U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DOLORES G. MILLENDEZ and U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Seattle, WA

Docket No. 99-520; Submitted on the Record;
Issued May 25, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS, BRADLEY T. KNOTT

The issue is whether appellant sustained a recurrence of disability beginning August 18, 1995 due to her accepted carpal tunnel syndrome.

On August 24, 1993 appellant, then a 37-year-old distribution clerk,[1] filed a claim for carpal tunnel syndrome that she attributed to casing mail and lifting heavy tubs. Appellant did not stop work at that time, but was assigned limited-duty working in "short paid," stamping instructions on letters. Appellant stopped work on September 28, 1993 and used sick leave until November 15, 1993, from which date she claimed compensation. The Office of Workers' Compensation Programs accepted that appellant sustained bilateral carpal tunnel syndrome in the performance of duty, and paid compensation until she returned to limited duty on February 22, 1994. Appellant again stopped work on March 8, 1994, underwent a right carpal tunnel release on March 30, 1994 and used sick leave or received compensation until she returned to work on May 9, 1994. She again stopped work on May 11, 1994 and returned to work on May 18, 1994, accepting an offer as a short paid clerk. She received compensation during this absence from work. Appellant again stopped work on May 24, 1994 and received compensation for temporary total disability from that date until she returned to limited duty for four hours per day on July 10, 1994. Thereafter, appellant increased her hours of work to eight hours per day by October 31, 1994, with the Office paying compensation for partial disability until that date.

Appellant next stopped work on January 16, 1995 the Office accepted that she sustained a recurrence of disability and began payment of compensation for temporary total disability. On May 12, 1995 appellant accepted an offer of a position at the employing establishment as a distribution clerk (rehabilitation assignment). The duties were listed as inputting data using a computer keyboard and 10 key, copying information by using microfiche, filing and assisting in

[1] The employing establishment stated that appellant's job title was distribution clerk but that she worked as a manual flats sorter.

clerical duties in an office environment. Her work limitations were listed as lifting no more than 20 pounds occasionally and 10 pounds frequently, ability to vary tasks throughout each workday to limit the frequency and quantity of motions and intermittent keyboarding use. On this offer appellant's attending physician, Dr. Thomas B. Curtis, a Board-certified physiatrist, wrote: "It is acceptable to me that [appellant] try this job." Appellant began working in this position on May 30, 1995 and the Office paid compensation until that date. On June 16, 1995 the Office found that the rehabilitation assignment distribution clerk position was suitable.

On August 18, 1995 appellant resigned her position at the employing establishment. The reason she gave for her resignation was: "I cannot work repetitive motion. My present work still aggravating my injury, so I have to stop working." The last day appellant worked was August 14, 1995.

By decision dated December 8, 1995, the Office found that appellant was not entitled to compensation after August 15, 1995 for the reason that she abandoned suitable work. By letter dated August 1, 1996, appellant requested reconsideration. By decision dated September 23, 1996, the Office set aside its December 8, 1995 decision on the basis that proper notice had not been given and found that appellant had not established that she sustained a recurrence of disability beginning August 18, 1995. Appellant requested a hearing, which was held before an Office hearing representative on July 29, 1997. By decision dated November 12, 1997, this Office hearing representative found that appellant had not established a change in her injury-related conditions or in her light-duty requirements and had, therefore, failed to establish a recurrence of disability.

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 or the medical evidence establishes that the employee 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 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.[2]

The Board finds that appellant has not established that she sustained a recurrence of disability beginning August 18, 1995.

In her August 1, 1996 request for reconsideration, appellant contended that when she began her rehabilitation assignment she did mostly hand work like sorting, that after a week she was trained on the computer, that after a week of working on the computer her hands and arms and shoulder began to hurt again and that she had a meeting with supervisory personnel who told her it was up to her to make her own time. Appellant stated that she went back to work and spent most of her time on the computer paying bills and that her trainer wanted her to do everything and know everything, including research for people on the telephone. Appellant continued that one morning her hands started to really hurt so she stopped using the computer and did some microfiche work, but that she had to return to the computer to pay bills on time. In

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

this letter, appellant is alleging that her duties changed so that they exceeded her work tolerance limitations, an allegation specifically advanced by her attorney at the July 29, 1997 hearing.

The record, however, contains too many contradictions to support a finding that appellant was required to perform more than the intermittent keyboarding set forth in her work limitations. In her testimony at the July 29, 1997 hearing, appellant testified that she keyed from 6:00 a.m. to 2:30 p.m. constantly except for her breaks, but also testified that she keyed five to six hours per day. She also testified that she was able to rest her hands from computer use by doing microfiche, and that when her hands hurt she "just really stopped and then go on to something else," although this was sometimes interrupted to do research. When questioned by the Office hearing representative as to what she was doing shortly before she stopped work on August 18, 1995, appellant testified that she opened mail, sorted mail and then start keying. She testified that she could have keyed intermittently but she had nothing else to do.

In addition to the contradictions in appellant's testimony about the amount of keying required in her rehabilitation assignment, the record contains a memorandum from an employing establishment injury compensation specialist of a meeting attended by appellant, the supervisor of accounting services and a human resource specialist. This memorandum states that the meeting was held because appellant had complained that her hands and arms were beginning to hurt again because of the repetitive nature of her work, mainly on the computer. The memorandum states that "it was determined her pain was caused by her not alternating her job tasks as instructed," that appellant was instructed to alternate her job tasks and that she "agreed to the above. Her only comment was she would like to resign but cannot due to financial concerns." This memorandum reinforces that appellant had several job tasks to perform and that they could be alternated with her keyboard work. Appellant has not established a change in the nature and extent of her light-duty requirements such that they exceeded her work tolerance limitations.

Appellant also has not established a change in the nature and extent of her injury-related condition. In a report dated August 15, 1995, the day after she last worked, Dr. Curtis noted that appellant reported continued pain in her right hand and arm aggravated by computer use at work; the he stated: "[Appellant] says emphatically she will not return to work. It is my impression that she is capable of work." When asked by the Office whether appellant's findings had changed so she was no longer able to work, Dr. Curtis replied in a September 9, 1996 report:

> "There is not, to my knowledge, any change in her medical condition…. It is my impression that there has not been so much a change in her physical condition as there has been a learning of what she is able to do and what she is not able to do. I support her position, where she would be willing to do such things as light filing, microfiche, copying information by using microfiche and other light duties. She would like to avoid 10-key work and data entry into the computer. This is appropriate."

Although Dr. Curtis' September 9, 1996 report also noted that a January 10, 1995 electromyogram showed carpal tunnel syndrome and that frequent repetitive activities would bother a person with this problem, his reports do not show a change in the nature and extent of her injury-related condition. Dr. Curtis stated in a July 23, 1996 report that appellant was not

capable of performing a job involving repetitive use of her hands, including the job title of distribution clerk, but did not explain why her position changed since he approved of appellant trying the position in May 1995. This report indicated Dr. Curtis had not seen appellant since August 15, 1995. In a report dated August 22, 1997, he explained why keyboarding for two hours at a time would worsen a carpal tunnel syndrome, but it is not established that appellant actually performed such lengths of uninterrupted keyboarding. Appellant has not established a change in the nature and extent of her injury-related condition that prevented her from continuing her light duty.

The decision of the Office of Workers' Compensation Programs dated November 12, 1997 is affirmed.

Dated, Washington, D.C.
May 25, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member