

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BRENDA M. JOHNSON and U.S. POSTAL SERVICE,
POST OFFICE, Richland, TX

*Docket No. 00-1042; Submitted on the Record;
Issued September 27, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant sustained a recurrence of disability on December 12, 1998, causally related to her January 10, 1990 employment injury.

On January 10, 1990 appellant, then a 25-year-old letter carrier, injured her back while in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for cervical and lumbar strain. Appellant received appropriate wage-loss compensation for her employment injury. Additionally, the Office accepted that appellant sustained recurrences of disability on June 26, 1990, October 25, 1991, March 15, 1994, November 19, 1997 and April 21, 1998. Following her April, 1998 recurrence of disability, appellant returned to work in a limited-duty capacity. She performed those duties until December 12, 1998, at which time she ceased working.

On July 27, 1999 appellant filed a notice of recurrence of disability (Form CA-2a), alleging that she had a recurrence of disability on December 12, 1998 causally related to her January 10, 1990.

In August 1999, the Office referred appellant for examination by Dr. William E. Blair, Jr., a Board-certified orthopedic surgeon. In a report dated September 9, 1999, Dr. Blair found that appellant no longer suffered residuals of her January 10, 1990 employment injury.

By decision dated December 1, 1999, the Office denied appellant's claim for recurrence of disability.

The Board finds that appellant failed to establish that she sustained a recurrence of disability on December 12, 1998 causally related to her January 10, 1990 employment injury.

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 establishes that she can perform the light-duty position, the employee has the burden of

establishing 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 employment-related condition or a change in the nature and extent of the light-duty job requirements.¹

In the instant case, the Office developed the record with respect to appellant's accepted physical injuries and based on the second opinion examination performed by Dr. Blair, the Office found that appellant no longer suffered residuals of the physical injuries she sustained on January 10, 1990.² Appellant submitted medical reports from her treating psychiatrist indicating that she was diagnosed with anxiety and depression.

With respect to the issue of whether appellant sustained a recurrence of disability causally related to her accepted physical injuries of January 10, 1990, the Board notes that appellant did not allege a change in the nature and extent of the light-duty position she held at the time of her claimed recurrence of disability on December 12, 1998. The Board further finds that the record does not establish a change in the nature and extent of appellant's light-duty position.

Appellant also failed to establish a change in the nature and extent of her accepted employment-related condition. Dr. Blair's September 9, 1999 report represents the weight of the medical evidence of record. His finding that appellant no longer suffered residuals of her January 10, 1990 accepted employment injury for cervical and lumbar strain is uncontradicted. Dr. Blair provided a clinical diagnosis of "nonspecific neck and back pain without evidence of musculoskeletal pathology." He further indicated that based upon appellant's current clinical findings, there was no medical reason to impart any work restrictions or limitations. While appellant submitted several reports documenting her ongoing subjective complaints of neck and back pain, the record is devoid of any recent medical evidence that documents a clinical pathology for her ongoing pain. Accordingly, appellant failed to establish that she sustained a recurrence of disability on December 12, 1998 causally related to her January 10, 1990 employment injury.

¹ *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222 (1986).

² Appellant submitted medical evidence from her treating psychiatrist indicating that she was diagnosed with anxiety and depression. As Office has yet to render a final decision on this aspect of her claim this issue is not before the Board on this appeal.

The December 1, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
September 27, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member