U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KIM KILTZ and U.S. POSTAL SERVICE,
POST OFFICE, Montgomery, IN

Docket No. 98-1907; Submitted on the Record;
Issued March 9, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue is whether appellant has established that he sustained a recurrence of disability beginning December 14, 1996 causally related to his accepted arm conditions and surgeries.

On October 10, 1992 appellant, then a 44-year-old rural carrier, filed a claim for bilateral carpal tunnel syndrome, which he attributed to repetitive motion on his job. The Office of Workers' Compensation Programs accepted that appellant sustained bilateral carpal tunnel syndrome in the performance of duty and authorized surgery for this condition. On April 6, 1993 a left carpal tunnel and pronator tunnel release was performed by Dr. R. Michael Harrison, an orthopedic surgeon, and on May 5, 1993 Dr. Harrison performed a right carpal tunnel release.

The Office paid appellant compensation from October 9, 1992, when he first stopped work, until his return to work as a limited-duty clerk on December 9, 1992. The Office also paid appellant compensation for recurrences of disability from December 27, 1992 to January 4, 1993, and from January 8 until appellant returned to work for three hours per day on June 21, 1993. Thereafter, the Office paid appellant compensation for partial disability until an accepted recurrence of disability from August 2 to September 15, 1993. On September 16, 1993 appellant returned to full-time work as a limited-duty clerk. The Office accepted that appellant sustained a recurrence of disability from June 14 to 22, 1994.

On November 17, 1994 Dr. Thomas J. Fischer, a Board-certified orthopedic surgeon, performed a right external neurolysis of the median nerve of the pronator muscle, which was authorized by the Office. The Office paid appellant compensation for total disability from November 17 until his return to limited duty on November 25, 1994.

Appellant again stopped work on November 28, 1994 and filed a claim for a recurrence of disability. On December 12, 1994 the employing establishment offered appellant a limited-duty assignment that it stated was "merely written confirmation of the temporary limited-duty assignment that was offered to you … by telephone to be effective November 25, 1994." The

tour was listed as "2 or as assigned," and the duties as "Manual letter distribution to post office boxes and verification of box numbers, answering the telephone and any other duties that can be performed without using your right arm and minimal lifting with your left arm." The physical requirements included lifting and carrying up to 10 pounds, no pulling or pushing, 8 hours of continuous simple grasping with the left hand only and 8 hours of intermittent fine manipulation with the left hand only.

In a report dated January 17, 1995, Dr. Fischer stated that he concurred with the restrictions in the employing establishment's December 12, 1994 offer, including the eight hours of simple grasping continuously with the left hand only. Appellant returned to this duty on January 30, 1995 and the Office paid compensation for total disability from November 28, 1994 to January 27, 1995.

By decisions dated January 17 and March 26, 1996, the Office found that the evidence failed to establish that appellant sustained a back injury consequential to his accepted conditions. On November 25, 1996 the Office issued appellant a schedule award for a 15 percent permanent loss of use of the right arm and a 15 percent permanent loss of use of the left arm. The period of the award was from July 5, 1996 to April 21, 1998.

In a letter to the employing establishment dated December 13, 1996, appellant stated that changes in limited-duty assignments must be in writing in the form of a new contract, that numerous changes had taken place in his duties and restrictions since the employing establishment's December 12, 1994 contract and that he was reverting back to that contract by reporting to work at 8:00 a.m. on December 16, 1996 and by working Monday through Friday, 8:00 a.m. to 4:30 p.m., with Saturday and Sunday as nonscheduled days. In a letter to his union steward dated December 17, 1996, appellant stated that on December 13, 1996 he personally delivered his December 13, 1996 letter to the employing establishment and that the postmaster called him at home that night and instructed him to return to work on December 14, 1996 on Tour I (midnight to 8:30 a.m.). Appellant continued that he reported to work at 8:00 a.m. on December 16 and 17, 1996 but that the employing establishment refused to allow him to sign in, sent him home and placed him in an absent-without-leave status. In a letter dated December 26, 1998, the employing establishment reminded appellant that he had failed to report for duty to his assigned tour as directed since December 14, 1996, that he had five days to notify the employing establishment of his intentions toward his position and that if acceptable evidence justifying his absence was not submitted within five days, his "entire absence may be considered as unauthorized an appropriate disciplinary action will be taken." By letter dated December 28, 1996, appellant advised the employing establishment that he intended to return to work after a medical evaluation of his condition and "only after a new contract has been issued."

On December 27, 1996 appellant filed a claim for a recurrence of disability beginning December 14, 1996; appellant stated that the Office failed to send the employing establishment new restrictions of July 1996 and that working under the old restrictions "resulted in increased impairment causing a stop work." The employing establishment stated on the reverse side of this claim form that limited duty was still available and that documentation did not support a recurrence of total disability.

On January 6, 1997 the employing establishment offered appellant a limited-duty assignment that it stated was "merely written confirmation of the temporary limited-duty assignment that was offered to you verbally … effective [December 14, 1996.]" The hours were midnight to 8:30 a.m. or as assigned and the duties were "Prepping mail, unsleeving trays of mail, culling mail and other general mail processing duties within the physical requirements listed below." These physical requirements included lifting and carrying up to 20 pounds, no twisting of either upper extremity, no pushing or pulling, alternating duties to avoid repetitive grasping and no fine manipulation. On January 9, 1997 the employing establishment issued appellant a notice of removal effective February 18, 1997 for insubordination and failure to report for duty as directed and scheduled.

In a report dated January 6, 1997, Dr. Fischer stated that appellant told him that since August 1996 he had been sorting mail, which entailed lifting and distributing 300 to 400 trays in a short period of time, with half of these trays weighing up to 40 pounds. He noted that appellant had not been working since December 14, 1996 because of left arm pain and concluded that "a strain of the anterior scar tissue along his antecubital fossa where his previous operation was done in 1993 or 1994" was "the likely source of his pain." Dr. Fischer recommended "continued restrictions of 0 to 20 pounds with no repetitive pulling, grasping or twisting and no repetitive pushing of more than 20 pounds." In another January 6, 1997 report on an Office form, he indicated that appellant's strain or sprain of the left anterior elbow was caused or aggravated by lifting and moving mail trays, that appellant was partially disabled for work from December 14, 1996 to February 1, 1997 and that appellant had been advised he was able to resume light work on January 6, 1997.

In a letter dated February 10, 1997, the employing establishment stated that appellant had been working tour I since May 6, 1995, that he separated 200 to 250 trays of mail in an 8½-hour day in conjunction with other duties and that the trays ranged in weight from ½ to 20 pounds. In a letter dated February 13, 1997, appellant stated that the employing establishment had changed his duties numerous times since December 12, 1994 and that he had performed the duties of a janitor, machine operator and mail preparer. Appellant stated that the duties in the employing establishment's January 6, 1997 offer were "totally different than the duties listed [December 12, 1994.] The [January 6, 1997] limited-duty assignment resulted from the fact I have been performing those duties since Dr. Fischer's permanent injury findings dated July 18, 1996.… Those duties were at the time of [July 18, 1996] given to me verbally by the postmaster." Appellant stated that the performance of these duties "resulted in loss of mobility, numbness and pain to the left arm and loss of strength to the right arm. These duties clearly exceeded my restrictions and resulted in the progressive deterioration of my original condition."

By decision dated March 4, 1997, the Office found that the evidence failed to demonstrate a causal relationship between appellant's employment injury and his claimed recurrence of disability. Appellant requested reconsideration and submitted additional medical evidence. By decision dated April 28, 1997, the Office found that the additional evidence was not sufficient to warrant modification of its prior decision. Appellant requested reconsideration and submitted additional medical evidence. By decision dated May 8, 1998, the Office found that the additional evidence was not sufficient to warrant modification of its prior decision.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a 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 to show that he or 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]

The Board finds that appellant has not established that he sustained a recurrence of disability beginning December 14, 1996, causally related to his accepted arm conditions and surgeries.

The record indicates that appellant stopped work on December 14, 1996 because of a disagreement with the employing establishment over which tour he should be working. The employing establishment reported that appellant had been working tour I since May 6, 1995, even though its offer of limited-duty employment dated December 12, 1994 specified tour "2 or as assigned." This disagreement over working hours is not within the jurisdiction of the Office or the Board and appellant has filed a grievance over his termination of employment on the basis of his absence without leave resulting from this disagreement. While changes in the nature and extent of an employee's light-duty requirements can result in a compensable recurrence of disability, not all such changes have this effect. Only changes that cause the light-duty assignment to exceed the employee's work tolerance limitations result in a compensable recurrence of disability. An employee is not obligated to perform work that does not comply with the physical restrictions established by the medical evidence.[2]

Appellant has alleged but has not established that the physical requirements of the light-duty assignment he was performing immediately before he stopped work on December 14, 1996 exceeded his work tolerance limitations. In a February 13, 1997 letter appellant stated that he had performed the duties listed in the employing establishment's January 6, 1997 offer of limited duty since July 18, 1996 pursuant to verbal instructions from the employing establishment's postmaster. The physical requirements associated with these duties -- lifting and carrying up to 20 pounds, no pushing or pulling, alternating duties to avoid repetitive grasping and no twisting of either upper extremity -- do not exceed the work tolerance limitations set forth by appellant's attending physician, Dr. Fischer, in his July 5, 1996 report: a weight limitation of 20 pounds and no repetitive pushing, pulling, grasping or twisting. He confirmed that these restrictions remained the same in a January 6, 1997 report. Even if appellant did perform work exceeding his work tolerance limitations at some time during his limited-duty assignment that began December 12, 1994, the evidence shows that the work he stopped performing on December 14, 1996 conformed with his most recent work tolerance limitations, those from Dr. Fischer dated July 5, 1996.

Appellant also has not established that the nature and extent of his injury-related condition changed on December 14, 1996 so as to prevent him from continuing to perform his

[1] *Terry R. Hedman*, 38 ECAB 222 (1986).

[2] *Louise R. Silva*, 41 ECAB 176 (1989).

limited-duty assignment. The first medical examination appellant underwent following his stoppage of work on December 14, 1996 was on January 6, 1997 by Dr. Fischer, who indicated appellant could continue to perform his limited duty and that he had informed appellant of this. Although he stated that appellant sustained a sprain or strain of the scar tissue where his surgery was done and that this was the likely source of his left arm pain, Dr. Fischer did not indicate that appellant was totally disabled or that he was disabled for the limited-duty assignment he had been performing. With his requests for reconsideration, appellant submitted reports from Dr. Steven Hugenberg, a Board-certified rheumatologist. Although Dr. Hugenberg lent some support in his April 10, 1997 and April 3, 1998 reports to a causal relation between appellant's left arm pain and the surgery authorized by the Office, neither of these reports indicates that appellant was disabled for his limited-duty assignment. For this reason, these reports do not show a recurrence of disability.

The decision of the Office of Workers' Compensation Programs dated May 8, 1998 is affirmed.

Dated, Washington, D.C.
March 9, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member