

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROBERT L. PRESSER and U.S. POSTAL SERVICE,  
POST OFFICE, Cincinnati, OH

*Docket No. 02-473; Submitted on the Record;  
Issued October 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 his burden of proof in establishing that he sustained a recurrence of disability on July 7, 1998 causally related to his December 7, 1995 employment injury.

Appellant, a 44-year-old tractor trailer operator, filed a notice of traumatic injury alleging that on December 7, 1995 he sustained injuries to his head in a motor vehicle accident in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for cervical strain, strain right shoulder, arthroscopy right shoulder and chronic rotator cuff syndrome. Appellant returned to full duty on November 29, 1996. He stopped work on February 10, 1997 due to increased pain. Appellant returned to light-duty work on June 26, 1997. The Office entered appellant on the periodic rolls on June 30, 1997.

On June 1, 1998 appellant filed notices of recurrence of disability alleging that he sustained recurrences of disability from March 9 to April 16, 1998 and from June 24 to 30, 1998. On June 1, 1999 he filed a notice of recurrence of disability alleging he was disabled from July 7 to November 10, 1998 due to his December 7, 1995 employment injury. Appellant also claimed disability due to his December 7, 1995 employment injury from June 11 to 13, 1999.

By decision dated February 28, 2000, the Office denied appellant's claim for recurrence of disability beginning July 7, 1998. Appellant requested reconsideration of this decision and by decision dated July 17, 2000, the Office reviewed appellant's claim on the merits and found that the evidence did not support his recurrence of disability on July 7, 1998. He requested reconsideration on June 1, 2001. By decision dated September 26, 2001, the Office reviewed

appellant's claim on the merits and found that he had not submitted sufficient medical evidence to establish a recurrence of disability on July 7, 1998.<sup>1</sup>

The Board finds that appellant has not established that he sustained a recurrence of disability on July 7, 1998 due to his December 7, 1995 employment injury.

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 of record establish that he 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 show that he 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 requirements.<sup>2</sup>

Appellant returned to light-duty work on June 26, 1997. On June 1, 1999 he filed a notice of recurrence of disability alleging that he was totally disabled from July 7 to November 10, 1998 due to his December 7, 1995 employment injuries. In support of his claim for total disability for this period, appellant submitted reports from Dr. John R. Helmick, a Board-certified anesthesiologist, noting appellant's history of injury, reporting findings on physical examination as well as reviewing diagnostic studies. Dr. Helmick diagnosed chronic cervical strain and degenerative disc displacement and treated appellant with epidural steroid injections on March 9 and 31 and April 14, 1998. He noted that appellant worked full time. Dr. Helmick did not indicate that appellant had experienced a change in the nature and extent of his injury-related condition. He diagnosed a "chronic" cervical strain. Dr. Helmick did not address the causal relationship between appellant's condition of degenerative disc displacement and his diagnosed condition. Furthermore, he did not provide work restrictions nor address appellant's light-duty job requirements.

Dr. Philip Zaacks, a Board-certified internist, completed a note on May 26, 1998 and stated that appellant's pain returned to the original intensity following his epidural steroid injections. Dr. Zaacks stated that appellant had discomfort in his left shoulder and left arm. He stated: "His work involves a fair amount of driving and bouncing around in his truck. That tends to aggravate his pain a great deal as does the cold weather." He did not indicate that appellant had a change in his injury-related condition and did not address any work restrictions nor change in appellant's job requirements.

In a report dated October 7, 1998, Dr. Helmick stated that appellant injured his knee at work in July 1998 and that he stopped work at that time. Appellant reported constant right neck and shoulder pain with radiation of pain into his fingers. Dr. Helmick diagnosed chronic cervical pain, degenerative disc disease in the cervical spine and chronic pain syndrome. He recommended that appellant undergo a multidisciplinary evaluation. Dr. Helmick stated that

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<sup>1</sup> The only claim for recurrence of disability before the Board is the June 1, 1999 claim alleging disability from July 7 to November 10, 1998. The Office has not issued a final decision on the remainder of appellant's claims; therefore, the Board will not address these claims for the first time on appeal. 20 C.F.R. § 501.2(c).

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

appellant had not worked for three months, but did not address any work restrictions or offer an opinion regarding appellant's disability for work. Dr. Helmick did not provide an opinion on the causal relationship between appellant's degenerative disc disease or chronic pain syndrome and his employment injury and did not address a change in the nature and extent of appellant's injury-related conditions.

On November 6, 1998 Dr. Helmick approved appellant's return to work in a limited-duty position and stated that appellant's examination was unchanged. Appellant did not claim disability after November 10, 1998.

The reports from Drs. Helmick and Zaacks are not sufficient to meet appellant's burden of proof in establishing a recurrence of total disability due to his accepted employment injury. Neither Dr. Helmick nor Dr. Zaacks provided any discussion of appellant's work restrictions nor indicated that appellant was totally disabled due to his diagnosed condition. Furthermore, neither physician addressed a change in the nature and extent of appellant's accepted employment-related conditions. Without an opinion that appellant was totally disabled and unable to perform his light-duty position, these reports are not sufficient to meet appellant's burden of proof and establish a recurrence of disability from July 7 to November 10, 1998 due to his December 7, 1995 employment injury.

Dr. Ghahreman Khodadad, a Board-certified neurosurgeon, completed a report on July 22, 1998 noting appellant's complaint of chronic neck pain. Dr. Khodadad mentioned appellant's December 7, 1995 employment injury and recommended further diagnostic testing. On August 11, 1998 he stated appellant presented with a clinical picture of cervical radiculopathy involving the nerve roots on the right side. In an August 26, 1998 note, Dr. Khodadad stated: "The gentleman was still complaining of a rather severe pain in the right shoulder, right upper extremity and the right side of his neck. Because of this pain he has not been able to work for a few months...." His reports did not provide a diagnosis nor did he provide any work restrictions nor finding of disability. Dr. Khodadad merely noted that appellant had not been able to work without opining that appellant was totally disabled due to a change in his injury-related condition and without a clear opinion that appellant's current condition was due to his accepted employment injury. Therefore, these reports are not sufficient to meet appellant's burden of proof.

Dr. James Schrand, a Board-certified family practitioner, completed a note on June 11, 1999 and stated that appellant was unable to work from July 7 to November 10, 1998.<sup>3</sup> In an undated note, Dr. Schrand stated that appellant suffered shoulder and cervical spine injuries which caused disability from work from July 7 to November 10, 1998. He stated: "This injury was the cause of lost time, between neck and shoulder."

Dr. Schrand completed a report on March 5, 2001 and stated that as of March 1998 appellant had degenerative disc disease related to his December 7, 1995 employment injury. He

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<sup>3</sup> In a report dated February 3, 1999, Dr. Schrand noted appellant's history of injury and medical history. He diagnosed chronic myositis of the shoulders and cervical neuropathy. Dr. Schrand provided work restrictions and stated that appellant required job modifications. This report does not address appellant's claim for total disability from July 7 to November 10, 1998.

stated that appellant was disabled for a “period of time” due to cervical degenerative disc disease and his shoulder. Dr. Schrand stated: “He suffered shoulder and neck symptomatology secondary to a car accident where his arm on the steering wheel jerked his right arm, shoulder and neck. This caused his eventual disability time which was lost.” He concluded that appellant’s degenerative disc disease was aggravated by the December 7, 1995 employment injury.

While Dr. Schrand opined that appellant was totally disabled from July 7 to November 10, 1998 and attributed this disability to an aggravation of degenerative disc disease caused by appellant’s accepted employment injury, his reports are not sufficiently well rationalized to establish appellant’s claim for recurrence of disability due to a change in the nature and extent of appellant’s accepted conditions. The Office has not accepted aggravation of degenerative disc disease as a result of the employment injury. Dr. Schrand did not explain how or why this condition would result from the employment injury. Furthermore, he did not indicate that he was aware of appellant’s light-duty job requirements and did not specifically address why appellant’s diagnosed condition prevented him from performing those duties. Dr. Schrand also failed to provide contemporaneous medical evidence supporting appellant’s total disability for work for the period in question. Without rationalized medical opinion evidence establishing that appellant was totally disabled from July 7 to November 10, 1998 due to his accepted employment injuries of cervical strain, strain right shoulder, arthroscopy right shoulder and chronic rotator cuff syndrome, or medical evidence clearly establishing the additional condition of aggravation of cervical degenerative disc disease and disability resulting from this condition, appellant has not established a recurrence of disability on the dates in question due to a change in the nature and extent of his employment injuries and the Office properly denied his claim.

The September 26, 2001 decision of the Office of Workers’ Compensation Programs is hereby affirmed.

Dated, Washington, DC  
October 18, 2002

Alec J. Koromilas  
Member

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member