting over five pounds but was able to perform duties at the cash register. She returned to limited duty. The Office of Workers' Compensation Programs accepted appellant's claim for lateral epicondylitis of the right elbow.

On April 14, 1998 appellant submitted a claim for recurrence of disability. She indicated that she stopped working on April 6, 1998 and would return to work on May 6, 1998. Appellant stated that for approximately three months her injured arm had been swollen and sore at the end of every workday. She commented that her physician related her current condition to the employment injury. In a November 21, 1998 decision, the Office denied appellant's claim for a recurrence of disability on the grounds that the evidence of record failed to establish that a worsening of her condition caused total disability.

The Board finds that the case is not in posture for 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 to establish 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 injury-related condition or a change in the nature and extent of the light-duty job requirements.¹

In support of her claim of recurrence of disability, appellant submitted an April 3, 1998 note from Dr. Scott T. Gray, an orthopedic surgeon, who stated that appellant was unable to return to work due to an orthopedic injury and indicated that she would return to work in approximately four weeks. In a May 6, 1998 report, he indicated that appellant complained of pain and swelling of her right elbow and difficulty using her right arm for lifting and repetitive use. Dr. Gray reported that appellant's right elbow was swollen and she had tenderness over the lateral epicondyle. He noted that she had increased pain with active extension of the wrist against resistance. Dr. Gray stated that appellant's disability was partial and indicated that she was unable to use her hand for repetitive motion. In a May 20, 1998 note, he indicated that appellant was back to limited duty, working at the cash register four hours a day intermittently. In a July 1, 1998 form report, Dr. Gray diagnosed lateral epicondylitis. He marked a "yes" box on the form to indicate that the condition was related to an employment activity, which he described as overuse. Dr. Gray reported that appellant was totally disabled from April 6 through May 4, 1998 and was partially disabled beginning May 4, 1998. In a note of the same date, he indicated that appellant had pain with overuse, tenderness over the lateral epicondyle and decreased range of motion. In subsequent progress reports, Dr. Gray stated that appellant had tenderness over the lateral epicondyle and improvement in pain after decreased use of the arm in work activity. He indicated that appellant had a change in her condition which he attributed to overuse of the elbow. Dr. Gray's reports are not sufficiently well rationalized to sustain appellant's burden of proof. However, the extended period of reports, which are uncontradicted, are sufficient to raise a question of whether appellant has sustained a recurrence of disability causally related to the original employment injury. The case, therefore, must be remanded for further development by the Office.² On remand, the Office should refer appellant, together with a statement of accepted facts and the case record, to an appropriate specialist for an examination and opinion on whether appellant has sustained a recurrence of disability causally related to factors of her employment.

¹ *George DePasquale*, 39 ECAB 295 (1987); *Terry R. Hedman*, 38 ECAB 222 (1986).

² *John J. Carlone*, 41 ECAB 354 (1989).

The decision of the Office of Workers' Compensation Programs, dated November 21, 1998, is hereby set aside and remanded to the Office for further development consistent with this decision of the Board.

Dated, Washington, D.C.
June 14, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member