

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of REINA LASSALLE and U.S. POSTAL SERVICE,
POST OFFICE, San Juan, PR

*Docket No. 01-766; Submitted on the Record;
Issued October 18, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability for work on or about August 15, 1991 causally related to her accepted employment injury.

In the prior appeal of this case,¹ the Board found that appellant had filed a timely request for reconsideration and had submitted a December 5, 1997 medical report containing sufficient new and relevant evidence to require a merit review. The Board remanded the case to the Office of Workers' Compensation Programs to conduct such a review. The facts of this case as set forth in the Board's prior decision are hereby incorporated by reference.

On remand, the Office conducted a merit review of appellant's claim. In a decision dated October 20, 2000, the Office denied modification of its prior decision denying appellant's claim of recurrence. The Office found that the evidence showed no change in appellant's condition on or after August 15, 1991 and showed no change in her limited-duty job requirements.

The Board finds that appellant has not met her burden of proof to establish that she sustained a recurrence of disability on or about August 15, 1991 that was 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 limited-duty position or the medical evidence of record establishes that she can perform the limited-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of disability and to show that she cannot perform such limited-duty work. 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 limited-duty job requirements.²

¹ Docket No. 98-2132 (issued July 10, 2000).

² See *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

The Office accepted that appellant sustained an employment-related bilateral carpal tunnel syndrome. On August 16, 1991 appellant filed a claim asserting that she sustained a recurrence of disability on August 15, 1991 while working a limited-duty assignment.³ She therefore bears the burden of proof to show that this recurrence of disability resulted from a change in the nature and extent of her injury-related condition or a change in the nature and extent of her limited-duty job requirements.

The Board has reviewed the evidence submitted to support appellant's claim. She made no assertion, and the record fails to support that she was unable to continue working eight hours a day because of a change in her limited-duty job requirements on or before August 15, 1991. Appellant instead submitted medical opinion evidence to support her claim. This evidence, however, fails to show how the nature and extent of her accepted bilateral carpal tunnel syndrome changed prior to August 15, 1991 such that she could no longer work eight hours a day.

What the evidence tends to show is that appellant injured her right upper extremity on August 15, 1991 while trying to keep a package of letters from falling. There is no claim of a spontaneous return of disabling symptoms or a progressive worsening of her accepted condition. Both appellant and her physician attribute disability on or about August 15, 1991 to an incident that occurred at work that day.

On December 5, 1997 Dr. José F. Irizarry, appellant's attending rheumatologist, reported as follows:

"This is a 70 years old white female patient who complaints [sic] of numbness, weakness and pain in both hands since April 1, 1979 when she sustained a work-related injury. She had a diagnosis of bilateral carpal tunnel syndrome which was severe and proven by EMG [electromyography]. She was evaluated by me (rheumatologist), neurology and physical medicine and was treated.

"She had a recurrence of above symptoms on August 15, 1991. At that time she was trying to keep mail from falling from a case and she hurt herself doing this. At that time she had severe numbness, paresthesias and weakness of hands due to the carpal tunnel syndrome. At this time her condition showed deterioration showing that she had limitation of motion and difficulty in grasping and pinching with hands as well as a positive Tinel's and Phalen's signs. She was put on light duty and continued working in spite of symptoms but because of the cumulative impact of the stress of her job moving her hands. [sic] She continued getting worse and on December 6, 1991, she had to stop working because of increase in numbness, paresthesias and weakness of hands as well as a positive Tinel's and Phalen's sign. She continued getting worse and on April 2, 1992, was evaluated by a hand surgeon who recommended surgery of hands but she did n[o]t go on with the surgery because she was afraid of the surgery.

³ On October 26, 1994 appellant filed a claim asserting that she sustained a recurrence of total disability on or about December 6, 1991.

“This information was not included in earlier reports because we did n[o]t think it was necessary and that previous reports were intended to show total disability related to the original condition of bilateral carpal tunnel syndrome.

“She has continued with numbness and paresthesias of both hands with difficulty grasping, pinching and holding. She has a positive Tinel’s and Phalen’s [s]ign and her condition is not improved.

“The patient cannot push, pull, lift, grasp or pinch any object of more than one pound for just seconds. She cannot work for any period of time (zero hours).”

As this evidence supports, appellant’s claim is not that she sustained a recurrence of disability as a result of a change in the nature and extent of her injury-related condition. Appellant’s claim is that she sustained a new injury on or about August 15, 1991 preventing her from working eight hours a day in her limited-duty assignment. The Office was correct in denying appellant’s claim of recurrence, and the Board will affirm that decision. Upon the return of the case record to the Office, however, the Office should consider the true nature of appellant’s claim and issue an appropriate final decision on whether appellant sustained an injury while in the performance of her duties on or about August 15, 1991.

The October 20, 2000 decision of the Office of Workers’ Compensation Programs is affirmed.

Dated, Washington, DC
October 18, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member