

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GARL G. MOLLOHAN and U.S. POSTAL SERVICE,
POST OFFICE, Fairborn, OH

*Docket No. 01-1308; Submitted on the Record;
Issued May 21, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has met his burden of proof to establish a recurrence of disability.

The case has been before the Board on a prior appeal. In a decision dated April 5, 2000, the Board remanded the case for further development on the issue of whether appellant had more than a 32 percent right leg permanent impairment or 20 percent left leg permanent impairment.¹

On November 16, 1998 appellant filed a notice of recurrence of disability commencing November 9, 1998. The record indicates that appellant had been working in a limited-duty position as a distribution clerk since December 1991. According to appellant, on November 9, 1998 he was moved to a new work area. He stopped working in December 1998 and retired from federal employment.

By decision dated January 7, 1999, the Office of Workers' Compensation Programs denied the claim for a recurrence of disability. In a decision dated March 13, 2001, an Office hearing representative affirmed the January 7, 1999 decision.

The Board finds that appellant did not meet his burden of proof to establish a recurrence of disability.

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 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

¹ Docket No. 98-2550.

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

In this case, the accepted injury is a permanent aggravation of degenerative disc disease. With respect to the claim for a recurrence of disability, appellant has primarily identified a change in the light-duty job requirements that commenced as of November 9, 1998. A recurrence of disability may be established if the light-duty job is outside the employee's work restrictions, but there must be sufficient evidence of record to support the finding that the job exceeded physical limitations.³ Appellant submitted diagrams indicating that his work area was changed; he stated that he worked at a double case rather than a single case. At the hearing before the Office hearing representative, appellant indicated that the double case required him to turn from side to side; he also stated that he had to get up and move to carry the mail to a transporting buggy, as opposed to dropping in a cart next to him. Although appellant has indicated that his job had changed on November 9, 1998, he did not clearly explain how these changes were outside his work restrictions. In addition, at the hearing appellant stated that before he retired the job was again changed "so it wasn't what it was," without providing further explanation.

With respect to work restrictions, Dr. Joseph Olszewski, a neurologist, had submitted a form report dated January 14, 1997. The Office requested that appellant submit current medical evidence with respect to his new limited-duty position and his employment-related condition, but the record does not contain probative medical evidence on this issue.

In a report dated November 6, 1998, Dr. Olszewski stated that appellant was permanently and totally disabled because of difficulty with his cervical and lumbosacral spine. He does not provide any additional explanation or discussion of the relevant issues. The Board notes that as of November 6, 1998 appellant had been working in a light-duty position and he continued to work after that date. Dr. Olszewski does not discuss appellant's employment, his employment injuries or otherwise provide an accurate factual and medical background. Moreover, he does not discuss a worsening of appellant's employment-related condition. In a December 8, 1998 duty status report, Dr. Olszewski reiterated the prior work restrictions. An August 15, 2000 report from him provides results on examination, without discussing the relevant issues.

The Board finds that appellant has not established a recurrence of disability. The evidence does not establish that there was a change to the light-duty job that was outside appellant's work restrictions, nor is there medical evidence showing a change in the nature and extent of the employment-related condition at the time appellant stopped working. Accordingly, the Board finds the Office properly denied the claim in this case.

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

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

The decision of the Office of Workers' Compensation Programs dated March 13, 2001 is affirmed.

Dated, Washington, DC
May 21, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member