

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of EULA D. ELLINGTON and U.S. POSTAL SERVICE,  
POST OFFICE, Redwood City, CA

*Docket No. 02-452; Submitted on the Record;  
Issued November 18, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof to establish that she sustained a recurrence of disability on or about November 1, 2000 causally related to her accepted employment injury.

On January 12, 1996 appellant, then a 47-year-old letter carrier, filed a traumatic injury claim alleging that she was struck on the side by a motor vehicle on December 23, 1995 while driving in the performance of duty. The Office of Workers' Compensation Programs accepted the claim for a right arm contusion, right hand contusion and neck strain. Appellant stopped work on December 26, 1995 and returned to light duty on January 2, 1996.

Appellant was initially treated by the Kaiser Permanente Medical Center in San Francisco through October 1998 for conditions including those accepted by the Office. On January 15, 1998 the Office referred appellant to Dr. Robert Ferretti, a Board-certified orthopedic surgeon, to determine the relationship between her medical conditions and factors of her federal employment.

In a February 2, 1998 report, Dr. Ferretti reviewed appellant's work and social history, history of injury, complaints at that time, medical record including x-ray results and his examination of appellant. Dr. Ferretti diagnosed cervical strain and tendinitis of the right wrist/strain, resolved and naturally occurring cervical degenerative disc disease C5-6. He stated that, although appellant's cervical strain and wrist tendinitis were historically related to the December 23, 1995 traumatic injury, based on medical probability the effect of these injuries should have resolved. Dr. Ferretti noted that there were no signs or symptoms of cervical nerve root involvement or any other neurological abnormality (cervical radiculopathy). The physician opined that appellant continued to suffer subjective residuals of the injury based on her complaints only and that she appeared to be out of work at that time based on a stress-related condition, which had not been accepted as related to her employment. Dr. Ferretti further opined that from an orthopedic standpoint appellant was physically able to perform her usual and customary occupation as a carrier, without work restrictions or modifications.

In reports from the Kaiser Permanente Medical Center dated from February 24 to October 27, 1998, appellant was noted to have permanent work modifications with stable cervical radiculopathy, left hand and wrist conditions, and intermittent neck, trapezius and arm pain. Appellant was noted to have been doing well overall.

On December 12, 2000 appellant filed a recurrence of disability claim alleging that on November 1, 2000 she experienced mild to moderate ongoing pain in her hand and neck related to the original injury since returning to light duty.

In support of her recurrence of disability claim, appellant submitted treatment notes from Dr. Hans Odsen, a Board-certified physician in emergency medicine, dated December 12, 2000. The report indicated that appellant was seen for trapezius and wrist tenderness, noted November 1, 2000 as the date of injury and diagnosed cervical/trapezius strain, repetitive stress injury right hand and wrist. Appellant also submitted a CA-17 form dated December 12, 2000, which indicated that appellant was released to modified duties with restrictions including limited lifting and no carrying above shoulder and route work. Appellant further submitted a progress report dated May 18, 2001 from Dr. Odsen in which he reported that appellant still complained of neck, right trapezius and arm pain especially with casing overhead, however, could continue modified duties as outlined in the CA-17 form.

In a letter dated August 21, 2001, the Office advised appellant that the evidence submitted in support of the recurrence of disability claim was insufficient. The Office requested additional documentation including an opinion from her treating physician explaining the cause of her recurrence and the relationship between her current condition and the original injury. The Office allotted appellant 30 days within which to submit the requisite evidence; however, no response was received.

By decision dated September 27, 2001, the Office denied appellant's recurrence of disability claim on the grounds that the medical evidence of record failed to establish that appellant sustained a spontaneous return or increase in disability due to the previously accepted work-related injury without intervening cause.

The instant appeal ensues.<sup>1</sup>

The Board finds that appellant has not met her burden of proof to establish that she sustained a recurrence of disability on or about November 1, 2000 causally related to her accepted employment injury.

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

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<sup>1</sup> The Board notes that appellant requested that the case be reopened in a letter received November 20, 2001, and the Office responded in a letter dated December 18, 2001 that appellant should follow the appeal rights furnished with the September 27, 2001 decision. Appellant filed her application for review with the Board on January 10, 2002.

disability and to show that she cannot perform such limited-duty work. 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.<sup>2</sup>

The Office accepted that on December 23, 1995 appellant sustained an employment-related right arm contusion, right hand contusion and neck strain. Following the injury, appellant was released to limited duty on January 2, 1996. On December 12, 2000 appellant filed a claim asserting that she sustained a recurrence of disability on November 1, 2000 while working limited duties. She therefore bears the burden of proof to show that this recurrence of disability resulted from a change in the nature and extent of her injury-related condition or a change in the nature and extent of her limited-duty job requirements.

The evidence reveals that appellant complained of trapezius and wrist tenderness pain, which she claimed began on or about November 1, 2000 and sought treatment on December 12, 2000 and May 18, 2001. In the December 12, 2000 and May 18, 2001 reports, Dr. Odsen diagnosed cervical/trapezius strain and repetitive stress injury right hand and wrist with a date of injury of November 1, 2000 and released appellant to continued modified duties with restrictions including limited lifting and no carrying above the shoulder and route work. The physician's reports did not contain a history of the original injury or a rationalized medical opinion, which related appellant's cervical/trapezius strain and repetitive stress injury of the right hand and wrist diagnosed on December 12, 2000 to her December 23, 1995 employment injury. Dr. Odsen did not opine that appellant sustained a spontaneous return of disabling symptoms or a progressive worsening of her accepted condition on or about November 1, 2000. This is critical particularly since the accepted employment condition was found to have resolved by Dr. Ferretti and her physicians at Kaiser Permanente in 1998. Without this medical evidence, appellant has not established her claim for recurrence of disability

Appellant has failed to meet her burden of proof in establishing a recurrence of disability on November 1, 2000 causally related to her employment because she failed to show either a change in the nature or extent of her light-duty requirements or a change in her accepted injury-related condition. As appellant did not establish that she sustained a recurrence of disability on November 1, 2000 causally related to her December 23, 1995 employment injury, the Office properly denied her claim.

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<sup>2</sup> See *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

The September 27, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
November 18, 2002

Alec J. Koromilas  
Member

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member