

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DIANE R. POTENZIANI and U.S. POSTAL SERVICE,
AIRPORT MAIL FACILITY, Kansas City, MO

*Docket No. 00-2024; Submitted on the Record;
Issued May 8, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained a recurrence of disability on and after September 3, 1999 causally related to her accepted employment injury.

On October 10, 1997 appellant, then a 30-year-old mailhandler, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1), alleging that she injured her right arm and shoulder on October 8, 1997 while throwing sacks of mail down the slide. The Office of Workers' Compensation Programs accepted the claim for right shoulder strain, right shoulder acromioplasty with distal clavicle resection and authorized right shoulder arthroscopy. Appellant returned to light-duty work on January 29, 1999.

Appellant filed a recurrence claim on September 3, 1999.

By letter dated September 9, 1999, the Office advised appellant of the type of information required to support her claim for a recurrence of disability.

In an October 4, 1999 report, Dr. William O. Reed, Jr., an attending Board-certified orthopedic surgeon, diagnosed persistent pain status post partial open acromioplasty and distal clavicle excision. He noted:

“[Appellant] is complaining of severe pain in the right shoulder at this point. She complains that even her skin cannot be touched. This exquisite hypersensitivity of the skin is certainly an indication of symptom magnification.”

Dr. Reed, in a second report dated October 4, 1999, noted that appellant called regarding pain after an injection consisting primarily of Lidocaine which he opined “should certainly not have given her more pain.” Dr. Reed indicated that this was a “further indication that [appellant] has severe symptom magnification.”

By decision dated October 12, 1999, the Office denied appellant's recurrence claim.

On October 18, 1999 appellant's representative requested an oral hearing which was held on February 15, 2000.

In a report dated October 21, 1999, Dr. Reed diagnosed symptom magnification of right shoulder pain status post right shoulder open acromioplasty. He opined that appellant had symptom magnification based upon her continued complaints "of exquisite pain even when the skin is light[ly] touched" and that there were no objective abnormalities. Lastly, Dr. Reed opined that there were no objective reasons why appellant's "work duties should be limited in any way."

In an October 21, 1999 office note, Dr. Reed released appellant to her regular work duties as there was no objective evidence to support any continued limitations. He indicated that a physical examination revealed an intact rotator cuff and continued evidence of symptom magnification based upon her complaints "of exquisite pain even when the skin is lightly touched."

In a January 9, 2000 note, Dr. Christine L. Moore, an attending physician, diagnosed right shoulder impingement syndrome and opined that appellant was incapacitated and totally disabled from working. She attributed appellant's disability from appellant's inability to "use the right arm to lift, stretch, reach, push, pull or do any repetitive movements with her right upper extremity." Dr. Moore also opined that appellant had a permanent partial disability.

In a letter received by the Office on March 6, 2000, appellant submitted a September 28, 1999 report by Joyce E. Peterson, R.N. and cosigned by Dr. Kent A. Bogner. In this report, Ms. Peterson diagnosed continued right shoulder pain and that appellant stated she was unable to work. She recommended that appellant be evaluated by an orthopedic surgeon as to her right shoulder pain and to determine her physical limitations and physical capabilities.

By decision dated April 20, 2000, the hearing representative affirmed that the evidence of record was insufficient to establish that appellant sustained a recurrence of disability.

The Board finds that appellant has not established that she sustained a recurrence of disability and after September 3, 1999 causally related to her accepted employment injury.

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.¹

In this case, appellant has failed to submit rationalized medical evidence establishing that she was totally disabled on and after September 3, 1999 due to her October 8, 1997 employment injury. The only medical evidence of record which addressed the issue of disability during the

¹ *Linda Thompson*, 51 ECAB ____ (Docket No. 99-1164, issued September 26, 2000); *Robert Kirby*, 51 ECAB ____ (Docket No. 98-2428, issued April 13, 2000)

above period are the January 19, 2000 report by Dr. Moore, the October 4 and 21, 1999 reports by Dr. Reed and a September 28, 1999 report by Ms. Peterson, which was cosigned by Dr. Bogner. In the January 19, 2000 medical report, Dr. Moore diagnosed right shoulder impingement syndrome with a poor prognosis and opined that appellant was totally disabled which was a permanent disability. She provided no supporting rationale to explain her opinion as to why she considered appellant totally disabled. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.² Inasmuch as Dr. Moore did not provide any medical rationale explaining the causal relationship between appellant's conditions and her October 8, 1997 employment injury, her report is of diminished probative value. The Board finds that Dr. Moore's medical report is insufficient to establish that appellant was totally disabled from work. Similarly, Ms. Peterson's report, signed by Dr. Bogner is also insufficient to support appellant's burden as it provides no opinion as to whether appellant was totally disabled due to her employment injury beyond noting that appellant stated that she was unable to work. Furthermore neither Dr. Moore nor Ms. Peterson provided any explanation as to how there had been a change in the nature or extent of appellant's work-related injuries sustained on September 3, 1999 such that appellant was not able to perform light-duty work. They also did not explain how appellant's claimed recurrence of total disability was caused by a change in the nature or extent of her light-duty physical requirements. Therefore, these reports are not sufficient to establish that appellant sustained a recurrence of total disability on and after September 3, 1999 causally related to her October 8, 1997 employment injury. Furthermore, the only rationalized medical evidence, submitted by Dr. Reed, indicates that appellant is capable of performing her usual employment with no restrictions. Inasmuch as appellant has failed to submit rationalized medical evidence establishing either a change in the nature and extent of her injury-related condition or a change in the nature and extent of his light-duty requirements, she has failed to meet her burden of proof and the Office properly denied her claim for a recurrence of total disability.

² *Lucrecia M. Nielsen*, 42 ECAB 583, 594 (1991).

The decisions of the Office of Workers' Compensation Programs dated April 20, 2000 and October 12, 1999 are hereby affirmed.

Dated, Washington, DC
May 8, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member