U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WARREN A. TAYLOR and U.S. POSTAL SERVICE,
POST OFFICE, Augusta, GA

Docket No. 00-1373; Oral Argument Held May 16, 2001;
Issued June 26, 2001

Appearances: *Warren A. Taylor, pro se*; *Catherine P. Carter, Esq.*, for the Director,
Office of Workers' Compensation Programs.

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has established that he sustained a recurrence of disability commencing October 5, 1999, causally related to his accepted conditions of left knee chondromalacia and aggravation of osteoarthritis.

The Office of Workers' Compensation Programs accepted that on February 27, 1995 appellant, then a 39-year-old mailhandler, sustained left knee chondromalacia and aggravation of arthritis, causally related to factors of his federal employment. Appropriate compensation benefits and medical expenses were paid.

On February 27, 1998 appellant accepted the position of modified distribution clerk which was determined to be within his physical restrictions.[1] This was noted to be a very sedentary position.

On October 5, 1999 appellant filed a claim alleging a recurrence of disability commencing that date due to "numbness along the lateral aspect of the knee and pulling pain along the posterior medial and posterior lateral aspect of the knee into the superior aspect of the calf." This description of his recurrence was excerpted from a July 19, 1999 functional capacity evaluation performed by Dr. Hugh C. McLeod, III, a Board-certified orthopedist. Appellant alleged that the recurrence was due to "The modified distribution clerk position accepted February 28, 1998 has converted into a full[-]time clerk position after a period of one year. So, by seniority rights … I have been denied a full-time clerk position or full restoration due to my

[1] Dr. Thomas P. Brancd, a Board-certified orthopedist, had restricted appellant to lifting not to exceed 15 pounds, intermittent standing for 1 hour, intermittent walking for 1 hour and occasional overhead work while distributing mail with both hands.

physical limitation to perform all the duties in the clerk job position." He indicated, however, that he continued to work at his assigned modified distribution clerk position.

Appellant requested conversion from his present modified distribution clerk position (part-time flexible) into a full-time position and in the alternative requested retirement. He also filed a Form CA-7 claim for compensation from October 5, 1999 and continuing. Appellant filed another CA-7 claim for compensation from October 8, 1997 and continuing on November 1, 1999.

Also by letter dated November 1, 1999, appellant claimed compensation from February 28, 1999 and continuing as he alleged that he was being penalized and denied wages due to his injuries, particularly for overtime and holiday opportunities.

In support of his recurrence claim appellant submitted a copy of a September 7, 1995 letter from Dr. Robert L. Brand, a Board-certified orthopedist, which noted that appellant was returned to full duty without restrictions as of September 8, 1995 and a May 22, 1996 unsigned medical report. Also submitted were some physical therapy records.

By letter dated November 4, 1999, the employing establishment explained that appellant had been reassigned under the "Snow Award" (National Arbitration Agreement), that he became a part-time flexible in the clerk craft but was guaranteed 40 hours per week and that therefore he was not entitled to receive holiday pay. The employing establishment noted that appellant lost no pay as a result of the reassignment.

By letter dated December 2, 1999, the Office advised appellant that it had received his CA-7 claim for compensation and it explained why he could not qualify for overtime or holiday pay. It advised that he was receiving appropriate pay for his assigned craft. Also by separate letter of that date the Office advised appellant that it had received his recurrence claim and it described the kind of evidence appellant needed to submit to establish his claimed recurrence of disability.

In response to the Congressional inquiry by letter dated January 13, 2000 the Director of the Office explained that appellant's "recurrence" claim was based on him being "denied a full[-]time clerk position or full restoration due to [his] physical limitation to perform all the duties in the clerk job position." The Director explained that when appellant was reassigned under the "Snow Award," provisions of the agreement when a partially recovered employee was assigned across craft lines to a craft which had part-time flexible employees, the assignment would be a part-time flexible position and the employee would be a junior employee. The Director noted, however, that the employee would not lose any pay and the mere reassignment to a junior position did not qualify as a "recurrence." The Director noted that with appellant there had been no work stoppage and noted that therefore there had been no recurrence of disability.

By decision dated January 24, 2000, the Office formally denied appellant's recurrence claim finding that the criteria for a recurrence of disability had not been met.

Thereafter appellant appealed the January 24, 2000 decision and requested an oral argument before the Board.

The Board finds that appellant has failed to establish that he sustained a recurrence of disability commencing October 5, 1999, causally related to his accepted conditions of left knee chondromalacia and aggravation of osteoarthritis.

An employee returning to light duty, or whose medical evidence shows the ability to perform light duty, has the burden of proof to establish a recurrence of temporary total disability by the weight of reliable, probative and substantial evidence and to show that he cannot perform the light duty.[2] As part of his burden, the employee must show a change in the nature and extent of the injury-related conditions or a change in the nature and extent of the light-duty requirements.[3]

In the present case, appellant has failed to submit any probative rationalized medical evidence supporting that on October 5, 1999 he experienced a change in the nature or extent of his injury-related conditions and he failed to submit any factual evidence supporting that at that time there had been and change in the nature or extent of his light-duty job requirements.

The medical reports from 1995 and 1996 did not address his condition on or around October 5, 1999 and hence are irrelevant to the 1999 recurrence claim. Further, the physical therapy records have no probative value in supporting any change in the nature of extent of his injury-related conditions.[4]

As appellant has failed to demonstrate a change in the nature or extent of his injury-related conditions or a change in the nature or extent of his light-duty job requirements, he has failed to demonstrate that he sustained a recurrence of total disability commencing October 5, 1999 or thereafter.[5]

[2] *Terry R. Hedman*, 38 ECA 222, 227 (1986).

[3] *Id.*

[4] *See Jennifer L. Sharp*, 48 ECAB 209 (1996); *Thomas R. Horsfall*, 48 ECAB 180 (1996).

[5] Appellant's arguments regarding his pay rates, status or eligibility for holiday and overtime pay are irrelevant to this case as the Board has no jurisdiction over these issues.

Accordingly, the decision of the Office of Workers' Compensation Programs dated January 24, 2000 is hereby affirmed.

Dated, Washington, DC
June 26, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member