U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LEIGHANN KORANDA and U.S. POSTAL SERVICE,
POST OFFICE, Chicago, IL

Docket No. 99-2034; Submitted on the Record;
Issued October 17, 2001

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained a recurrence of disability beginning August 9, 1998 due to her June 14, 1993 employment injury.

On June 15, 1993 appellant, then a 31-year-old mailhandler, filed a traumatic injury claim alleging that she hurt her back on June 14, 1993. The Office of Workers' Compensation Programs accepted appellant's claim for lumbosacral strain and herniated disc L5-S1. After five years, appellant returned to limited-duty work on August 6, 1998.[1] Appellant stopped work on August 9, 1998 and did not return to work.

In a work capacity evaluation, Dr. Richard A. Geline, an impartial Board-certified orthopedic surgeon, indicated that appellant was capable of working with restrictions on twisting, squatting, kneeling, climbing and lifting between 15 and 20 pounds. Dr. Geline also noted that appellant might require periodic rest periods.

On June 4, 1998 appellant accepted the employing establishment's offer of a limited-duty job as a modified mailhandler. The restrictions in the job description, based upon Dr. Geline's report, included intermittent standing, sitting and walking up to 4 hours per day, no lifting more than 15 pounds up to 4 hours per day, minimal to no bending and twisting.

In a letter dated August 29, 1998, appellant alleged that the employing establishment failed to follow the work restrictions imposed by her physician. Specifically, she stated that she was required to bend forward constantly to tape up damaged mail and that her chair had no lumbar support, weighed 30 pounds and had no wheels. Appellant alleged that moving the chair back and forth caused pain in her neck and lower back. Next, she stated that she was moved to

[1] The Office concluded that the requirements of the limited-duty position were within the restrictions noted by the impartial medical examiner.

another unit two hours later, required to sit in the same type of chair, bend over constantly to get mail off a truck and place the mail into different tubs on either side of her.

Appellant alleged that she was supposed to be placed in a modified mailhandler position but was put into the same type of job she had when she was injured. She also stated that, when she asked to go to the medical unit because of her pain, she was informed the medical unit was closed on the weekend and the only thing she could do was leave.

In a report dated September 23, 1998, Dr. Herbert H. Engelhard, III, an attending Board-certified neurological surgeon, diagnosed cervical and lumbar herniated discs which he opined were employment related.[2] Dr. Engelhard "recommended that she be off work, because working aggravates the pain" and indicated that he was "particularly concerned about the cervical disc."

The employing establishment responded to appellant's allegations by letter dated October 8, 1998. It denied that appellant had been required to work outside of her restrictions. She was moved to another unit because she complained that she did not want to work in the nixie unit. The employing establishment indicated that appellant received and then repaired a tray of damaged mail in a cubicle that was waist high with chairs "adjustable to height and back" with an armrest. The employing establishment added that processing the damaged tray of mail required one hour, making it "impossible for her to perform 'constant bending' as alleged."

In a March 8, 1999 report, Dr. Engelhard, who had been treating appellant since August 31, 1998, concluded, after reviewing appellant's job description, that appellant was unable to perform the duties of the position. The physician noted that appellant was unable "to sit for up to four hours per day intermittently" as this would cause lumbar spasms and severe throbbing pain. Dr. Engelhard opined that, for the job to be acceptable, appellant needed to change positions frequently, and not maintain positions causing her severe pain. Lastly, the physician noted that appellant was unable to perform any activities involving twisting or bending her back and that she had a lifting restriction.

By decision dated March 29, 1999, the Office found that the evidence failed to establish a causal relationship between appellant's June 14, 1993 employment injury and the claimed recurrence of disability on August 9, 1998.

The Board finds that appellant has not established that she sustained a recurrence of disability beginning August 9, 1998 due to her June 14, 1993 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 or light-duty position or the medical evidence of record establishes that she can perform the duties of 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 show that she cannot perform such light duty. As part of this

[2] On August 25, 1998 the Office granted appellant's request to change her treating physician from Dr. David J. Smith, an attending Board-certified orthopedic surgeon, to Dr. Engelhard.

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 requirements.[3]

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between her recurrence of disability and her June 14, 1993 employment injury.[4] This 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 employment factors and supports that conclusion with sound medical reasoning.[5]

In this case, appellant has not submitted sufficient medical evidence to show a change in the nature and extent of her injury-related condition. Dr. Engelhard diagnosed employment-related cervical and lumbar herniated discs, but did not rationally relate these conditions to appellant's June 14, 1993 employment injury. In addition, his recommendation that appellant not work because working aggravated her pain is prophylactic and does not establish that appellant's condition had worsened so that she was unable to perform the light-duty position. Moreover, the Office has not accepted the condition of a cervical herniated disc. Thus, Dr. Engelhard's September 23, 1998 report is irrelevant to the issue of a recurrence of disability.[6]

The March 8, 1999 report is also not probative because Dr. Engelhard failed to address the specific restrictions of the offered position in concluding that appellant was unable to perform the light-duty job. Furthermore, the Office had previously found that the offered position was within appellant's restrictions based on opinions by her prior treating physician and a second opinion physician. As appellant did not submit sufficient evidence showing a recurrence of disability due to a change in her injury-related condition or limited-duty job requirements, she failed to satisfy her burden of proof.

With regard to appellant's ability to perform light work, appellant has not shown a change in the nature and extent of her light-duty requirements. Specifically, appellant has alleged that she was assigned to her old position and required to work outside the restrictions imposed by her physician. Appellant also alleged that she was not given a chair with lumbar sport and that she had to physically move the chair. The probative evidence of record does not support appellant's allegations. Dr. Geline, an impartial Board-certified orthopedic surgeon, indicated appellant was capable of working with restrictions on twisting, squatting, kneeling, climbing and lifting up to between 15 and 20 pounds and the employing establishment offered appellant a position within these restrictions. The employing establishment concedes that appellant was moved from the modified position at her request and that the job duties she was

[3] *Barry C. Peterson*, 52 ECAB ___ (Docket No. 98-2547, issued October 16, 2000); *Carlos A. Marrero*, 50 ECAB ___ (Docket No. 96-2186, issued October 19, 1998); *Terry R. Hedman*, 38 ECAB 222 (1986).

[4] *Carmen Gould*, 50 ECAB ___ (Docket No. 97-2225, issued August 3, 1999); *Lourdes G. Davila*, 45 ECAB 139, 142 (1993); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

[5] *Alfred Rodriguez*, 47 ECAB 437, 441 (1996); *Louise G. Malloy*, 45 ECAB 613 (1994).

[6] *See Barbara J. Williams*, 40 ECAB 549, 657 (1989) (medical reports that failed to address the issue of recurrence of disability causally related to the initial work injury found to be irrelevant).

required to perform in another unit were within the restrictions set forth by Dr. Geline. In an October 8, 1998 letter, the employing establishment indicated that appellant's duties in the new unit required repairing a tray of mail in a cubicle which was waist high with chairs an arm rest and "adjustable to height and back," she was allowed to work at her own pace, the processing of the damaged mail required one hour, and there was no constant bending in this position. The Board finds that the employing establishment provided work within the restrictions described by Dr. Geline and rejects her allegation that she was required to work outside of those restrictions when moved to another unit at her request. Thus, the Board finds that there is no reliable, probative and substantial evidence of record to indicate a change in the nature and extent of her light-duty job requirements.

The decision of the Office of Workers' Compensation Programs dated March 29, 1999 is affirmed.

Dated, Washington, DC
October 17, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member