

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINDA FARMER and U.S. POSTAL SERVICE,
POST OFFICE, New York, NY

*Docket No. 98-1716; Submitted on the Record;
Issued November 6, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has met her burden of proof in establishing that she sustained a recurrence of disability on June 2, 1996 as alleged.

On October 4, 1987 appellant, a clerk, filed a claim alleging that she injured her left shoulder in the performance of duty. The Office of Workers' Compensation Programs accepted her claim for sprain and tendinitis of the left shoulder and entered appellant on the periodic rolls on February 12, 1990. Appellant underwent surgery on July 29, 1992 and her postsurgical diagnosis was incomplete rotator cuff tear and subacromial bursectomy. She sustained recurrences of disability and on October 25, 1994 the Office entered appellant on the periodic rolls. Appellant returned to limited duty on April 1, 1996. On June 2, 1996 she alleged that she sustained a recurrence of disability causally related to her October 4, 1987 employment injury. By decision dated December 24, 1996, the Office denied appellant's recurrence of disability. On December 20, 1997 appellant requested reconsideration of the December 24, 1996 decision. By decision dated February 13, 1998, the Office stated that it declined to reopen appellant's claim for consideration of the merits.¹

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 establish 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

¹ The Board notes that although the Office stated that it was denying appellant's claim without review of the merits, the text of the Office's February 13, 1998 decision is detailed in its analysis of the evidence and does not limit the review to the provisions of section 8128(a) of the Federal Employees' Compensation Act and section 10.138(b) of the Office's regulations. 5 U.S.C. § 8128(a); 20 C.F.R. § 10.318(b).

and extent of the light-duty requirements.² Furthermore, appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her recurrence of disability commencing June 2, 1996 and her October 4, 1987 employment injury.³ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁴

In support of her June 2, 1996 recurrence claim, appellant submitted a report dated June 3, 1996 from her attending physician, Dr. Richard Memoli, an orthopedic surgeon. In this note, Dr. Memoli stated that appellant did not work due to pain in the left shoulder. On June 17, 1996 he stated that he examined appellant on June 3, 1996 for muscle tendon rupture right and tendinitis bicipital left. Dr. Memoli stated that appellant was totally disabled due to this condition.

The Office referred appellant for a second opinion evaluation with Dr. Martin Manin, a Board-certified orthopedic surgeon. In a report dated August 19, 1996, Dr. Manin noted appellant's history of injury and performed a physical examination. He found normal passive range of motion and symmetrical reflexes. Dr. Manin noted that x-rays showed a mild degree of proximal migration of the humeral head. He stated, "The patient obviously had a rotator cuff tear and still showed some evidence of this in the proximal migration of the humeral head." Dr. Manin concluded, "In my opinion, rotator cuff tears are usually not particularly painful. There is a degree of exaggeration superimposed upon her injury." He stated that appellant could work four hours a day boxing mail. This report does not support appellant's claim for recurrence of total disability.

Appellant submitted a narrative statement on December 20, 1997 and alleged that she sustained a recurrence of disability as the nature and extent of her light-duty requirements changed. Appellant stated that the light-duty work she began on March 21, 1996 required repetitive use of both upper extremities. She stated that she experienced daily pain, discomfort and swelling in her left shoulder as well as spasms in her shoulder and neck. Appellant resubmitted the light-duty position description which she accepted on March 15, 1996. This position indicated no repetitive motions of the left wrist and elbow, no carrying, lifting or reaching with the left arm. This position complied with Dr. Memoli's January 31, 1996 work restrictions.

In a report dated November 10, 1997, Dr. Memoli, diagnosed muscle tendon rupture rotator cuff and bicipital tendinitis left shoulder as well as impingement syndrome left shoulder. He stated that he examined appellant on October 7, 1997 and that she reported persistent pain, impingement syndrome and supraspinatus tendinitis of the left shoulder. Dr. Memoli stated,

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

³ *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

⁴ *See Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

“Due to her condition I feel her left shoulder has worsened since she returned to work in April 1996. [Appellant’s] prognosis is guarded.”

Section 8123(a) of the Act,⁵ provides, “If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.” In this case, appellant’s attending physician, Dr. Memoli, an orthopedic surgeon, supported that appellant’s injury-related condition had worsened after her return to work. The Office referral physician, Dr. Manin, a Board-certified orthopedic surgeon, found that appellant demonstrated exaggerated symptoms and that she could perform the duties of her light-duty position for four hours a day. Due to this unresolved conflict of medical opinion evidence, the Board finds that the Office must refer appellant, a statement of accepted facts and a list of specific questions to an appropriate medical specialist to determine the nature and extent of her employment-related disability. After this and such other development as the Office deems necessary, the Office should issue an appropriate decision.

The February 13, 1998 decision of the Office of Workers’ Compensation Programs is hereby set aside and remanded for further development of appellant’s claim for a recurrence of disability on June 2, 1996.

Dated, Washington, DC
November 6, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

⁵ 5 U.S.C. §§ 8101-8193, 8123(a).