

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KATHERINE E. BOCKO and U.S. POSTAL SERVICE,
MAIL SORTING CENTER, White River Junction, VT

*Docket No. 00-2060; Submitted on the Record;
Issued May 14, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has established that she had a recurrence of disability beginning October 2, 1995.

The case has been on appeal previously.¹ In a December 28, 1998 decision, the Board found that the Office of Workers' Compensation Programs had improperly terminated appellant's compensation for refusal to accept suitable work. The Board noted that, prior to the effective date of the termination of compensation, appellant had stated that she would accept the modified position as a mail clerk, albeit under duress. The Board also indicated that appellant was performing the duties of the offered position, although working only 20 hours a week. The Board therefore reversed the termination of appellant's compensation.

On January 11, 1999 appellant filed a claim for compensation from October 2, 1995 through October 4, 1998. She stated that the employing establishment terminated her limited-duty assignment on October 2, 1995 and did not provide any further accommodation for her until October 4, 1998. She submitted a copy of a July 18, 1998 settlement agreement in which she withdrew her Equal Employment Opportunity (EEO) complaint against the employing establishment. In return, the employing establishment agreed to pay her \$15,000.00 in compensatory damages, restore 120 hours of sick leave and 80 hours of annual leave, expunge all records of disciplinary actions, and provide her with a modified Central Forwarding System assignment as of October 1, 1998.

¹ Docket No. 97-77 (issued December 28, 1998). The history of the case is contained in the prior decision and is incorporated by reference.

In an April 5, 1999 decision, the Office rejected appellant's claim on the grounds that she had failed to establish that she sustained a recurrence of total disability effective October 2, 1995 that was causally related to the June 21, 1989 employment injury.²

In an April 30, 1999 letter, appellant's attorney requested a hearing before an Office hearing representative. At the December 21, 1999 hearing, appellant testified that the employing establishment, after considerable effort, finally offered a job in which she would work one hour at a time at a letter case, four hours a day and would perform other duties. She indicated that, as implemented, she was required to work four hours at the letter case and then the employing establishment would see if other duties were available. Appellant stated that she was unable to work her entire shift at the position because of increasing pain. She commented that stress increased the pain, particularly when she was performing repetitive tasks. She testified that leaving early to pick up her children reduced stress.

In a March 14, 2000 decision, the Office hearing representative found that appellant did not have a recurrence of disability because her limited-duty assignment was terminated for cause. He therefore affirmed the Office's April 5, 1999 decision.

The Board finds that appellant has not established that she had a recurrence of disability from October 2, 1995 through October 4, 1998.

When an employee, disabled from the job she held when injured, returns to a limited-duty position or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden to establish that she had a recurrence of total disability and therefore cannot perform such light 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 job requirements.³

In this case, appellant stated that there was a change in the limited-duty position offered to her. She claimed that this change led to increasing back pain to the point where she had to leave work early. As a result of appellant's absences from work, the limited-duty assignment was terminated. This decision was subsequently amended in a settlement of appellant's EEO action against the employing establishment. She was given another assignment and the disciplinary action was expunged from her records. Appellant's complaints, however, do not establish by themselves that the duties of the limited-duty position she originally accepted were changed in nature or extent. She did not submit any evidence other than her testimony that her limited duties exceeded her work restrictions.

The only medical evidence submitted by appellant in support of her claim was a November 9, 1995 report from Dr. Seddon R. Savage, a Board-certified anesthesiologist. He noted that appellant had recently been fired by the employing establishment. He indicated that

² The Office subsequently received a copy of the August 31, 1995 notice of removal for appellant. The employing establishment found that appellant had been absent without leave (AWOL) for 13 days between July 14 and August 25, 1995 because she left at 1:45 p.m., prior to the end of her 8-hour shift. The employing establishment also noted that she was AWOL for 10 days between July 15 and August 27, 1995.

³ *George DePasquale*, 39 ECAB 295 (1987); *Terry R. Hedman*, 38 ECAB 222 (1986).

he had supported her desire to work hours other than those assigned by the employing establishment because of exacerbation of pain and her inability to implement her self-care program.

He commented that on examination appellant did not appear to be in acute pain, although she was tender to palpation over the thoracic spine and the low thoracic paravertebral muscles. He noted that he felt a fibrous band over the T8-10 levels which he had not noticed previously. He diagnosed chronic thoracic strain relating to repetitive motion in past postal work.

While Dr. Savage commented on appellant's continued pain, he did not provide a detailed, rationalized medical explanation of how appellant's performance of her duties in the limited-duty position specifically caused her to be disabled after October 2, 1995. His report therefore has little probative value and is insufficient to establish that appellant's disability after October 2, 1995 was causally related to her employment or to the effects of her accepted thoracolumbar muscular strain. Appellant has not met her burden of proof that her disability from October 2, 1995 through October 4, 1998 was causally related to her employment.

The decision of the Office of Workers' Compensation Programs, dated March 14, 2000, is hereby affirmed.

Dated, Washington, DC
May 14, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member