

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DORA VERA and U.S. POSTAL SERVICE,  
PROCESSING & DISTRIBUTION CENTER, Santa Ana, CA

*Docket No. 01-160; Submitted on the Record;  
Issued August 24, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant has established that, beginning April 8, 1998, she sustained a recurrence of total disability causally related to her April 7, 1997 employment injury.

On April 10, 1997 appellant, then a 49-year-old mail processor, filed a claim for an injury to her back sustained on April 7, 1997 when her rest bar was struck by a utility cart. Appellant did not stop work, but was assigned limited duty as a clerk casing mail. The Office of Workers' Compensation Programs accepted that appellant sustained a sprain of the neck and a sprain of the lumbar region.

In a report dated January 13, 1998, appellant's orthopedic surgeon, Dr. Raymond H. Folmar, stated that appellant "has recently been assigned to a position where she has to throw mail and has to move her neck around frequently. She has been disabled for the last two days." In a letter dated April 8, 1998, the Office advised appellant to file a claim for a traumatic injury if a new incident at work caused her condition to recur, a claim for an occupational disease if work factors occurring over more than one day caused her condition to recur and a claim for a recurrence of disability if she became disabled because of the original injury without an intervening incident.

On April 20, 1998 appellant filed a claim for a recurrence of disability due to her April 7, 1997 employment injury. She indicated that she stopped work on April 8, 1998 and described the circumstance of recurrence: "On the week of April 1 to 7 of 1998 the U.S. Postal Service stop to [sic] provide me a suitable work that is within my physical limitations." Appellant submitted an April 10, 1998 note from Dr. Folmar stating that appellant would be on disability for three weeks.

By letter dated May 14, 1998, the Office advised appellant that if she contended that her light-duty assignment changed such that it no longer met the restrictions set by her physician, she must furnish "a statement in full explanation," and that if she stopped work because of a worsening of her employment-related condition, she must provide a narrative report from her

physician describing the objective findings that convinced him her condition had worsened and explaining how she could no longer perform the duties she was performing when she stopped work.

Appellant submitted additional reports from Dr. Folmar: a May 6, 1998 note stating she could return to limited-duty work on May 13, 1998, a May 8, 1998 list of her work tolerance limitations and a June 4, 1998 narrative report based on examinations of appellant on May 6 and 26, 1998. In the June 4, 1998 report he stated:

“She still complains of a lot of pain. Her functional capacity is improving and she is getting better with physical therapy. When she first came in, approximately a month ago, she states that she could not stand or walk. Now, she can stand and walk. She can sit and drive, but she has some aching in her back and legs when she drives.

“She has been disabled since April 8, 1998. I anticipate that she will be able to return to work on May 11, 1998.”

Dr. Folmar then set forth appellant’s complaints and findings on physical examination and noted that she had been involved in a motor vehicle accident occurring on May 17, 1998 that aggravated her symptoms and rendered her disabled for work.

In a letter dated August 3, 1998, the employing establishment stated that appellant had been working in a light-duty capacity for approximately the past two years, that her assignment had been manual letter operations, which entailed sitting in a chair or rest bar casing mail into a letter case and that at times she had been asked to perform other assignments such as facing unfaced mail or verifying mail for proper postage. The employing establishment stated that at no time had appellant been asked to do anything out of her restrictions, nor had she notified any member of management that what she had been asked to do was out of her restrictions.

By decision dated August 7, 1998, the Office found that appellant had not established a causal relationship between her disability beginning April 8, 1998 and her April 7, 1997 employment injury.

Appellant requested a hearing, which the Office by decision dated January 19, 1999, declined to grant on the basis that the request was not made within 30 days. Appellant appealed this decision to the Board, which by decision dated July 12, 2000, found that the Office’s August 7, 1998 decision was not properly issued because it was not mailed to appellant’s attorney of record. The Board remanded the case to the Office for reissuance of the August 7, 1998 decision.<sup>1</sup>

On September 1, 2000 the Office reissued its August 7, 1998 decision, finding that appellant had not established a causal relationship between her disability beginning April 8, 1998 and her April 7, 1997 employment injury.

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<sup>1</sup> Docket No. 99-1207.

The Board finds that appellant has not established that, beginning April 8, 1998, she sustained a recurrence of total disability causally related to her April 7, 1997 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 light-duty position or the medical evidence establishes that the employee 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 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.<sup>2</sup>

Appellant, who performed only limited or light duty following her April 7, 1997 employment injury, has not shown that the nature and extent of her light-duty requirements changed such that they exceeded the work tolerance limitations set forth by her treating physician. On her claim form for a recurrence of disability beginning April 8, 1998, appellant stated that the employing establishment stopped providing her work within her restrictions during the week from April 1 to 7, 1998. Appellant, however, did not respond to the Office's May 14, 1998 request, for a full explanation of how her assignment changed and the employing establishment denied that it ever assigned appellant work beyond her limitations. Since appellant has not provided a description of the assignments or tasks that allegedly exceeded her work tolerance limitations, she has not met her burden of showing a change in the nature and extent of her light-duty requirements.

Appellant also has not shown a change in the nature and extent of her injury-related condition. Appellant submitted three reports from Dr. Folmar regarding her claim for a recurrence of disability beginning April 8, 1998: an April 10, 1998 note stating that she would be disabled for three weeks, a May 8, 1998 list of her work tolerance limitations and a June 4, 1998 narrative report. In the narrative report, Dr. Folmar stated that appellant had been disabled since April 8, 1998 and described her complaints and her findings on examination on May 6 and 26, 1998. There is no medical evidence, however, that indicates that appellant's disability beginning April 8, 1998 was causally related to her April 7, 1997 employment injury. In light of appellant's degenerative conditions of the neck and low back shown by magnetic resonance imaging scans, a definitive, rationalized opinion on causal relation to the employment injury is needed to meet appellant's burden of proof.

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

The September 1, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
August 24, 2001

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member