

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD NEIDERT and U.S. POSTAL SERVICE,
POST OFFICE, Colorado Springs, CO

Docket No. 00-2016; Submitted on the Record;
Issued January 7, 2002

DECISION and ORDER

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

The issue is whether appellant sustained a recurrence of disability commencing March 1, 1995.

The Office of Workers' Compensation Programs accepted appellant's claim for aggravation of his low back strain and lumbar radiculopathy causally related to his letter carrier duties. Appellant returned to work in a limited-duty capacity and retired on March 1, 1995.

On March 15, 1999 appellant filed a notice of recurrence of disability. He also filed a claim for compensation commencing March 1, 1995.

By decision dated May 24, 1999, the Office denied appellant's claim. In a decision dated April 7, 2000, an Office hearing representative affirmed the prior decision.

The Board finds that appellant has not established a recurrence of disability commencing March 1, 1995.

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 establishes that light duty can be performed, the employee has the burden to establish by the weight of reliable, probative and substantial evidence a recurrence of total disability. As part of this burden of proof, the employee must show either 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.¹

In this case, appellant had returned to work in a light-duty capacity and stopped working on March 1, 1995. He did not allege or establish a change in the duties of this position. Further, the medical evidence of record fails to establish disability for the light-duty position commencing March 1, 1995. Appellant submitted a report dated February 1, 2000 from

¹ *Terry R. Hedman*, 38 ECAB 222 (1986).

Dr. Oregon Hunter, a specialist in rehabilitation medicine. Dr. Hunter provided results on examination and diagnosed a history of herniated nucleus pulposus (HNP) L4-5 and L5-S1, with radiculopathy.

Dr. Hunter concluded: "It would appear that [appellant] is unable to return to his usual occupation as a letter carrier. It is my opinion that he is unable to return to uninterrupted gainful employment due to [the] need to lie down intermittently due to his spine condition." The issue in the case is whether there was a change in appellant's employment injury as of March 1, 1995 that rendered him disabled for the light-duty position. Dr. Hunter does not provide a reasoned opinion on this issue.

The remainder of the evidence is also of diminished probative value on the issue presented. The record contains an October 12, 1998 report from a second opinion physician, Dr. Ernesto Colina, addressing the issue of a permanent impairment.² The Office did not request an opinion on disability and Dr. Colina does not address the relevant issue of a recurrence of disability commencing March 1, 1995.

Appellant did not submit a contemporaneous medical report showing a change in the employment injury as of March 1, 1995 resulting in disability for the light-duty position, nor is there any probative medical evidence containing a reasoned medical opinion on the relevant issue presented. The Board accordingly finds that appellant did not meet his burden of proof in this case.

The decision of the Office of Workers' Compensation Programs dated April 7, 2000 is affirmed.

Dated, Washington, DC
January 7, 2002

David S. Gerson
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member

² In a decision dated November 29, 1994, the Office issued a schedule award for a 13 percent impairment to the right leg. This decision was affirmed by the Board in a decision dated June 3, 1997 (Docket No. 95-1371). By decision dated January 15, 1999, the Office issued a schedule award for a 28 percent impairment of the left leg.