

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of TERESA L. HARDY and U.S. POSTAL SERVICE,  
ANNANDALE POST OFFICE, Annandale, VA

*Docket No. 00-554; Oral Argument Held June 12, 2001;  
Issued August 13, 2001*

Appearances: *Harnam S. Arneja, Esq.*, for appellant; *Catherine P. Carter, Esq.*,  
for the Director, Office of Workers' Compensation Programs.

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
BRADLEY T. KNOTT

The issue is whether appellant is entitled to compensation for partial disability for the period March 10 through July 22, 1997 causally related to residuals of her July 18, 1988 accepted back condition.

On July 19, 1988 appellant, then a 30-year-old window clerk, filed a traumatic injury claim alleging that on July 18, 1988 she pulled muscles in her back while lifting boxes weighing a total of 29 pounds. Appellant stopped work on July 20, 1988.

By letter dated October 19, 1998, the Office of Workers' Compensation Programs accepted appellant's claim for thoracic radiculitis, subluxation and acute strain.

Appellant returned to limited-duty work on February 28, 1989. Appellant stopped work on April 29, 1992 and claimed a recurrence of disability, which was accepted by the Office.

On July 13, 1995 the employing establishment offered appellant the position of full-time modified distribution window clerk. On December 18, 1995 appellant rejected the employing establishment's offer. On October 3, 1996 the employing establishment again offered appellant the same position, which appellant rejected.

By letter dated October 21, 1996, the Office advised appellant that the offered position was suitable and within her work capabilities based on the September 25, 1996 medical report of Dr. Kevin F. Hanley, a Board-certified orthopedic surgeon and impartial medical examiner.

Appellant accepted the employing establishment's job offer and returned to work on November 23, 1996.<sup>1</sup>

The Office received a March 24, 1997 letter from Dr. Eric G. Dawson, an orthopedic surgeon and appellant's treating physician, indicating that appellant should be restricted to either six hours per day light-duty work or two consecutive days off. In addition, he noted that home therapy equipment had not yet been authorized. By letters dated March 28, 1997, the Office requested that Dr. Dawson submit medical evidence in support of his recommendation.

On July 23, 1997 appellant filed a claim for continuing compensation for two hours of wage loss per day for the period March 10 through July 22, 1997. Appellant submitted medical reports from Drs. Dawson and Hampton J. Jackson, Jr., a Board-certified orthopedic surgeon, in support of her claim.

By decision dated September 24, 1997, the Office denied appellant's claim for compensation on the grounds that she failed to establish that she suffered a worsening of her work-related condition. In an October 6, 1997 letter, appellant requested an oral hearing.

By decision dated August 13, 1999, the hearing representative affirmed the Office's decision.

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a full-time light-duty position or the medical evidence of record establishes that she can perform the full-time light-duty position, to be entitled to further compensation the employee has the burden to establish by the weight of the substantial, reliable and probative evidence that she cannot continue to perform such light-duty full-time work. 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.<sup>2</sup>

In this case, appellant has shown no change in the nature and extent of her injury-related condition or of the limited-duty requirements. The record shows that, following the July 18, 1988 employment injury, appellant accepted the limited-duty position of modified window distribution clerk at the employing establishment and returned to work on November 23, 1996. The record does not establish, nor does appellant allege, that the claimed recurrence of total disability during the period March through July 22, 1997 was caused by a change in the nature or extent of her limited-duty job requirements. Appellant has not submitted sufficient medical evidence establishing that the accepted conditions have materially changed or worsened since her return to work in 1996.

Appellant submitted Drs. Dawson's and Jackson's March 10 and 24, April 3, May 16, July 9, August 14 and September 4, 1997 reports recommending that she work six hours per day, five days per week with two consecutive days off from work. However, none of these reports

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<sup>1</sup> Appellant stopped work on January 10, 1997 and returned to work on January 21, 1997. On January 24, 1997 appellant filed a claim alleging that she sustained a recurrence of disability. The Office accepted appellant's claim and paid compensation for temporary total disability for the period January 10 to 19, 1997.

<sup>2</sup> See *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

contain any medical rationale explaining how or why appellant's inability to perform the duties of a modified distribution clerk for two hours during the period March 10 through July 22, 1997 was causally related to her accepted July 18, 1988 employment-related back injury. In addition, they attributed appellant's partial disability to disc degeneration and osteoarthritis conditions, which have not been accepted by the Office.

As appellant has failed to submit rationalized medical evidence establishing that she sustained a recurrence of disability during the period March 10 through July 22, 1997 causally related to her July 18, 1988 employment injury, she has failed to satisfy her burden of proof.

The August 13, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
August 13, 2001

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member