

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN J. BRANDL and U.S. POSTAL SERVICE,
POST OFFICE, Buffalo, NY

*Docket No. 00-2414; Submitted on the Record;
Issued June 27, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate compensation benefits after September 21, 1994; and (2) whether appellant has met his burden of proof to establish that he sustained a recurrence of disability after January 1995.

The Office of Workers' Compensation Programs accepted that on June 27, 1990 appellant, then a 45-year-old mailhandler, sustained a lumbar strain while lifting a sack onto a dolly in the performance of duty. He was off work until August 5, 1990, when he returned to light duty. Appellant continued to perform light duty until August 20, 1994, when he stopped work and filed a claim for a recurrence of disability from August 20 to September 21, 1994, when he was released to light duty and returned to work. In a decision dated May 18, 1995, the Office denied appellant's claim for a recurrence of disability. He requested an oral hearing and in a decision dated May 2, 1996, an Office hearing representative reversed the prior Office decision, finding that appellant met his burden to establish that he had suffered a recurrence of disability from August 20, through September 20, 1994. Appellant worked full-time light duty from September 21, 1994 until January 1995, when he was hospitalized for a nonemployment-related foot injury. Due to his foot injury and subsequent complications, on January 19, 1995 his left foot was amputated below the knee. Appellant did not return to work and on July 12, 1995, he retired on medical disability. In a letter dated September 23, 1999, the Office proposed to terminate appellant's entitlement to wage-loss compensation benefits for any periods after September 21, 1994, when he returned to work, and denying his recurrence of disability commencing January 1995. By decision dated October 26, 1999, the Office terminated appellant's entitlement to wage-loss compensation benefits for any periods after September 21, 1994, and denied his 1995 recurrence of disability.¹ He requested an oral hearing, which was held on March 21, 2000 and submitted additional medical and factual evidence in support of his

¹ The record is unclear as to the date appellant stopped work, but it appears that appellant stopped work in January 1995, just prior to his surgery.

claim. In a decision dated June 5, 2000, an Office hearing representative affirmed the Office's October 26, 1999 decision.

The Board finds that the Office met its burden of proof to terminate wage-loss benefits.

Once the Office accepts a claim, the Office may not terminate or modify compensation without establishing that the disability has ceased or that it is no longer related to the employment.² In this case, appellant returned to his regular full-time light-duty work on September 21, 1994 and continued to perform that work until January 1995, when he was hospitalized for a nonwork-related foot condition. The Office found that appellant's employment-related disability ceased as of September 21, 1994.

The relevant medical evidence in this case consists of a series of treatment notes and reports from Dr. Thomas Dougherty, appellant's treating Board-certified family practitioner. In attending physician's form reports, dated September 28 and 30, 1994, Dr. Dougherty indicated that appellant had sustained a lumbosacral strain on June 27, 1990 and that due to this condition he had been totally disabled from August 20 to September 20, 1994. He noted that appellant had returned to work on September 21, 1994, that he should remain on permanent light duty and that he would probably have flare-ups from time to time. In a narrative report dated November 21, 1994, Dr. Dougherty offered a rationalized opinion as to why he believed appellant's August 20, 1994 recurrence of disability was causally related to his 1990 accepted employment injury, but did not discuss any periods of disability after that time. The Office met its burden of proof to terminate benefits as there was no rationalized evidence that appellant was disabled due to his employment injury after September 21, 1994.

The Board also finds that appellant has not established a recurrence of disability after January 1995.

In a narrative report dated June 5, 1995, Dr. Dougherty stated that appellant had presented to the emergency room on January 19, 1995 with an infected necrotic lesion of the left great toe. He stated that appellant had failed to respond to treatment, forcing amputation of his foot below the knee. He noted that appellant had additional health conditions, including diabetes and a herniated lumbar disc with chronic lumbosacral strain from a work-related injury and added that the lumbosacral strain had limited appellant to light duty for several years. Dr. Dougherty concluded, stating:

“[Appellant] needs extensive physical therapy to resume daily living activities. He is at this time receiving therapy and is in compliance with treatment of his diabetic condition. The use of prosthesis still causes the skin to break down. Also the therapy and condition has caused an increase in his back pain from his chronic lumbosacral strain.”

On a work restriction evaluation form dated May 27, 1999, Dr. Dougherty indicated that appellant could sit for four hours, could reach above shoulder level, could lift up to 10 pounds, could operate a motor vehicle and had no hand restrictions, but was restricted from additional

² *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

activities. He further stated that appellant had reached maximum medical improvement and was steadily getting worse. Dr. Dougherty did not indicate the cause of appellant's restrictions. In a narrative note dated June 23, 1999, he stated: "... [D]ue to his multiple health problems, [appellant] is unable to work in any capacity." In his final medical report of record dated November 22, 1999, Dr. Dougherty stated:

"[Appellant] has been disabled since a back injury in 1990. His condition has not improved since that time. [Appellant] is still totally and permanently disabled. [He] will never be able to return to gainful employment."

Although Dr. Dougherty opined that appellant was totally disabled due to "his multiple health problems," his additional conditions of diabetes and leg amputation are not accepted work-related conditions in this case. In a separate report, he indicated that appellant had been totally disabled since a work-related back injury in 1990 and would never return to gainful employment, this report conflicts with the fact that appellant, in fact, has not been totally disabled since his 1990 back injury, but worked full-time light duty from August 5, 1990 to August 20, 1994 and again from September 20, 1994 until January 1995, when he was hospitalized for a nonemployment-related foot condition. When an employee who is disabled from the job 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 and probative evidence, a recurrence of total disability and to show that he cannot perform such 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 requirement.³ As Dr. Dougherty does not offer any opinion, with rationale, as to the causal relationship, if any, between appellant's work stoppage after January 1995 and his accepted lumbosacral strain, his reports are not sufficient to establish appellant's entitlement to any periods of wage-loss compensation for a recurrence of disability.⁴

³ *Doris J. Wright*, 49 ECAB 230 (1997).

⁴ The Board notes that the Office's October 26, 1999 decision did not terminate appellant's entitlement to medical benefits for his accepted lumbosacral strain.

The decisions of the Office of Workers' Compensation Programs dated June 5, 2000 and October 26, 1999 are hereby affirmed.

Dated, Washington, DC
June 27, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member