U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ARETHA COLEMAN and U.S. POSTAL SERVICE,
POST OFFICE, Memphis, TN

Docket No. 99-827; Submitted on the Record;
Issued February 6, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has established an employment-related disability for intermittent dates between June 8, 1994 and June 23, 1995.

The Office of Workers' Compensation Programs accepted that appellant, then a 28-year-old letter carrier, sustained cervical and lumbar strains, as well as myofascial back pain, in the performance of duty on August 31, 1993. Appellant returned to light duty in October 1993. By decision dated March 18, 1997, the Office determined that appellant was not entitled to disability for intermittent dates between June 8, 1994 and June 23, 1995. In a decision dated June 5, 1998, an Office hearing representative affirmed the March 18, 1997 decision.

The Board finds that appellant has not established an employment-related disability for intermittent dates between June 8, 1994 and June 23, 1995.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his or her claim, including any disability or specific condition for which compensation is claimed is causally related to the employment injury.[2] The Board also notes that when an employee returns to a light-duty position the employee has the burden to establish by the weight of reliable, probative and substantial evidence a recurrence of total disability. As part of this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the light-duty requirements.[3]

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[1] 5 U.S.C. §§ 8101-8193.

[2] *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *Terry R. Hedman*, 38 ECAB 222 (1986).

Since appellant had returned to light duty, it is her burden to establish any specific period of subsequent disability. The Board notes that it does not appear that appellant filed appropriate claims for the dates at issue in this appeal.[4] For example, appellant did file CA-8's (claim for continuing compensation on account of disability) for February 19 to June 3, 1994, and for April 13 to May 9, 1995, but these dates were addressed in Office decisions that are not before the Board.[5] The Office examined specific dates that appellant took leave from June 8, 1994 to June 23, 1995 (not including April 13 to May 9, 1995), and determined that the medical evidence was insufficient to establish a disability causally related to the August 31, 1993 injury on those dates.

The Board agrees that the medical evidence is insufficient to meet appellant's burden of proof. The record does not contain a reasoned medical opinion establishing disability for work causally related to the employment injury on any of the dates in question. There are, for example, brief reports and treatment notes from attending physicians Dr. Rodney G. Olinger, and Dr. Henry Stratton, but none of this evidence discusses a specific period of disability causally related to an employment injury. A chiropractor, Dr. Xavier Haymer, submitted brief notes indicating that appellant should be excused from work; in a note dated September 29, 1994, for example, he indicated that appellant was unable to work from August 17 to October 3, 1994, without further explanation. With respect to whether Dr. Haymer is considered a physician under the Act,[6] the record does contain an undated report in which Dr. Haymer indicates that appellant was examined on June 21, 1994, diagnoses subluxations and indicates that x-rays were taken. It is noted, however, that subluxations have not been accepted as causally related, and Dr. Haymer does not discuss causal relationship with the employment injury, or provide an opinion relating any specific period of disability to an employment injury.

The Office did subsequently further develop the record regarding appellant's continuing condition, but there is no probative evidence of record with respect to an employment-related disability on any of the specific dates from June 8, 1994 to June 23, 1995 addressed by the Office in the March 18, 1997 decision. It is appellant's burden of proof on this issue, and the Board finds appellant has not met her burden in this case.

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[4] Once appellant returned to work, a claim for a period of disability is either a claim for a recurrence of disability, or if new employment factors are implicated, a claim for a new injury. A recurrence of disability includes a work stoppage caused by a spontaneous material change in the employment-related condition without an intervening injury. If the disability results from new exposure to work factors, an appropriate new claim should be filed; *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3 (January 1995). Appellant did filed a Form CA-2a, notice of recurrence of disability, but his was for the period commencing November 1, 1996.

[5] By decision dated August 17, 1995, an Office hearing representative determined that appellant had not established an employment-related disability from February 19 to June 3, 1994; by decision dated April 16, 1997, the Office denied appellant's request for reconsideration without merit review. In a decision dated September 30, 1996, the Office denied compensation during the period April 13 to May 9, 1995. In a decision dated April 16, 1997, the Office determined that appellant's request for reconsideration was insufficient to warrant merit review. The Board's jurisdiction is limited to Office decisions issued within one year of the filing of the appeal, and therefore the Board does not have jurisdiction over these decisions. 20 C.F.R. § 501.3(d)(2).

[6] Section 8101(2) of the Act provides that the term '"physician' … includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist."

The decision of the Office of Workers' Compensation Programs dated June 5, 1998 is affirmed.

Dated, Washington, D.C.
February 6, 2001

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member