

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BEVERLY J. HARDY and U.S. POSTAL SERVICE,
POST OFFICE, Nashville, TN

*Docket No. 02-961; Submitted on the Record;
Issued October 3, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant established that she is entitled to continuing disability compensation for the period of June 27 through September 3, 2001.

On August 17, 1993 appellant, then a 33-year-old mail carrier, was injured in the performance of duty when she was involved in an automobile accident, being struck from behind by a private vehicle. The Office initially accepted the claim for a cervical strain. The claim was later expanded to include aggravation of cervical degenerative disc disease and bilateral shoulder sprain. Appellant did not miss any time from work following the work injury but she was placed on limited duty. Appellant was later placed on nonduty status from March 19 to July 1, 1994, when she signed a temporary limited-duty job offer. The limited-duty job was extended by the employing establishment effective October 14, 1994.

Appellant filed for a recurrence of disability on November 25, 1997, which was also approved by the Office on April 13, 1998.¹ She did not miss any time from work.

Appellant filed a second recurrence of disability claim beginning March 17, 1999. Appellant underwent an anterior cervical discectomy and fusion at C5-6 with iliac crest bone grafts performed on June 3, 1999.

In an April 10, 2000 report, Dr. Scott Standard, a Board-certified neurosurgeon and appellant's treating physician, approved her for modified duty for eight hours a day.

On November 6, 2000 the employing establishment offered appellant a modified full-time city carrier position, which she accepted on November 16, 2000.

¹ Appellant also received an eight percent schedule award for permanent impairment for both arms related to her work injury.

In a January 31, 2001 decision, the Office determined that the position of modified carrier fairly and reasonably represented appellant's wage-earning capacity and that she had zero wage loss due to her work injury.

On May 30, 2001 appellant filed a CA-7 claim for wage loss from May 30 to June 27, 2001. Appellant attached a copy of a CA-20 attending physician's report signed by Dr. Standard on June 6, 2001 indicating that she was disabled from work from May 30 through June 27, 2001 due to cervical pain and would be undergoing physical therapy.²

In a May 1, 2001 attending physician's report, Dr. Jeff Lundy, a family practitioner, noted that appellant was disabled from work beginning April 19, 2001 due to "neck, trapezius, arm pain, suspected due to neck injury." The date of injury was listed as August 17, 1993. He further noted that appellant needed a repeat neurological evaluation prior to a work determination.

In a June 27, 2001 follow-up treatment note, Dr. Standard stated that appellant's MRI showed a good fusion but that she was developing a spur on the left at C6-7. He noted that she would have physiotherapy and epidural steroid injections, and that he anticipated returning her to light-duty work in four weeks.

Appellant filed additional CA-7 claims for wage loss from April 19 to May 30, 2001, June 27 to July 30, 2001, and August 1 to September 1, 2001.

In a July 30, 2001 attending physician's report, Dr. Standard stated the period of total disability to be May 30 through July 30, 2001. The diagnosis was cervical herniated disc. The treatment provided was physical therapy and epidural steroid injections.

In a letter dated August 14, 2001, the Office advised appellant that she had not submitted sufficient medical evidence to support the disability period claimed on her CA-7 claim forms. Appellant was given 30 days to submit the required medical evidence.

On September 14, 2001 appellant filed another CA-7 claim for wage-loss compensation for the period April 19 to September 1, 2001.

In a September 11, 2001 attending physician's report, Dr. Standard listed the period of disability from May 30 through September 1, 2001. He noted that appellant received physical therapy for cervical pain. The date of injury was August 17, 1993.

In an October 3, 2001 letter, the Office advised appellant that she was required to submit a narrative medical report from her treating physician with a detailed explanation on why she was unable to work during the periods she was claiming total disability wage loss.

² In a separate June 6, 2001 report, Dr. Standard noted that appellant was experiencing significant low back pain, neck and shoulder pain. He reported that she increasingly complained that she was unable to work. He ordered a magnetic resonance imaging (MRI) of the cervical spine on June 11, 2001, which showed left lateral disc at C6-7 with neural foramina stenosis.

In a January 11, 2002 decision, the Office denied appellant's claim for wage loss from May 30 to June 27, 2001, noting that she had already received compensation for that period and was not entitled to any additional benefits for that period. The Office further denied compensation from April 19 to May 29 and June 28 to September 1, 2001 on the grounds that appellant had submitted no medical evidence to establish her disability from work for the times claimed.

The Board finds that the Office properly denied appellant's claim for wage loss from April 19 to May 29 and June 28 to September 1, 2001.³

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or she 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 or she cannot perform such light duty. As part of this burden, 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.⁴

In this case, appellant has not shown a change in the nature and extent of her modified-duty job requirements, nor has she submitted sufficient medical evidence to show a change in the nature and extent of her injury-related condition. In support of her claim, appellant submitted several reports from Dr. Standard which either fail to address the period of disability claimed or fail to provide a reasoned medical statement as to why appellant was unable to perform her limited-duty job from June 29 through September 1, 2001. Because there is no reasoned medical evidence to establish that appellant sustained a recurrence of disability beyond the dates paid by the Office, the Board finds that appellant has failed to meet her burden of proof in establishing her claim for compensation for wage loss based on a recurrence of disability.

³ Appellant submitted evidence subsequent to the Office's January 11, 2002 decision; however, that evidence may not be considered by the Board on appeal. The Board's jurisdiction is limited to the evidence that was before the Office at the time it rendered its final decision. See 20 C.F.R. § 501.2(c). This decision does not preclude appellant from submitting evidence to the Office along with a request for reconsideration.

⁴ *Gus N. Rodes*, 46 ECAB 518 (1995); *Cynthia M. Judd*, 42 ECAB 246 (1990); *Terry R. Hedman*, 38 ECAB 222 (1986).

The decision of the Office of Workers' Compensation Programs dated January 11, 2002 is hereby affirmed.

Dated, Washington, DC
October 3, 2002

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member