

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DENNIS R. ROMERO and U.S. POSTAL SERVICE,
POST OFFICE, Pueblo, CO

*Docket No. 99-879; Submitted on the Record;
Issued April 13, 2001*

DECISION and ORDER

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

The issue is whether appellant sustained recurrences of disability from October 23, 1996 through May 19, 1997 and from September 15, 1997 onward, causally related to his accepted February 21, 1991 employment injury.

On February 21, 1991 appellant, then a 32-year-old maintenance mechanic, filed a traumatic injury claim alleging that he injured his lower back when he picked up a shampooer.¹ The Office of Workers' Compensation Programs accepted the claim for lumbar strain and placed him on the automatic rolls for temporary total disability. Appellant returned to a limited-duty position working four hours a day on November 12, 1996, stopped work on November 18, 1996, and returned to a limited-duty position on May 22, 1997 working eight hours a day. He was approved for disability retirement by the Office of Personnel Management on January 8, 1998.

By decision dated August 7, 1997, the Office denied appellant's claim for a recurrence of disability on the grounds that the medical evidence was insufficient to support appellant's claim for lost wages for October 23 through December 21, 1996 and January 1 through May 19, 1997.

Appellant's representative requested an oral hearing, which was held on September 15, 1998.

¹ This was assigned claim number A12-0120584. The Board notes that the record contains evidence that appellant filed an occupational disease claim on December 20, 1997 and a traumatic injury claim June 12, 1997. The December 20, 1997 occupational claim was assigned claim number A12-173151, deleted the claim April 1, 1998 and advised appellant to submit a claim for a recurrence of disability. The June 12, 1997 claim was assigned claim number A12-169427 and was denied by the Office by decision dated September 5, 1997 on the basis that fact of injury was not established. Appellant also filed claims for a schedule award on October 28 and December 18, 1996, but the record contains no final decision by the Office on these claims.

By decision dated March 27, 1998, the Office denied appellant's claim for a recurrence of disability beginning September 15, 1997 due to his accepted February 21, 1991 employment injury.

By decision dated November 23, 1998, the hearing representative affirmed the Office's August 7, 1997 decision which denied appellant's claim for a recurrence of disability from October 23, 1996 through May 19, 1997. The hearing representative determined that the medical evidence was insufficient to establish that appellant was unable to perform his limited-duty position.

The Board finds that appellant has not established that he sustained a recurrence of disability causally related to his accepted February 21, 1991 employment injury.

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

In this case, appellant has failed to submit rationalized medical evidence establishing that he was totally disabled from October 23, 1996 through May 19, 1997 and from September 15, 1997 onward due to his February 21, 1991 employment injury. Appellant submitted reports from Dr. Jack L. Rook, an attending physician Board-certified in physical medicine and rehabilitation and Dr. Dexter D. Koons, a Board-certified neurologist.

Dr. Koons, in his January 27, 1997 report, noted that appellant had returned to work with restrictions in October 1996 and that appellant's physician took him off work because appellant "could not take it being in that small room." In his August 29, 1997 report, Dr. Koons opined that appellant was capable of performing his light-duty work as set forth in the November 12, 1996 limited-duty assignment offer. Neither report establishes that appellant is totally disabled from his light-duty position.

Dr. Rook's reports are also insufficient to support appellant's burden of proof to establish his recurrence of disability. In his May 7, 1996 report, Dr. Rook stated that it was "reasonable to have kept [appellant] off work since November 19, 1996," that appellant "will remain temporarily totally disabled until after he sees the surgeon" and that he would "most likely place him in light to medium physical demand level if he chooses not to pursue surgical intervention." In a February 28, 1997 report, Dr. Rook indicated that he reviewed Dr. Koons' January 27, 1997 report and agreed with his conclusions. Dr. Rook also noted that appellant was taken off work in October 1996 as sitting "in a small cold room" and in a hard chair aggravated his back condition. In his October 13, 1997 report, Dr. Rook opined that appellant "was disabled at this time with regards to working at the [employing establishment] for physical and emotional reasons" and that "physical work has aggravated his back condition over the years." He took appellant off

² *Linda Thompson*, 51 ECAB ____ (Docket No. 99-1164, issued September 26, 2000); *Kim Klitz*, 51 ECAB ____ (Docket No. 98-1907, issued March 9, 2000); *Terry R. Hedman*, 38 ECAB 222 (1986).

work for six weeks in his October 22, 1996 report, noting that appellant was obviously depressed.

Dr. Rook has not provided any explanation or rationale to support his conclusion that appellant was unable to perform his light-duty position. Inasmuch as he did not provide any medical rationale explaining the causal relationship between appellant's conditions and his October 15, 1996 employment injury, his report is of diminished probative value.³ The Board finds that Dr. Rook's medical reports are insufficient to establish that appellant was totally disabled from work. Furthermore, Dr. Koons opined that appellant was capable of performing his light-duty work and Dr. Rook concurred with Dr. Koons' conclusions.

Inasmuch as appellant has failed to submit rationalized medical evidence establishing that he was totally disabled from October 23, 1996 through May 19, 1997 and from September 15, 1997 onward due to his February 21, 1991 employment injury, he has failed to satisfy his burden of proof.

Appellant also has not established that the nature and extent of his injury-related condition changed on October 23, 1996 and September 15, 1997 so as to prevent him from continuing to work his limited-duty assignment.

The decisions of the Office of Workers' Compensation Programs dated November 23 and March 27, 1998 are hereby affirmed.

Dated, Washington, DC
April 13, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member

³ *Lucrecia M. Nielsen*, 42 ECAB 583, 594 (1991).