

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MIKLE W. WILLIAMS and U.S. POSTAL SERVICE,
POST OFFICE, Dallas, TX

*Docket No. 00-1001; Submitted on the Record;
Issued May 29, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant is entitled to compensation for wage loss after July 31, 1996.

This is the second appeal to the Board.¹ In a January 27, 1998 decision, the Board found that appellant did not establish that he sustained a lumbar strain, chondromalacia or a sclerotic lesion of the right knee or osteophytes of the right and left knees causally related to his federal employment. The Board found that the medical evidence submitted by appellant was insufficient to establish his claim. The Board also found that appellant did not establish that he sustained a recurrence of total disability on or after May 20, 1996 causally related to his September 22, 1993 injury.² The Board noted that the medical evidence submitted was insufficient to establish a change in the nature or extent of appellant's injury-related condition. The facts and background of the case, as set forth in the Board's prior decision, are incorporated herein by reference.

In a December 17, 1998 letter, appellant requested reconsideration and submitted a June 29, 1998 report from Dr. Ronnie D. Shade, a Board-certified orthopedic surgeon, and a June 11, 1998 report from Dr. J.D. Fajardo, a podiatrist.

On May 11, 1999 the Office of Workers' Compensation Programs referred appellant to Dr. Arthur L. Sarris, a Board-certified orthopedic surgeon, for a second opinion evaluation. Dr. Sarris was asked to determine whether appellant had sustained a low back or other knee

¹ Docket No. 97-1100 (issued January 27, 1998). Appellant developed a right heel spur and right plantar faciitis condition in September 1993. He underwent surgery on April 14, 1994 and returned to limited duty, subject to limitations on walking, standing and twisting the right knee. On July 14, 1995 appellant received a schedule award for 19 percent impairment of his right foot. The period of the award ran from October 25, 1994 to July 24, 1995.

² On August 24, 1996 appellant submitted a recurrence of disability claim commencing May 20, 1996 causally related to the September 23, 1993 injury. He stopped work on June 6, 1996 alleging that he experienced right foot pain and was required to work outside of his physical limitations. On March 3, 1997 his application for disability retirement was approved by the Office of Personnel Management.

conditions as a consequence of his accepted right foot condition. The Office also requested an opinion on whether appellant was unable to work sedentary duty since June 6, 1996.

In a June 3, 1999 report, Dr. Sarris reviewed appellant's history of injury and medical treatment, including a history of the accepted right heel spur condition and plantar fasciitis for which he underwent surgery. He noted appellant's complaint of right heel pain and swelling in both knees. Dr. Sarris provided findings on physical examination of appellant's lumbar spine and lower extremities and reviewed a May 18, 1996 right knee magnetic resonance imaging study. He diagnosed degenerative lumbar disc disease involving the L5-S1 disc space and internal derangement of both knees, including chondromalacia changes and synovitis with crepitation and restriction of motion. Dr. Sarris concluded that appellant's low back and knee conditions were a consequence of the accepted September 22, 1993 employment injury. He explained that appellant altered his gait following the employment injury which put undue stress on both knees and shifting of weight in the region of the low back.³ As appellant came to bear more weight on his left knee, this contributed to the development of his left knee condition. Dr. Sarris reviewed the medical records and found that appellant was capable of working at sedentary work since June 6, 1996, with a lifting maximum of 10 pounds and walking and standing limited to one hour. He completed a June 2, 1999 work tolerance evaluation.

The employing establishment submitted materials related to appellant's limited-duty status in 1996. In a June 25, 1999 memorandum, station manager Donald Brent stated that modified work was available to appellant within his physical restrictions on his return to work at the University Station Post Office as of July 31, 1996. Rilla Allen, manager of customer service at the Highland Hills Post Office, noted that appellant returned to that station on August 1, 1996; however, he had previously been assigned modified work at the University Hills station. When asked why he was at Highland Hills, appellant advised that his claim had been disapproved and he was on light duty. Mr. Allen stated that he had not been notified of any denial regarding appellant's claim but that appellant was not supposed to be working at the Highland Hills station. Appellant was advised that, if he was still on limited duty, his job was at the University Hills station as there was no light duty available at Highland Hills.⁴

In a July 19, 1999 decision, the Office found that the medical evidence supported the causal relationship of his low back and bilateral knee conditions to his accepted right foot injury and accepted those conditions for payment of medical expenses. The Office also accepted that appellant was totally disabled for the period June 6 to July 31, 1996, and accepted his recurrence of disability claim for this period. The Office found, however, that appellant was able to return to modified work as of August 1, 1996 and that the modified job he had been performing was available at the University Hills station as of that date. The Office denied wage-loss compensation after July 31, 1996.

³ Appellant is approximately 6' 2" and weighing between 285 to 300 pounds.

⁴ The record indicates that, as of the September 23, 1993 injury, appellant was a letter carrier assigned at Highland Hills station. Following his surgery of 1994, appellant returned to work in a limited-duty position at the University Hills station on May 31, 1994. Appellant stopped work at the University Hills station on June 6, 1996.

By letter dated October 14, 1999, appellant requested reconsideration and submitted additional medical evidence consisting of an October 13, 1999 report from Dr. Shade and evidence previously submitted to the case record. The record also contains an October 6, 1999 reconsideration request submitted by appellant's union representative pertaining to the denial of wage-loss compensation after July 31, 1996. It was argued that, although appellant was not disabled for his modified job after July 31, 1996, the employing establishment did not make light duty available to appellant after that date.

In a January 5, 2000 decision, the Office denied modification of the July 19, 1999 decision.

The Board finds that the case is not in posture for decision.

When appellant sustained an injury on September 22, 1993, he was employed as a regular letter carrier at the Highland Hills station. Following his foot injury and surgery, appellant was returned to work in a limited-duty capacity on May 31, 1994 at the University Hills station, where he worked until June 6, 1996 and subsequently claimed a recurrence of disability. The Office has accepted that appellant sustained a recurrence of total disability for the period June 6 to July 31, 1996 and denied wage-loss compensation after that date.

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 the employee can perform the light-duty position, the employee had the burden to establish by the weight of the reliable and probative 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.⁵

Appellant acknowledges that he was not disabled for his limited-duty position after July 31, 1996; his contention on appeal is that the employing establishment did not have any light-duty work available as of August 1, 1996. Appellant submitted a photocopy of a document dated June 5, 1996 addressed to Donald Brent, indicating that the injury compensation office reviewed appellant's file and found that he was no longer entitled to limited duty as the Office had closed his case. The record also contains a memorandum dated June 10, 1995 to appellant from Mr. Brent who noted that, according to the June 5, 1996 document, appellant did not qualify for limited duty. With his release to return to work as of July 31, 1996, the record notes that appellant returned to the Highland Hills station, where he was advised that no light duty was available. Mr. Brent submitted a statement, however, indicating that light duty was available to appellant as of that day at the University Hills station.

The evidence of record is not clear as to the availability of light duty to appellant as of August 1, 1996. The case will be remanded to the Office for further development of the evidence with regard to this issue. On remand, the Office should request clarification as to appellant's work status in light of the above-noted documents and the availability of light duty. The Office should clarify whether appellant was instructed to return to regular-duty work at the

⁵ See *Doris J. Wright*, 49 ECAB 230 (1997); *Terry R. Hedman*, 38 ECAB 222 (1986).

Highland Hills station or to light duty at the University Hills station. After such further development as the Office deems necessary, it should issue a *de novo* decision on appellant's entitlement to wage-loss compensation as of August 1, 1996.

The January 5, 2000 decision of the Office of Workers' Compensation Programs is hereby set aside and the case remanded for further development consistent with this decision.

Dated, Washington, DC
May 29, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member