

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARGUERITE MALDONADO and U.S. POSTAL SERVICE,
POST OFFICE, Bakersfield, CA

*Docket No. 01-1256; Submitted on the Record;
Issued June 12, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant sustained a recurrence of temporary total disability from June 27 to September 29, 2000 causally related to her accepted lumbosacral strain.

On May 14, 1999 appellant, then a 45-year-old clerk, filed a notice of occupational disease and claim for compensation, alleging that she sustained a "disc in back" as a result of her federal employment. Appellant began treatment with Dr. Marshall S. Lewis, an orthopedic surgeon, on April 28, 1999 and at that time he diagnosed lumbosacral strain and left lumbar radiculopathy. By letter dated August 17, 1999, appellant's claim was accepted for lumbosacral strain and she was paid compensation benefits. On December 3, 1999 appellant underwent a bilateral L4-5 laminectomy with foraminotomy for stenosis, bilateral L5-S1 laminectomy with foraminotomy for S1 stenosis, bilateral L4-5 discectomy and bilateral L5-S1 discectomy.

Dr. Lewis released appellant to return to work on March 22, 2000, limited to four hours a day and pushing, pulling and lifting limited to ten pounds. Appellant returned to work under these restrictions on March 25, 2000. On April 19, 2000 Dr. Lewis allowed appellant to return to work eight hours a day with restrictions. In his final report May 3, 2000, Dr. Lewis opined that appellant sustained a herniated nucleus pulposus on the right at L4-5, L5-S1 central disc herniation, foraminal stenosis at L4-5 and L5-S1, lumbosacral strain and left lumbar radiculopathy as a result of an industrial injury, which occurred on or about March 29, 1999. He further found that appellant had reached a permanent and stationary status.

On June 28, 2000 appellant filed a claim for compensation from June 27 to July 27, 2000. Subsequent claims were filed to extend the request for compensation through September 29, 2000.

In a medical report dated June 27, 2000, Dr. Michael O. McCabe, a Board-certified orthopedic surgeon, indicated that appellant sustained degenerative lumbar disc disease, L4-5 and L5-S1, low back pain, left greater than right lower extremity pain and status post lumbar laminectomy and discectomy by another physician. He noted that appellant indicated that her

pain was intolerable. Dr. McCabe indicated that appellant should remain on light duty until her next visit. In his July 13, 2000 report, Dr. McCabe indicated that appellant completed a lumbar magnetic resonance imaging (MRI) scan on July 11, 2000 and that the scan demonstrated central disc herniation at L4-5 and moderate degenerative disc changes at L4-5 and L5-S1. He noted a distinct possibility that additional surgery would be needed, which would include redo decompression and stabilization from L4 to S1. Dr. McCabe indicated that appellant would remain temporarily totally disabled for another 30 days.

By letter dated August 17, 2000, the Office of Workers' Compensation Programs requested that Dr. McCabe provide further information with regard to his opinion that claimant's condition worsened and explain why she could no longer perform her work duties.

In his September 12, 2000 medical report, Dr. McCabe reviewed appellant's progress and opined:

"At this point, additional decompression along with stabilization with instrumented fusion at L4-5 and L5-S1 are needed. I anticipate a period of temporary and total disability of 180 days. [Appellant] will remain temporarily totally disabled pending authorization of the requested surgery from her industrial carrier."

Meanwhile, by letter dated August 28, 2000, appellant noted that when she returned to work on March 25, 2000, she was assigned to work in the registry room, but that position "did not fit her limitations as it consisted of lifting greater than 15 pounds, pulling and pushing letter trays, standing and walking sporadically." She noted that she was reassigned to the "tore up mail department," wherein she continued to lift letter trays and flat tubs and push and pull trays and carts.

Appellant also submitted a letter from Eddie Moralez, wherein he indicated that her work at the registry room involved "lifting 50-pound sacks and plastic trays and dumping of express mail sacks exceeding 50 lbs."

By decision dated October 11, 2000, the Office denied appellant's claim for compensation as it found that she had not established a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.

By letter dated December 6, 2000, appellant requested reconsideration. In support of her request, she submitted a November 17, 2000 medical report by Dr. McCabe wherein he stated that appellant did not improve after her lumbar spine surgery, that some of her pain elements have worsened since the surgery and that additional surgery was needed. He noted that as appellant has not had any additional injuries, he would "submit that her current problem is a continuation of her original problem." Dr. McCabe indicated that appellant's "ongoing and worsening symptoms and inability to stay on the job support the fact that her release to work was not actually feasible." He noted that appellant's "disc pathology constitutes necessary objective evidence to warrant disability." However, Dr. McCabe admitted, "There is actually no particular way to demonstrate that [her condition] is objectively worse." He concluded, "It remains my

opinion that [appellant] is temporarily totally disabled from her usual work including through the time frame where you have disqualified her between June 27 and September 29, 2000.”

By letter dated December 14, 2000, the Office authorized additional surgery (decompression along with stabilization with instrumented fusion at L4-5 and L5-S1).

By decision dated January 3, 2001, the Office denied appellant’s request for reconsideration, as it found that the evidence submitted in support thereof was insufficient to warrant modification of its prior decision.

The Board finds that appellant has established a *prima facie* case indicating a change in the nature and extent of her light-duty job requirements, sufficient to require further development of the evidence.

An employee who claims benefits under the Federal Employees’ Compensation Act¹ has the burden of establishing the essential elements of her claim.² 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 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 job requirements.³

In this case, appellant has provided *prima facie* evidence showing a change in the nature and extent of her job requirements. After she returned from surgery for her accepted back condition, she returned to limited duty on March 25, 2000, under restrictions from Dr. Lewis which limited lifting to 10 pounds. In a letter dated August 28, 2000, appellant alleged that on April 1, 2000 she was unable to work due to pain. She indicated that the job to which she was assigned exceeded her limitations, it consisted of lifting greater than 15 pounds, pulling and pushing letter trays, standing and walking sporadically. Appellant noted that she was then reassigned to the “tore up mail” department, where she continued to lift letter trays and flat tubs. She also submitted a statement by Mr. Moralez, wherein he indicated that appellant was required to perform a great deal of walking and lifting of mail sacks and trays exceeding 50 pounds. The record is not clear whether Mr. Moralez is a supervisor or a coworker. This evidence is sufficient to establish a *prima facie* case indicating a change in the nature and extent of her light-duty job requirements.

While the claimant has the burden of establishing the elements of her claim by the weight of reliable, probative and substantial evidence,⁴ it is well established that proceedings under the

¹ 5 U.S.C. §§ 8101-8193.

² *Richard E. Konnen*, 47 ECAB 388, 389 (1996).

³ *Robert G. Morris*, 48 ECAB 240, 242 (1996); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁴ *Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

Act are not adversarial in nature and the Office shares responsibility in the development of the evidence.⁵ For these reasons, the case will be remanded to the Office for further development of the evidence and evaluation of whether appellant had a change in her work requirements that exceeded her restrictions. After such proceedings as it deems necessary, the Office should issue an appropriate decision.

The decisions of the Office of Workers' Compensation Programs dated January 3, 2001 and October 11, 2000 are hereby vacated and this case is remanded for further proceedings consistent with this opinion.

Dated, Washington, DC
June 12, 2002

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁵ *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1983).