

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BRENDA G. HALL and U.S. POSTAL SERVICE,
POST OFFICE, Inglewood, CA

*Docket No. 02-464; Submitted on the Record;
Issued June 17, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of total disability on or after June 21, 2001 due to her May 17, 1989 employment injury.

On May 17, 1989 appellant, then a 35-year-old mail carrier, sustained a cervical sprain, lumbar strain, right arm abrasion, right buttock strain, scalp contusion, and cervical and lumbar disc syndrome due to a vehicular accident at work. In December 1989, appellant returned to limited-duty work for the employing establishment.¹ By award of compensation dated July 28, 1992, the Office granted appellant a schedule award for a 10 percent permanent impairment of her left arm.² Appellant later claimed that she sustained a recurrence of total disability on June 21, 2001 due to her May 17, 1989 employment injury. By decision dated September 21, 2001, the Office denied appellant's claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained a recurrence of total disability on or after June 21, 2001 due to her May 17, 1989 employment injury.

The Board finds that appellant did not meet her burden of proof to establish that she sustained a recurrence of total disability on or after June 21, 2001 due to her May 17, 1989 employment injury.

¹ The limited-duty work required appellant to answer telephones, assist customers, distribute documents to supervisors via cart, input data and occasionally throw box mail. Appellant periodically stopped work for various periods and received appropriate compensation from the Office of Workers' Compensation Programs for these periods. By decision dated June 29, 1998, the Office determined that appellant did not sustain a recurrence of disability on March 6, 1998 due to her May 17, 1989 employment injury.

² After further development of the medical evidence, the Office later determined that appellant did not have more than a 10 percent permanent impairment of her left arm. This matter is not currently before the Board on appeal.

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a limited-duty position or the medical evidence of record establishes that she can perform the limited-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 limited 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 limited-duty job requirements.³

In support of her claim, appellant submitted a June 21, 2001 report of Dr. Antoine Roberts, an attending Board-certified orthopedic surgeon, who noted that appellant reported experiencing a gradual increase in neck and low back pain since April 2001. Dr. Roberts diagnosed cervical sprain/strain, left shoulder bursitis and impingement syndrome and lumbar disc disease. He recommended that appellant undergo magnetic resonance imaging (MRI) testing and stated, "She is able to continue working with restrictions and will return to the office in four weeks for reevaluation and review of the MRI [results]." As Dr. Roberts indicated that appellant could continue working in her limited-duty position, this report does not show that appellant sustained a recurrence of total disability on or after June 21, 2001 due to her May 17, 1989 employment injury.

Appellant also submitted the findings of MRI testing of the lumbar and cervical regions, performed on August 20, 2001, which showed disc protrusions at C5-6, C6-7 and L4-5 and degenerative changes at several lumbar and cervical levels. However, these reports do not contain any indication that appellant sustained an employment-related recurrence of total disability on or after June 21, 2001.⁴ The Office provided appellant with an opportunity to provide additional evidence in support of her claim, but she did not do so within the time allotted.

For these reasons, appellant did not show that she sustained a recurrence of total disability on or after June 21, 2001 due to her May 17, 1989 employment injury.

³ *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁴ *See Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship). Appellant also did not show that there was a change in the nature and extent of her limited-duty job requirements.

The September 21, 2001 decision of the Office of Workers' Compensation Programs is affirmed.⁵

Dated, Washington, DC
June 17, 2002

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ Appellant submitted additional evidence after the Office's September 21, 2001 decision, but the Board cannot consider such evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c).