

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PEGGY J. GANTNER and U.S. POSTAL SERVICE,
POST OFFICE, Louisville, KY

*Docket No. 00-271; Submitted on the Record;
Issued September 19, 2001*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issues are: (1) whether appellant has met her burden of proof in establishing that she sustained a recurrence of total disability due to her 1989 employment injury; and (2) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits on the grounds that she neglected to work after suitable work was procured for her.

On August 28, 1989 appellant, a 41-year-old automated mark-up clerk, filed a notice of occupational disease alleging that she developed low back pain due to her employment duties. The Office accepted appellant's claim for chronic lumbosacral strain and entered her on the periodic rolls on September 4, 1990. On June 5, 1996 appellant accepted a position with the employing establishment. Appellant stopped work on July 26, 1996. By decision dated October 2, 1996, the Office found that appellant had refused to work in a suitable work position. Appellant requested an oral hearing on October 10, 1996. By decision dated March 17, 1998, the hearing representative affirmed the Office's October 2, 1996 decision.

Appellant appealed this decision to the Board. In its February 24, 1998 decision,¹ the Board granted the motion of the Solicitor of Labor to set aside the March 17, 1998 decision of the Office terminating appellant's compensation benefits and remanded the case for determination of whether appellant sustained a recurrence of disability on or after July 21, 1996 and a *de novo* decision regarding appellant's entitlement to additional monetary benefits.

Following the Board's February 24, 1998 decision, the Office issued a decision on June 11, 1999 finding that appellant had not established a recurrence of total disability due to her 1989 employment injury and terminating appellant's compensation benefits on the grounds that she refused to work after suitable work was procured for her.

¹ Docket No. 98-2053.

The Board finds the case not in posture for decision.

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

Appellant has a second claim accepted by the Office for bilateral carpal tunnel syndrome. The Office noted that appellant filed a claim for recurrence of this condition on August 12, 1996. The Office denied this claim and appellant requested an oral hearing on this matter. The hearing representative denied appellant's claim for recurrence on March 17, 1998 and appellant did not pursue further appeal rights. This claim along with the supportive evidence is not included in the case record before the Board and appellant did not appeal the March 17, 1998 decision to the Board on September 27, 1999.

Appellant alleged that she was forced to work outside her restrictions. In regard to this allegation, in the June 11, 1999 decision, the Office stated that the employing establishment had denied this allegation in letters dated August 23, 1996 and September 27, 1996. The Office indicated that these letters were included in appellant's carpal tunnel records. The Board does not have the carpal tunnel record before it and appellant's current record does not include copies of the employing establishment's response to appellant's allegation. The absence of these documents is significant as it precludes the Board from reviewing the grounds upon which the Office relied in determining that appellant had not sustained a recurrence of disability of her back condition and consequentially allowed the Office to proceed to the issue of whether appellant refused to work after suitable work was procured for her.

As the case record submitted to the Board is incomplete and would not permit an informed adjudication of the case by the Board, the Board finds that the case is not in posture for a decision on appeal and must be remanded to the Office for proper assemblage of the record including combining appellant's carpal tunnel and back claim records, to be followed by an appropriate decision.

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

The June 11, 1999 decision of the Office of Workers' Compensation Programs is hereby set aside and the claim remanded for combining case files and an appropriate decision.

Dated, Washington, DC
September 19, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member