

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHELLY A. PAOLINETTI and DEPARTMENT OF AGRICULTURE,
FOREST SERVICE, Redding, CA

*Docket No. 00-2058; Submitted on the Record;
Issued May 29, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has established entitlement to compensation after December 5, 1998.

On May 6, 1997 appellant, then a 26-year-old seasonal forestry technician, filed a claim alleging that she sustained a left arm injury during tree climbing exercises. The Office of Workers' Compensation Programs accepted the claim for left thoracic outlet syndrome. Appellant returned to work in a light-duty position on April 27, 1998 and stopped on October 24, 1998 when her seasonal employment ended. Appellant filed a claim for wage-loss compensation from October 25 to November 7, 1998, from November 22 to December 5, 1998 and from December 6 to 19, 1998.

In a decision dated January 20, 1999, the Office determined that the medical evidence was insufficient to establish entitlement to compensation after December 5, 1998. By decision dated April 24, 2000, the Office denied modification.¹

The Board finds that appellant has not established entitlement to compensation after December 5, 1998.

As stated above, appellant was a seasonal employee at the time of injury on May 2, 1997; the employing establishment indicated that she normally worked from April to October. In April 1998 she worked in a light-duty position through October 1998, when the seasonal employment ended.

¹ The decision states that the evidence is not sufficient to warrant review of the prior decision, but the accompanying memorandum reviews the evidence submitted and finds that it is of insufficient probative value to establish continuing residuals of the employment injury. The Board finds that this decision represents a merit review of the claim.

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.²

Although withdrawal of a light-duty position may establish a recurrence of disability, in this case appellant was a seasonal employee at the time of injury. The termination of a temporary appointment, when the employee was a temporary employee at the time of injury, does not itself establish a recurrence of disability.³ Appellant must submit medical evidence establishing that she was disabled for the light-duty position.

A second opinion referral physician, Dr. Charles R. Miller, a Board-certified orthopedic surgeon, provided a December 8, 1998 report opining that appellant's employment-related condition had resolved. Dr. Miller found that appellant had no objective findings to establish any work restrictions or limitations.

Appellant did not submit any probative medical evidence establishing any disability on or after December 5, 1998.⁴ For example, in a report dated January 24, 2000, Dr. Richard Cross, an orthopedic surgeon, noted that appellant had prior carpal tunnel releases to both hands, and continued to have thoracic outlet and cervical symptomology. However, carpal tunnel syndrome is not an accepted employment injury, and Dr. Cross does not provide a reasoned opinion on any causal relationship with the May 2, 1997 employment injury.⁵ Moreover, he does not provide an opinion as to disability for work on or after December 5, 1998 causally related to the employment injury. In the absence of probative medical evidence, the Board finds that appellant has not established entitlement to compensation as of December 5, 1998.

² *Terry R. Hedman*, 38 ECAB 222 (1986).

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(2)(a) (May 1997).

⁴ The Board notes that on appeal new medical evidence was submitted; the Board cannot review evidence that was not before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

⁵ He stated that two days of "light-duty racking" brought on symptoms of carpal tunnel while at work, and noted that repetitive data entry can be a cause of carpal tunnel syndrome. To the extent that appellant is claiming her light-duty job caused or aggravated a carpal tunnel condition, that would be a separate claim. *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(2)(e) (May 1997).

The decision of the Office of Workers' Compensation Programs dated April 24, 2000 is affirmed.

Dated, Washington, DC
May 29, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member