

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FREDERICK L. WILLIAMS and U.S. POSTAL SERVICE,
POST OFFICE, Frankfort, KY

*Docket No. 00-2732; Submitted on the Record;
Issued May 28, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issues are: (1) whether appellant has established entitlement to compensation for wage-loss commencing March 28, 1992; and (2) whether the Office of Workers' Compensation Programs properly determined that appellant had abandoned his request for a hearing.

The case was before the Board on a prior appeal. In a decision dated August 6, 1998, the Board affirmed a February 29, 1996 Office decision, finding that appellant was not entitled to compensation for wage-loss October 27 to December 5, 1989.¹ The history of the case provided in the Board's prior decision is incorporated herein by reference.

According to the evidence of record, in 1991 appellant began working in a light-duty position involving clerical duties such as answering telephones and writing up accountable mail. In February 1992, the employing establishment made a formal offer of a light-duty position as a distribution clerk. Appellant accepted the position on March 5, 1992 and was scheduled to begin the distribution clerk position on March 21, 1992. He stopped working, however, on March 19, 1992 and did not report for the distribution clerk position. Appellant requested compensation commencing March 28, 1992.

By decision dated November 15, 1999, the Office denied the claim for wage-loss compensation commencing March 28, 1992. In a decision dated June 14, 2000, the Office determined that appellant had abandoned his request for a hearing.

The Board finds that appellant has not met his burden of proof to establish entitlement to wage-loss compensation commencing March 28, 1992.

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

¹ Docket No. 96-1894.

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

With respect to a change in the nature and extent of a light-duty job, if the light-duty job required activity that was outside the medically established work limitations, this could support a recurrence of disability claim.³ The Board notes, however, that in this case appellant never actually began work in the distribution clerk position. Moreover, there is no probative evidence that the position would have exceeded work restrictions. The offered position was approved by an attending physician and the employing establishment indicated that additional accommodations would be made for any work restrictions.⁴ There is no probative evidence to establish a recurrence of disability based on a change in the light-duty job.

The remaining issue is whether there was a change in an employment-related condition that disabled appellant on March 28, 1992 for a light-duty position. The Board notes that in this case the accepted injuries are: (1) a right knee sprain on August 14, 1989; and (2) a permanent aggravation of patellofemoral arthritis of the right knee, causally related to appellant's letter carrier duties. In a report dated March 17, 1992, Dr. Philip Browne, an orthopedic surgeon, stated that appellant was still symptomatic in his neck and shoulders. He reported that appellant had complained that the clerks job was aggravating his neck and shoulder pain.⁵ The Office has not accepted neck or shoulder injuries in this case; a claim that the light-duty job aggravated appellant's neck and shoulder injuries is not before the Board. The issue is whether the accepted right knee employment injuries had worsened and caused total disability as of March 28, 1992. On this issue there is no probative medical evidence supporting appellant's claim. In a report dated April 27, 1992, Dr. Browne acknowledged that the employing establishment had made significant efforts to accommodate appellant and stated: "it would appear that the primary problem is his inability to tolerate the discomfort that he undoubtedly feels from his degenerative condition." Dr. Browne does not discuss the right knee condition or otherwise provide a reasoned medical opinion on the issue presented.

It is appellant's burden of proof to submit sufficient medical evidence to establish his claim. The Board finds that he has not met his burden of proof in this case.

The Board further finds that the Office properly determined that appellant abandoned his request for a hearing.

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

³ *See, e.g., Cloteal Thomas*, 43 ECAB 1093 (1992),

⁴ An arbitrators' decision dated January 15, 1993, pursuant to a grievance filed by appellant, also found that the employing establishment was willing to provide special seating arrangements and other accommodations as needed.

⁵ Dr. Browne is apparently referring to the light-duty job appellant had been performing, not the distribution clerk position.

The Office's regulations are silent on the issue of abandonment of a hearing request. According to the Office's procedure manual, a hearing can be considered abandoned only if: "the claimant has not requested a postponement; the claimant has failed to appear at a scheduled hearing; and the claimant has failed to provide any notification for such failure within 10 days of the scheduled date of the hearing."⁶ Under these circumstances, the Branch of Hearings and Review will issue a formal decision finding that the claimant has abandoned his or her request for a hearing.⁷

The record indicates that the Office sent a notice dated March 16, 2000 to appellant's address of record that advised him of an oral hearing scheduled for May 23, 2000, in Lexington, Kentucky. Appellant did not request a postponement, failed to appear for the hearing and there is no indication that appellant provided notification for his failure to appear within 10 days of the scheduled hearing. As this meets the conditions for abandonment, the Branch properly issued a decision finding that appellant has abandoned his request for a hearing.⁸

The decisions of the Office of Workers' Compensation Programs dated June 14, 2000 and November 15, 1999 are affirmed.

Dated, Washington, DC
May 28, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.6.e (January 1999).

⁷ *Id.*

⁸ *See Chris Wells*, 52 ECAB __ (Docket No. 00-38, issued July 12, 2001).