

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WALTER WHITFIELD and U.S. POSTAL SERVICE,
POST OFFICE, Buffalo, NY

*Docket No. 00-198; Submitted on the Record;
Issued November 15, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of total disability on or after March 18, 1998 due to his March 7, 1997 employment injury.

The Board finds that appellant did not meet his burden of proof to establish that he sustained a recurrence of total disability on or after March 18, 1998 due to his March 7, 1997 employment 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 establishes 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 job requirements.¹

On March 7, 1997 appellant, then a 39-year-old casual mailhandler, sustained employment-related right shoulder tendinitis. He stopped work on March 8, 1997 and was released to limit duty in May 1997 but was terminated in June 1997 due to the temporary nature of his job. In late 1997, appellant was placed on the periodic compensation rolls for total disability. From November 25, 1997 to March 19, 1998, appellant worked as an assembler of plastic components for a private employer. Appellant was terminated from the position due to a decrease in the number of orders for the components.²

¹ *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

² The position involved the assembly of small plastic components using various devices, including gluing and welding machines, and required light to moderate lifting.

By decision dated June 19, 1998, the Office reduced appellant's compensation effective February 7, 1998 based on his actual wages as an assembler. The Office determined that the position fairly and reasonably represented appellant's wage-earning capacity. In August 1998, appellant filed a claim alleging that he sustained a recurrence of total disability on March 18, 1998 due to his March 7, 1997 employment injury. By decision dated September 25, 1998, the Office denied appellant's claim on the grounds that he did not submit sufficient medical evidence to show that he sustained an employment-related recurrence of disability on or after March 18, 1998. By decision dated June 8, 1999, the Office affirmed its September 25, 1998 decision.

The Board finds that appellant did not submit sufficient medical evidence to establish that he sustained a recurrence of total disability on or after March 18, 1998 due to his March 7, 1997 employment injury. Appellant submitted several reports by Dr. Paul K. Peartree, an attending Board-certified orthopedic surgeon, from around the time of his claimed recurrence of disability and thereafter. However, these reports do not show a change in the nature and extent of the injury-related condition or otherwise establish that appellant sustained an employment-related recurrence of total disability on or after March 18, 1998.³

In a report dated January 6, 1998, Dr. Peartree indicated that appellant stated that his present position required more manual dexterity than reaching and lifting but that he experienced some right shoulder pain when reaching. Dr. Peartree diagnosed rotator cuff strain, indicated that the problem was not severe enough to require further testing, and stated with respect to appellant's disability, "Partial, moderate. He is capable of light-duty work. No lifting above chest level. No repetitive reaching. It is too soon to make any determination about permanency."

In a report dated March 31, 1998, Dr. Peartree diagnosed rotator cuff strain, indicated that the problem was not severe enough to require further testing, and stated with respect to appellant's disability, "Partial, mild. I think he is capable of lifting up to 20 pounds frequently. No repetitive overhead work. No repetitive reaching above chest level. Because of the duration of his symptoms, I would say that these restrictions are permanent." In a work restriction form report dated April 7, 1998, Dr. Peartree stated that appellant could work 8 hours per day, lift up to 20 pounds and engage in pushing, pulling and occasional reaching above the shoulder. He noted that appellant had no restrictions on hand grasping or fine manipulation. In a report dated April 7, 1998, Dr. Peartree provided an opinion which was similar to that contained in his March 31, 1998 report.

In a report dated May 5, 1998, Dr. Peartree noted that appellant had full overhead elevation of his arms and indicated that he was not certain appellant was exerting full effort upon examination. He diagnosed right rotator cuff strain and indicated that appellant did not have a serious injury. In a report dated June 23, 1998, Dr. Peartree diagnosed right shoulder pain with rotator cuff strain and degenerative changes at the acromioclavicular joint. Dr. Peartree stated, "He has a partial mild disability related to his shoulder problem. He could perform medium duty type work." The record contains other reports, dated between August and November 1998, in

³ Appellant also did not show a change in the nature and extent of the light-duty job requirements.

which Dr. Peartree provided a similar assessment of appellant's condition and level of restrictions.

The reports of Dr. Peartree do not contain a clear opinion that appellant was not able to perform his light-duty position on or after March 18, 1998 due to residuals of his March 7, 1997 employment injury, right shoulder tendinitis. The Board has examined the medical reports from the periods before and after appellant's claimed March 18, 1998 recurrence of disability and finds that they do not show any notable change in appellant's employment-related condition.

The record also contains reports from Dr. Mary E. Riegel, an attending Board-certified internist. In a report dated August 11, 1998, Dr. Riegel stated that appellant had been seen for right shoulder discomfort and had degenerative disease in the acromioclavicular joint which had been worsening over the prior several months. She indicated that appellant was totally disabled. However, this report is of limited probative value in that it does not provide a clear opinion that appellant's disability was due to his March 7, 1997 employment injury.⁴

For these reasons, appellant did not meet his burden of proof to establish that he sustained a recurrence of total disability on or after March 18, 1998 due to his March 7, 1997 employment injury.

The decisions of the Office of Workers' Compensation Programs dated June 8, 1999 and September 25, 1998 are hereby affirmed.

Dated, Washington, DC
November 15, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member

⁴ See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).