

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEBRA J. TURK and U.S. POSTAL SERVICE,
POST OFFICE, Detroit, MI

*Docket No. 02-1691; Submitted on the Record;
Issued April 28, 2003*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established a recurrence of disability beginning September 2, 2000 causally related to her accepted August 6, 2000 employment injury.

On August 9, 2000 appellant, then a 43-year-old casual clerk, filed a notice of traumatic injury alleging that she injured her back on August 6, 2000 while picking up a tray off an all-purpose-container (APC) at work. The Office of Workers' Compensation Programs accepted the claim for thoracic strain. Appellant received medical care on the date of injury and was restricted to a sitting position at work with lifting no more than five pounds. Appellant was released to light-duty work beginning on or about August 16, 2000.

On September 7, 2000 appellant filed a notice of recurrence of disability claiming total disability commencing September 2, 2000. By decision dated January 11, 2001, the Office denied the recurrence of disability claim on the grounds that the evidence submitted failed to establish a relationship between the recurrence of disability on September 2, 2000 and the original work injury of August 6, 2000.

On January 16, 2001 appellant requested an oral hearing, which was held on July 24, 2001. By decision dated October 11, 2001, an Office hearing representative found that appellant failed to submit sufficient medical evidence to establish that the work incident of August 6, 2000 caused or contributed to a recurrence of total disability for work beginning September 2, 2000. The Office hearing representative affirmed the January 11, 2001 decision.

On January 14, 2002 appellant through counsel requested reconsideration. By decision dated March 12, 2002, the Office denied reconsideration as the evidence submitted was immaterial to warrant further review. Appellant disagreed and again through counsel requested reconsideration on March 20, 2002.

By merit decision dated May 16, 2002, the Office denied modification of the prior decision. The Office found that the medical evidence of record failed to establish that the work

incident of August 6, 2000 caused or contributed to a recurrence of total disability for work beginning September 2, 2000.

On appeal, appellant through counsel argues in a statement dated November 18, 2002 that the medical evidence of record substantiates that appellant is continually disabled and requires continual medical treatment as a result of the accepted employment injury.

The Board finds that appellant has not established a recurrence of total disability beginning September 2, 2000, causally related to the August 6, 2000 employment injury.

When an employee, who is disabled from the job she 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 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.¹

The medical evidence in this case is insufficient to establish a recurrence of total disability beginning September 2, 2000. In a report dated December 26, 2000, Dr. F.L. Lewerenz, an osteopath, reviewed the employment-related injury of August 6, 2000 and appellant's continuing complaints of pain in the thoracic region. Dr. Lewerenz indicated that appellant returned to work on light duty on August 18, 2000 following the work injury but was unable to continue working after September 2, 2000. The physician reported that appellant at that time felt "off balance" and could not sit, reach or bend without pain. He diagnosed thoracic myositis. Dr. Lewerenz concluded: "Her unsound condition and depressive state prevents her from performing normal daily activities without constant pain and anxiety. Medical care and physical therapy must be maintained to [e]nsure [appellant] will reach maximum medical improvement and be able to return to normal occupational and recreational activities." Such evidence is insufficient to establish a claim for recurrence because the physician offered no specific medical conclusion that appellant had had a recurrence of disability and did not elaborate on how her unsound condition, pain and anxiety prevented her from working.

In a report dated February 28, 2001, Dr. Jasper McLaurin, a Board-certified neurologist, indicated that appellant was evaluated on February 9, 2001 because of pain in the arm, wrist, back and neck. Dr. McLaurin reported that on August 6, 2000 appellant started having severe pain in the neck and right shoulder, which progressively worsened such that she had to stop work. He related that appellant was pushing an "APC cart" and began to lift mail when she twisted her back, neck and shoulder. She later started having pain and swelling in both wrists with numbness in both hands. The physician diagnosed cervical radiculitis C4-6 on the right, bilateral carpal tunnel syndrome, right greater than left and preexisting Bell's palsy on the left. The Board notes that Dr. McLaurin gave a history of the August 6, 2000 employment injury different than that alleged in the claim and did not discuss the accepted injury-related thoracic strain or appellant's work stoppage and pain on September 2, 2000. Dr. McLaurin's report fails to establish that the claimed September 2, 2000 recurrence of total disability was causally related to the August 6, 2000 employment injury.

¹ *Terry R. Hedman*, 38 ECAB 222 (1986).

In a report dated July 23, 2001, Dr. Lewerenz indicated that appellant had a work-related injury on August 6, 2000 and presented for evaluation on January 19, 2001 with mid back pain, chest pain and depression. He diagnosed acute thoracic myositis, radiculitis C4-6 on the right and bilateral carpal tunnel syndrome. Dr. Lewerenz did not mention appellant's work stoppage and pain on September 2, 2000 or discuss the issue of causal relationship between appellant's total disability beginning on the above date and the accepted thoracic strain.

In a December 7, 2001 report, Dr. McLaurin stated that he first saw appellant on February 9, 2001 for an accident that had occurred six months earlier on August 6, 2000 and that at the time he evaluated her, he had no medical information on her. In the December 7, 2001 report, Dr. McLaurin reviewed appellant's complaints of thoracic area pain, with radiation into the cervical area and down the right upper extremity and discussed her injury on August 6, 2000 sustained while lifting a tray at work. He indicated that electromyographic findings support nerve root compression in the C4-6 area, which supply the upper thorax, thus a diagnosis of cervical radiculitis at C4-6 was warranted. Further, Dr. McLaurin reported that at the time appellant was evaluated by him, she was disabled from doing her job as described to him. This report from Dr. McLaurin also fails to establish with sufficient medical reasoning that the claimed September 2, 2000 recurrence of total disability was causally related to the August 6, 2000 employment injury.

On appeal, appellant's counsel asserts that appellant received a light-duty job offer following the accepted employment injury, which was flawed. He states that, although appellant was promised that she would not have to lift or push more than five pounds in the limited-duty position, she performed duties upon her return to work, which caused severe pain and required her to stop on September 2, 2000. Appellant's counsel argues that, in addition to the persistent severe pain she suffered due to the accepted thoracic strain, appellant subsequently developed numbness and loss of equilibrium related to the employment injury such that she was unable to perform her light-duty position. He asserts that when additional evidence was submitted to reveal that new work-related conditions had been diagnosed, the Office should have properly expanded the claim to include the additional work-related diagnoses.

The Board notes that the issue on appeal is whether appellant has established a recurrence of disability beginning September 2, 2000 causally related to her thoracic strain, the only condition accepted by the Office. The Board therefore does not have jurisdiction over whether appellant has sustained other conditions causally related to the August 6, 2000 employment injury on appeal. There is no probative medical evidence in this case establishing that appellant's employment-related condition of thoracic strain worsened as of September 2, 2000 and caused total disability for the light-duty job. The reports from Drs. Lewerenz and McLaurin indicated that appellant complained of upper extremity pain and Dr. Lewerenz noted that appellant had not worked since September 2, 2000. Neither physician, however, offered an opinion supporting causal relationship between disability and the accepted employment injury of thoracic strain in this case. Accordingly, the Board finds that appellant did not meet her burden of proof to establish a recurrence of disability.

The May 16 and March 12, 2002 and October 11, 2001 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
April 28, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member