U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TERRY J. WILKE and U.S. POSTAL SERVICE,
POST OFFICE, Cleveland, OH

Docket No. 99-617; Submitted on the Record;
Issued May 25, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issues are: (1) whether appellant has established that he sustained a recurrence of disability commencing November 14, 1996; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing.

In the present case, appellant has several accepted employment injuries. The record indicates that the Office accepted that appellant sustained a right knee strain on June 13, 1998, a right knee strain and right foot contusion on July 6, 1994, and cervical and bilateral shoulder strains on September 26, 1995. Appellant also filed an occupational disease claim on August 30, 1996 that was accepted by the Office for bilateral carpal tunnel syndrome.

As a result of the right knee injuries, appellant began working a limited-duty job in September 1994. On November 9, 1996 appellant was reassigned to a new limited-duty position at a different work site. Appellant filed a notice of recurrence of disability (Form CA-2a) as of November 14, 1996.

By decision dated May 15, 1997, the Office denied appellant's claim for a recurrence of disability. In a decision dated August 18, 1998, an Office hearing representative affirmed the prior decision. By decision dated September 30, 1998, the Office's Branch of Hearings and Review denied appellant's request for a hearing.

The Board has reviewed the record and finds that appellant has not established a recurrence of disability commencing November 14, 1996.

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.[1]

The Board notes that appellant has alleged that the light-duty reassigned position he began working on November 9, 1996 was outside his physical restrictions. The probative evidence of record, however, does not support this allegation. Appellant's work restrictions were set forth in an October 24, 1996 evaluation (Form OWCP-5) from Dr. Kim Stearns, an orthopedic surgeon, who indicated that appellant could work 8 hours, perform simple grasping and fine manipulation and lift 20 to 50 pounds. The light-duty position description indicates that appellant was required to case mail, with specific physical restrictions that conformed to the restrictions provided by Dr. Stearns. Appellant alleges that he was required to stand for eight hours, which was more than the intermittent three hours of standing recommended by Dr. Stearns. The employing establishment indicated in a May 26, 1998 memorandum that all employees were provided with chairs and there was no requirement to stand for eight hours. There is no probative evidence that the light-duty job exceeded the restrictions of Dr. Stearns.[2]

With respect to whether appellant has established a change in the nature and extent of his employment-related condition, the Board finds that the medical evidence is not sufficient to meet his burden of proof. In a report dated November 19, 1996, Dr. John Zangmeister, a family practitioner, indicated that appellant was being treated for rheumatoid arthritis. This condition has not been accepted as employment related and Dr. Zangmeister does not provide an opinion on causal relationship. In a form report (Form CA-20a) dated November 21, 1996, Dr. Robert Rzewnski, a rheumatologist, also diagnosed rheumatoid arthritis and checked a box "no" as to causal relationship with employment.

In a report dated January 31, 1997, Dr. Stearns stated that appellant was being treated for multiple problems, including rheumatoid arthritis of the right knee, and appellant was permanently partially disabled. Dr. Stearns stated, "the duties of [appellant's] job mainly being on his feet, bending, lifting and climbing have exacerbated the symptoms related to the rheumatoid arthritis in his knee." To the extent that appellant is claiming that the light-duty work aggravated his condition, this would be a claim for a new injury.[3] The issue in the present case is whether appellant has established a material change in an accepted employment injury as of November 14, 1996. On this issue, the record does not contain any probative medical evidence sufficient to meet appellant's burden of proof. Accordingly, the Board finds that the Office properly denied the claim for a recurrence of disability in this case.

The Board further finds that the Office properly denied appellant's request for a hearing.

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

[2] Appellant indicated that a grievance was filed, but the record does not contain any relevant evidence establishing that appellant's light-duty job was outside his work restrictions.

[3] A recurrence of disability includes a work stoppage caused by a spontaneous material change in the employment-related condition without an intervening injury. If the disability results from new exposure to work factors, an appropriate new claim should be filed; *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3 (January 1995).

In the present case, appellant had requested and received an oral hearing on the recurrence of disability issue. He then requested a second oral hearing on the same issue. There is no provision in the Federal Employees' Compensation Act for more than one hearing on the same issue.[4] If a request for a second hearing is made, appellant is not entitled as a matter of right, but the Office must exercise its discretion in determining whether to grant a hearing.[5] In this case, the Office advised appellant that he could submit additional relevant evidence on the issue through the reconsideration process. This is considered a proper exercise of the Office's discretionary authority.[6]

The decisions of the Office of Workers' Compensation Programs dated September 30 and August 18, 1998 are affirmed.

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

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member

[4] *John S. Baldwin*, 35 ECAB 1161 (1984).

[5] *Id.*

[6] *See Mary E. Hite*, 42 ECAB 641, 647 (1991).