

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DONNA M. DIAS and U.S. POSTAL SERVICE,  
POST OFFICE, Keene, NH

*Docket No. 99-1142; Submitted on the Record;  
Issued January 23, 2001*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether appellant has established a recurrence of disability commencing September 15, 1997 causally related to her employment injury.

The Office of Workers' Compensation Programs accepted that appellant sustained a right shoulder impingement syndrome causally related to her federal employment as a letter carrier. She returned to a light-duty position and eventually stopped working after right shoulder surgery on May 7, 1997. On August 27, 1997 appellant returned to a light-duty position with restrictions on use of the right arm.

Appellant stopped working on September 15, 1997 and on December 9, 1997 she filed a notice of recurrence of disability (Form CA-2a) commencing September 15, 1997.

In a decision dated February 19, 1998, the Office determined that appellant had not established a recurrence of disability. By decision dated October 8, 1998, an Office hearing representative affirmed the February 19, 1998 decision.

The Board has reviewed the record and finds that appellant has not established a recurrence of disability commencing September 15, 1997.

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 establishes that light duty can be performed, 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.<sup>1</sup>

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<sup>1</sup> *Terry R. Hedman*, 38 ECAB 222 (1986).

In this case, the attending physician, Dr. William A. Mitchell, Jr., an orthopedic surgeon, indicated in a note dated September 15, 1997 that appellant was to remain off work for 14 days, then return to light duty at 4 hours per day. In a note dated October 1, 1997, Dr. Mitchell indicated that appellant should remain off work. Dr. Mitchell stated in a brief report dated October 30, 1997 that appellant had been seen on September 15, 1997, with right arm stiffness, pain and spasm.

In a report dated December 29, 1997, Dr. Mitchell discussed appellant's medical treatment, stating that appellant was capable of performing light duty, with no use of the right hand. Dr. Mitchell concluded that "any return to duty will be on a trial basis only from September 15[, 1997] to the present time." This report appears to indicate that appellant was capable of returning to the light-duty job, without clearly explaining the cause of any disability commencing September 15, 1997.<sup>2</sup>

In a report dated September 1, 1998, Dr. Mitchell indicated that appellant was seen on September 15, 1997 with complaints of right shoulder stiffness, pain and spasms. With respect to causal relationship with employment, Dr. Mitchell stated, "I feel that, due to the soft tissue not being completely healed, the right shoulder and scapular area not being healed enough, returning to work eight hours a day and using her left arm for the sorting and lifting caused [appellant] to aggravate the preexisting injury, which was still in the process of healing. There is a degree of counterbalancing in the shoulder girdle area. If this area is not strong enough or healed completely this would cause pain and cramping along with the spasms."

The Board notes that, if appellant is claiming that her employment-related right shoulder condition was aggravated by performing the light-duty job, this would constitute a claim for a new injury, not a recurrence of disability.<sup>3</sup> Although a recurrence of disability claim may be based on establishing that the claimant was forced to work beyond the stated medical restrictions,<sup>4</sup> appellant has not alleged or established that the light job was in violation of any stated restrictions. The statement accompanying appellant's Form CA-2a does suggest that she believed lifting and sorting with her left hand had affected her right shoulder. In this regard, it would be a claim for a new injury and must be accompanied by probative medical evidence, including a medical opinion that clearly explains how the lifting and sorting with the left hand would aggravate a right shoulder condition, and describes the nature and extent of any aggravation.

With respect to a recurrence of disability, there is no probative medical evidence establishing a spontaneous material change in the injury-related condition as of

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<sup>2</sup> The record indicates that appellant did not return to work until February 2, 1998, at four hours per day.

<sup>3</sup> 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).

<sup>4</sup> *See Carl W. Putzier*, 37 ECAB 691 (1986).

September 15, 1997. Accordingly, the Board finds that appellant did not meet her burden of proof in this case.

The decisions of the Office of Workers' Compensation Programs dated October 8 and February 19, 1998 are affirmed.

Dated, Washington, DC  
January 23, 2001

Willie T.C. Thomas  
Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member