

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROCHELLE P. WENKOWSKY and U.S. POSTAL SERVICE,
POST OFFICE, New York, NY

*Docket No. 00-2733; Submitted on the Record;
Issued January 17, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has established a recurrence of disability commencing May 11, 1995, causally related to her June 7, 1994 employment injury.

In a prior appeal, the Board determined that the Office of Workers' Compensation Programs had improperly refused to reopen appellant's recurrence of disability claim for merit review.¹ The history of the case is found in the Board's prior decision and is incorporated herein by reference.

In a decision dated August 10, 1999, the Office found that the evidence was insufficient to warrant modification of its January 5, 1996 decision. By decision dated June 14, 2000, the Office again denied modification.

The Board finds that the case is 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 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.²

Appellant submitted a report dated November 12, 1996 from Dr. Bruce L. Goldberg, a Board-certified orthopedic surgeon. As noted by the Board in its prior decision, Dr. Goldberg described results on examination on May 11, 1995, noted stiffness and loss of range of motion, and opined that appellant's low back derangement had worsened and resulted in disability. The

¹ Docket No. 97-2253 (issued May 19, 1999).

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

Board finds that Dr. Goldberg provided a detailed report supporting a change in the nature and extent of the employment injury as of May 11, 1995. The Office did not identify any contrary medical evidence. While appellant has the burden of proof to establish her claim, the Office shares responsibility in the development of the evidence.³ Although Dr. Goldberg did not fully discuss the period of employment-related total disability, the November 12, 1996 report is clearly sufficient to require further development of the record.

On remand the Office should prepare a statement of accepted facts and secure a reasoned medical opinion on the recurrence of disability issues presented in this case. After such further development as the Office deems necessary, it should issue an appropriate decision.

The decision of the Office of Workers' Compensation Programs dated June 14, 2000 is set aside and the case remanded for further action consistent with this decision of the Board.

Dated, Washington, DC
January 17, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

³ *William J. Cantrell*, 34 ECAB 1233 (1983).