

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RAYMOND L. ROSS and U.S. POSTAL SERVICE,
POST OFFICE, Newark, NJ

*Docket No. 00-2245; Submitted on the Record;
Issued October 1, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant sustained a recurrence of disability causally related to his February 11, 1993 work-related injury.

On February 11, 1993 appellant, then a 41-year-old motor vehicle operator, filed a claim alleging that on that day he injured his right shoulder while in the performance of duty. The Office of Workers' Compensation Programs accepted his claim for right shoulder sprain and right shoulder impingement and authorized right shoulder decompression surgery, which occurred in March 1997. He resumed work on May 27, 1997. The record shows that appellant worked intermittently in a limited-duty status.

On June 17, 1998 appellant filed a claim for recurrence of disability alleging continuous symptoms of pain.

By decision dated August 31, 1998, the Office denied appellant's claim. By letter dated September 15, 1998, appellant requested a review of the written record. By decision dated December 18, 1998 and finalized on December 21, 1998, the hearing representative affirmed the Office's August 31, 1998 decision. By letter dated September 9, 1999, appellant, through his counsel, requested reconsideration. By decision dated October 19, 1999, the Office denied appellant's request for modification of the hearing representative's December 21, 1998 decision. By letter dated January 11, 2000, appellant, through his counsel, again requested reconsideration. By decision dated April 4, 2000, the Office denied appellant's request for modification of its October 19, 1999 decision.

The Board finds that the medical evidence of record is sufficient to establish that appellant sustained a recurrence of disability that was causally related to his February 11, 1993 employment injury.

In treatment notes from September 2, 1994 to September 14, 1999, Dr. Clifford A. Botwin, appellant's treating osteopath, noted that appellant was symptomatic with a marked

increase in swelling and pain in his right hand, had marked restricted internal rotation and had increased severe pain and discomfort in his right shoulder.¹

In a report dated March 20, 1997, Dr. Botwin stated that he performed an arthroscopic arthrotomy of the right shoulder with partial bursectomy, acromioplasty, resection of the distal clavicle and a cortical acromial release on appellant.

In a report dated February 11, 1999, Dr. Botwin noted a familiarity with appellant's history of injury and treatment, noting that appellant had returned to light-duty work intermittently. Dr. Botwin also noted that appellant remained symptomatic with pain and discomfort after his March 1997 shoulder surgery and that, on June 12, 1998, appellant noted symptoms of pain and swelling in his arms, wrist and hand. Dr. Botwin stated that he examined appellant on a monthly basis and that he had remained symptomatic with painful passive motion in the right arm and shoulder with marked limitation of internal and external rotation. Dr. Botwin stated that appellant had a permanent disability with permanent limitation of use of his right arm and shoulder.

In a report dated September 14, 1999, Dr. Botwin stated that, appellant had "severe pain and swelling in the right hand, limited passive and active range of motion of the right arm and marked limitation of internal and external rotation of the right arm and limitation of motion ... (to no more) than 30 degrees in his shoulder" and that, therefore, appellant is disabled from limited light duty.

In a report dated November 1, 1999, Dr. Botwin stated that, due to appellant's severe right hand pain and swelling, his limited passive and active range of motion in the right arm and marked limitation of internal and external rotation of the right arm, that appellant was disabled and incapable of performing limited light-duty functions. He added that appellant "seems to be developing a post-traumatic sympathetic dystrophy of his arm as well.

The Board finds that the medical evidence of record is sufficient to establish that appellant sustained a recurrence of disability causally related to his February 11, 1993 employment injury.

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he 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 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 requirements.²

The medical evidence in this case shows a continuous symptomology of pain, discomfort and limited range of motion in appellant's right hand and pain and discomfort in his right

¹ Dr. Botwin placed appellant on total disability on June 12, 1998.

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

shoulder, from September 1994, which was three years before he returned to light duty and November 1, 1999, more than a year from the time appellant filed his claim for recurrence of disability. His treating physician, Dr. Botwin, noted that his condition was causally related to his work-related injury and on June 12, 1998, placed him on total disability as a result of his pain and discomfort in his arm, hand, and wrist and swelling in his hand. The medical evidence supports appellant's claim.

Because the weight of the medical evidence shows a marked increase in appellant's pain and discomfort following his work-related injury of February 11, 1993, resulting in his being placed on total disability by his treating physician, the Board finds that appellant has met his burden of proof to establish that he sustained a recurrence of disability causally related to his work-related injury of February 11, 1993.

The August 31, 1998 decision of the Office of Workers' Compensation Programs is reversed.

Dated, Washington, DC
October 1, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member