

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MELVIN G. HEILMAN and U.S. POSTAL SERVICE,
POST OFFICE, Bismarck, ND

*Docket No. 00-1946; Submitted on the Record;
Issued March 6, 2002*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant is entitled to wage-loss compensation for partial disability during the period August 2 through October 14, 1999 causally related to his accepted cervical strain injury.

On October 13, 1995 appellant, then a 35-year-old mailhandler, filed a traumatic injury claim (Form CA-1), alleging that he injured his neck on October 9, 1995 while lifting a number one bag. The Office of Workers' Compensation Programs accepted the claim for cervical strain. Appellant returned to work with permanent restrictions on November 22, 1995.

On February 20, 1997 appellant filed a recurrence claim, which the Office accepted on June 27, 1997.

In a May 28, 1999 functional capacity evaluation (FCE) it was noted that appellant's injury occurred when a 70-pound bag of mail fell on his head. Marvin Stitt, a physical therapist concluded, based upon the tests performed and injury history that appellant was capable of working an eight-hour day with restrictions on his movement and frequent changes of position. Dr. Howard Reeve, an attending Board-certified family practitioner, reviewed and approved Mr. Stitt's recommendations.

In a June 1, 1999 report, Mr. Stitt opined that appellant "may be able to gradually work back into some of his previous work duties with the exception of overhead lifting/reaching and weight restrictions on lift" and recommended that appellant return to the work hours of 8:00 a.m. to 5:00 p.m., which he held prior to his attendance at Tri-Life Center.

In a July 28, 1999 note, Dr. Reeve, stated that appellant's work hours would be reduced to four hours per day and that the hours were to be 8:00 a.m. to 12:00 p.m.

By letter dated August 30, 1999, the Office informed appellant that the medical evidence was insufficient to support his request for temporary total disability and advised him as to the information required.

In a letter dated September 15, 1999, signed by Mr. Stitt and Dr. Reeve, they noted that appellant was on medical restrictions due to a hernia repair and appendectomy on September 11, 1999. Regarding appellant's ability to work eight hours per day, it was noted:

“[Appellant] was not tolerating 8[-]hour days prior to attending Tri-Life Center. Because of the repetitive nature of [appellant]'s duties, he has been unable to tolerate an 8[-]hour day and was, therefore, reduced to 4[-]hour days. This was determined by a work site analysis completed by a physical therapist after [appellant] returned to work and experienced an increase in his pain levels. It was questionable at the time of [appellant]'s return to work if he would be able to tolerate the repetitive nature of this position 8 hours per day and unfortunately he has not been able to tolerate 8 hours.”

In a September 15, 1999 report, Dr. Reeve recommended that appellant work four hours per day instead of the eight hours he had been working. In support of the work-hour reduction, he noted that appellant was having problems working an eight-hour day due to a lot of muscle spasms, trouble working the next day and the soreness and stiffness in his neck, which was exacerbated by working eight hours per day. Dr. Reeve indicated that appellant had an appendectomy and hernia repair and that he was “having trouble moving around with abdominal discomfort.”

In a September 27 and 28, 1999 FCE, performed by Mr. Stitt and approved by Dr. Reeve, the report indicated that “Many of the above performance values have decreased since [appellant] was last tested in May 1999” and that it was difficult to ascertain the exact cause for this decrease. The report noted it was “not possible to determine or even approximate a work schedule or identify sitting, standing and walking tolerances as [appellant] is currently complaining of increasing pain with four hours of work.”

Appellant filed several claims for wage-loss compensation.

By decision dated November 18, 1999, the Office denied appellant's request for wage-loss compensation for a recurrence of partial disability for the period August 2 through October 14, 1999.

In a November 30, 1999 progress note, Dr. Reeve reported that appellant stated that he had muscle spasm and a lot pain after working four hours, that he must lie down when he gets home from work and that he cannot work more than four hours per day. He indicated that a magnetic resonance imaging scan test showed “osteophytes forming with a bulging disc and neural foramina impingement” and noted that the most recent FCE made no recommendations as to the number of hours appellant could work. Dr. Reeve stated that he could not recommend an increase in the number of hours appellant was currently working “since that seems to be causing him enough problems as it is.”

In a December 14, 1999 report, Dr. William D. Canham, a second opinion Board-certified orthopedic surgeon, diagnosed chronic pain syndrome due to a work-related injury and noted that there was no supporting objective evidence, but that this was not unusual in chronic pain syndromes subsequent to neck injuries. He noted that appellant reported that his injury had occurred when a 70-pound bag hit him in the left side of his neck while he was lifting the bag down. Physical examination revealed muscle spasm, “marked limitation of motion for both flexion, extension, lateral bending and rotation” and neck movement was no greater than 20 percent in all planes of normal range. Regarding appellant’s work capacity, Dr. Canham concluded that he was capable of working eight hours per day in his current position and on an irregular schedule. However, the physician indicated that appellant would be more comfortable in a more clerical job and with regular hours.

In treatment notes dated January 21, 2000, Dr. Reeve indicated that appellant was tolerating a four-hour workday. Appellant related that later in the afternoon he gets ringing in the ears, neck pain, headaches and muscle spasm requiring him to rest in a supine position to relieve the tension.

In a February 8, 2000 report, Dr. Reeve noted his disagreement with Dr. Canham regarding appellant’s ability to work more than four hours per day.

On February 10, 2000 appellant requested reconsideration of the denial of his claim.

By letter dated March 9, 2000, the Office requested Dr. Canham to clarify his opinion regarding work restrictions and mechanism of the injury. The Office also informed Dr. Canham that appellant’s injury occurred when he started to lift mailbags and that a mailbag did not fall on him.

By decision dated April 19, 2000, the Office denied appellant’s request for modification on the basis that the record did not contain a rationalized opinion supporting the reduction in appellant’s work hours.

The Board finds that appellant is not due any compensation for partial disability for the period August 2 through October 14, 1999 causally related to his accepted October 9, 1995 injury.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee 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 to show that he or 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.¹

Appellant submitted various reports from Dr. Reeve who stated that appellant could not work more than four hours after July 28, 2000 without providing any medical rationale for the

¹ *Shelly A. Paolinetti*, 52 ECAB ____ (Docket No. 00-2058, issued May 29, 2001).

reduction of hours. He referred to the September 28 and 29, 1999 FCE to support his recommendation that appellant reduce the number of hours he worked. The FCE performed on May 28, 1999 indicated that appellant was capable of working an eight-hour day with restrictions. The September 28 and 29, 1999 FCE provided no opinion as to the number of hours appellant could work while noting a decrease in his performance values. Furthermore, both Dr. Reeve and the functional capacity evaluations are based on an inaccurate history of the employment injury. As noted on appellant's claim form, he was injured when he was lifting up a number one bag and not when a 70-pound bag fell on him. Thus, the record fails to contain any medical opinion supported by objective evidence explaining why appellant was incapable of working eight hours in his light-duty position. Therefore, appellant has not established that his recurrence of disability for the period August 2 through October 14, 1999 was causally related to his accepted October 9, 1995 employment injury.

The April 19, 2000 and November 18, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
March 6, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member