U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PANKAJ K. SHAH and U.S. POSTAL SERVICE,
POST OFFICE, Aurora, IL

Docket No. 99-1215; Submitted on the Record;
Issued May 18, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant established that he sustained recurrences of disability from October 15 to November 10, 1997 and beginning February 9, 1998.

On October 28, 1992 appellant, then a 40-year-old letter sorting machine operator, filed a claim for de Quervain's syndrome that he attributed to keying and sorting in his employment. The Office of Workers' Compensation Programs accepted that he sustained bilateral de Quervain's syndrome and also authorized surgery on appellant's right wrist, which was performed on July 21, 1993. Appellant stopped work on July 16, 1993 and the Office paid him compensation for temporary total disability.

Pursuant to a November 8, 1995 agency final decision on appellant's Equal Employment Opportunity (EEO) complaint, the employing establishment on April 8, 1997 promoted appellant to the position of customer service representative retroactive to April 15, 1992. Appellant began working in this position on April 14, 1997. By decision dated June 19, 1997, the Office found that appellant's actual earnings in this position represented his wage-earning capacity and that he was no longer entitled to compensation because he had no loss of wage-earning capacity.

On February 19, 1998 appellant filed a claim for recurrences of disability from October 15 to November 10, 1997 and beginning February 6, 1998. The employing establishment reported that he stopped work on February 9, 1998, that he worked on February 17 and 18, 1998 and that he again stopped work after three hours on February 19, 1998. By letter dated March 11, 1998, the Office advised appellant that the medical evidence was not sufficient to support the periods of disability claimed; the Office requested that appellant submit further medical and factual evidence.

By decision dated May 5, 1998, the Office found that the medical evidence did not support that appellant was disabled from October 15 to November 10, 1997 and beginning February 9, 1998 due to the accepted condition. By letter dated July 10, 1998, he requested reconsideration and submitted additional medical evidence. By decision dated July 30, 1998, the Office found that the additional evidence was not sufficient to warrant modification of its prior decision. By letter dated September 2, 1998, appellant requested reconsideration and submitted

additional medical evidence. By decision dated November 19, 1998, the Office found that the additional evidence was not sufficient to warrant modification of its prior decision.

The Board finds that the Office properly determined that appellant did not meet his burden of proof to establish that he sustained recurrences of disability from October 15 to November 10, 1997 or beginning February 9, 1998, but finds that the case is not in posture for decision and requires further development of the evidence.

When an employee, who is disabled from the job he or she 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, probative and substantial evidence, a recurrence of total disability and to show that he or she 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.[1] Appellant's burden includes the necessity of furnishing medical evidence from a physician, who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.[2]

Although the customer service representative position appellant began performing on April 14, 1997 was procured pursuant to an EEO decision rather than through an offer of limited duty approved by the Office, this position nonetheless constituted a limited-duty position. Appellant is unable to perform the duties of the position he held when injured due to his employment-related condition and the employing establishment acknowledged and stated that it complied with the work tolerance limitations imposed by appellant's attending physician.

The Board finds that appellant has not established that he sustained a recurrence of disability from October 15 to November 10, 1997.

The only medical evidence that specifically addresses this period consists of 2 one-sentence reports from appellant's attending physician, Dr. Leonard J. Weiss. In these reports, which are dated October 20 and 31, 1997, he stated that appellant should be at bed rest and off of work because of his "continuing pain, weakness and paresthesias, in both of his hands, since the 15th of this month." These reports do not contain any findings on physical examination and do not show a change in appellant's condition such that he could no longer perform the position of customer service representative.

The Board further finds that appellant has not established that he sustained a recurrence of disability beginning February 9, 1998.

The Federal (FECA) Procedure Manual states that a recurrence of disability includes "a work stoppage caused by a spontaneous material change, demonstrated by objective findings, in the medical condition which resulted from a previous injury or occupational illness without an intervening injury or new exposure to factors causing the original illness."[3] A recurrence of

[1] *Terry R. Hedman*, 38 ECAB 222 (1986).

[2] *Jose Hernandez*, 47 ECAB 288 (1996).

[3] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(1)(a) (December 1991).

disability is distinguished from a new injury by the criterion that in a recurrence situation no event other than the previous injury accounts for the disability.[4]

In a report dated February 28, 1998, Dr. Weiss stated: "The above's current assignment at work of copying on the machine, collating, distributing mail reports and excessive writing, etc. is deteriorating his condition of de Quervain's syndrome in both hands and wrists causing marked loss of dexterity…." The employing establishment acknowledged on the reverse side of appellant's claim for a recurrence of disability that appellant performed all these activities, although it did not consider the amount of writing appellant performed to be excessive. The record reflects a disagreement between the employing establishment and appellant on whether appellant performed duties that exceeded the limitations imposed by his physicians.[5] Resolution of this disagreement is not necessary to the disposition of this case, however, as appellant did not stop work because he was instructed to perform work outside his limitations[6] but rather because of the worsened condition of his wrists. Whether this worsening occurred due to work within or outside appellant's work tolerance limitations is inconsequential, insofar as his entitlement to compensation is concerned.

In a report dated July 7, 1998, Dr. Weiss described appellant's objective clinical findings: "Decreased range of motion in all planes of both wrists and both thumbs (right greater than left); spasms at the site of the operation; lack of pinprick discrimination (numbness and loss of sensation) on the right and left first compartments and the dorsal aspects of all fingers on both hands." He then cited these findings as the basis of appellant's permanent disability beginning February 23, 1998.

In a report dated August 24, 1998, Dr. Weiss stated:

> "The exacerbation of the disability was evident on February 9, 1998. This followed a period of 60 days (December 1997 and January 1998) in which [appellant] was required to use his hands at work in a repetitive manner (copying, collating, processing, writing for prolonged periods, etc.). All of these repetitive motions aggravated his condition (bilateral de Quervain's syndrome) and rendered his hands immobile to the point he could not even safely drive his car. The particular tasks that triggered the exacerbation were generally within the restrictions except the repetitive use of the hands was restricted. That is what caused the current permanent disability in which [appellant] is unable to work."

The reports of Dr. Weiss regarding the period beginning February 9, 1998 show a worsening of appellant's employment-related condition and also set forth the objective findings from which Dr. Weiss concluded that appellant was totally disabled. However, Dr. Weiss' reports do not support that appellant's disability beginning February 9, 1998 was due to a spontaneous material change in the medical condition, which resulted from the previous occupational illness without new exposure to employment factors. The Office therefore was

[4] *See Stephen T. Perkins*, 40 ECAB 1193 (1989).

[5] Relying on a history provided by appellant, Dr. Weiss indicates on several occasions that appellant performed work beyond his limitations.

[6] A stoppage of work exceeding the employee's work tolerance limitations can constitute a recurrence of disability. *Jackie B. Wilson*, 39 ECAB 915 (1988).

correct in finding that appellant had not established a recurrence of disability due to his accepted condition of de Quervain's syndrome.

Nonetheless, while the claimant has the burden to establish entitlement to compensation, the Office shares the responsibility for developing the claim. The Office has the obligation to see that justice is done.[7] Although appellant did not submit evidence that established a recurrence of disability, the medical evidence he submitted strongly supports that he was disabled beginning February 9, 1998 due to worsening of his accepted condition caused by his employment duties in December 1997 and January 1998. In a case like this, it is not proper for the Office to narrowly characterize appellant's claim as a recurrence claim when the evidence does not establish a recurrence of disability but is supportive of an employment-related aggravation of the accepted condition.[8] Where the wrong claim form is filed, the claim should not be denied without sufficiently developing the case based on the evidence submitted. As Dr. Weiss' reports support an employment-related aggravation of appellant's accepted condition and there is no medical evidence to the contrary, the case will be remanded for the Office to determine whether the evidence establishes that factors of appellant's employment contributed to or aggravated his de Quervain's syndrome and resulted in his disability beginning February 9, 1998. Upon such further development as the Office deems necessary, the Office shall issue a *de novo* decision.

The decisions of the Office of Workers' Compensation Programs dated November 19, July 30 and May 5, 1998 are affirmed in part, vacated in part and remanded for further action consistent with this decision of the Board.

Dated, Washington, DC
May 18, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member

[7] *See Dennis J. Lasanen*, 43 ECAB 549 (1992); *Robert A. Redmond*, 40 ECAB 796 (1989).

[8] *See* FECA Bulletin No. 96-10 (May 1996).