U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN I. ECHOLS and U.S. POSTAL SERVICE,
MEMPHIS BULK MAIL CENTER, Memphis, TN

Docket No. 01-815; Submitted on the Record;
Issued April 5, 2002

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability on or about December 10, 1993 due to the withdrawal of his light-duty assignment.

The Office of Workers' Compensation Programs accepted that appellant, then a 33-year-old mailhandler, sustained a torn left lateral meniscus while in the performance of duty on July 27, 1979. He received appropriate wage-loss compensation and a schedule award. Appellant returned to light duty on June 12, 1993 and, in a decision dated August 12, 1993, the Office determined that the position of modified a mailhandler with retained wages fairly and reasonably represented appellant's wage-earning capacity. On December 10, 1993 appellant ceased working. The Office of Personnel Management (OPM) subsequently granted appellant a disability retirement effective January 16, 1994.

In a letter to the Office dated August 22, 1995, appellant requested additional wage-loss compensation retroactive to March 1, 1994. He explained that he retired because his prior light-duty assignment exceeded his physical limitations and, after discussions with management, it was determined that no other positions were available within his limitations. The Office responded by letter dated November 2, 1995 advising appellant that he should file a Form CA-2a and submit additional factual and medical information.[1] Additionally, the Office forwarded a copy of its November 2, 1995 letter to the employing establishment and requested that it comment on appellant's August 22, 1995 letter.

In a letter dated December 6, 1995, the employing establishment stated that appellant worked within the physical limitations imposed due to his employment-related injury. However, appellant reportedly expressed concern that the modified mailhandler position did not adequately accommodate his physical limitations due to a nonemployment-related back injury. The employing establishment further stated that it advised appellant that contractually he had the

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[1] Appellant filed a Form CA-2a on July 20, 2000.

right to request light duty to accommodate his back condition. However, rather than request light duty, appellant chose to retire.

In subsequent correspondence with the Office, appellant explained that the modified mailhandler position approved by his physician adequately accommodated both his occupational and nonoccupational physical limitations. Appellant stated that shortly after returning to work, the size of the mailbins changed so that he could no longer sort mail solely from a seated position. However, he indicated that both the position description and his doctor's restrictions provided for intermittent standing, which he was physically capable of doing. A problem purportedly arose when a union representative questioned whether appellant's position should be made available to someone in the clerks' union in light of appellant's ability to perform his duties while standing. Appellant further explained that, in an effort to appease the union and to avoid the possibility of further injury to his back, the employing establishment reportedly determined that the modified mailhandler position exceeded appellant's physical limitations. Additionally, appellant reiterated that the employing establishment advised him to retire on disability.

In a decision dated November 6, 2000, the Office denied appellant's claim for recurrence of disability. The Office found that appellant failed to establish that the employing establishment withdrew his light-duty assignment.

The Board finds that appellant failed to establish that he sustained a recurrence of disability on or about December 10, 1993, due to the employing establishment's withdrawal of his light-duty assignment.

The Office's definition of a "recurrence of disability" includes a work stoppage caused by a withdrawal of a light-duty assignment made specifically to accommodate the claimant's condition due to the work-related injury. However, the withdrawal of the assignment "must have occurred for reasons other than misconduct…."[2] The Board has held that when a claimant stops work for reasons unrelated to his accepted employment injury, he has no disability within the meaning of the Federal Employees' Compensation Act.[3]

The record in the instant case does not clearly establish the reason for appellant's December 10, 1993 work stoppage. In essence, appellant alleges that the employing establishment determined that his light-duty assignment as a modified mailhandler did not accommodate his physical limitations and therefore, he was instructed to file for disability retirement with OPM. According to appellant, the employing establishment expressed concern that his intermittent standing might exacerbate his nonoccupational back condition. However, appellant has failed to substantiate his allegations. And the employing establishment denied having forced appellant into retirement. Roberta Albright, who allegedly advised appellant to retire, stated that it was appellant who felt that his light-duty position did not adequately

[2] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(1)(c) (May 1997).

[3] *John W. Normand*, 39 ECAB 1378 (1988). The implementing regulations of the Act define disability as "the incapacity, because of employment injury, to earn the wages the employee was receiving at the time of injury." 20 C.F.R. § 10.5(f) (1999).

accommodate his nonoccupational back condition. She further stated that she advised appellant of his contractual right to request light-duty work that would accommodate his back condition. Although appellant indicated there was no additional light-duty work available, Ms. Albright stated that appellant did not request light duty, but instead elected to retire on disability. Additionally, Ms. Albright denied advising appellant he had to retire. She did, however, acknowledge that she might have told appellant that disability retirement was an option if he no longer desired to work.

Appellant has not provided sufficient evidence to support his allegation that the employing establishment withdrew his light-duty assignment and forced him to retire. Consequently, there is nothing in the record clearly establishing that appellant's retirement was either involuntary or precipitated by his employment-related left knee condition. Moreover, appellant stated that he was physically capable of performing his light-duty assignment.[4] Inasmuch as appellant failed to establish that the employing establishment withdrew his light-duty assignment, the Office properly denied appellant's claim for recurrence of disability.

[4] 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 of establishing by the weight of the reliable, probative and substantial evidence a recurrence of total disability and 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 employment-related condition or a change in the nature and extent of the light-duty job requirements. *Mary A. Howard,* 45 ECAB 646 (1994); *Terry R. Hedman,* 38 ECAB 222 (1986). In the instant case, the record is devoid of any evidence establishing either a change in the nature and extent of appellant's employment-related condition or a change in the nature and extent of his light-duty job requirements. As appellant correctly noted, the modified mailhandler position approved by his treating physician specifically provided for intermittent standing up to four hours per day.

The November 6, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
April 5, 2002

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member