U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONALD E. CARDIN and U.S. POSTAL SERVICE,
POST OFFICE, Willow Springs, MO

Docket No. 03-181; Submitted on the Record;
Issued April 25, 2003

DECISION and ORDER

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

The issue is whether appellant sustained a recurrence of disability beginning July 11, 2000 causally related to his accepted left shoulder condition.

On November 3, 1993 appellant, then a 46-year-old letter carrier, filed a claim for an occupational disease for suprascapular nerve entrapment that he attributed to carrying a weighted mail pouch on his left shoulder.

The Office of Workers' Compensation Programs accepted, as related to appellant's employment, suprascapular nerve entrapment and the November 16, 1993 surgery he underwent on his left shoulder for this condition.

On August 14, 1999 appellant filed a claim for a recurrence of disability, on which he listed the date of the recurrence as May 5, 1998. Appellant stated that he never carried the mail satchel on his left shoulder after his November 1993 surgery, that he carried it on his right shoulder until he began to experience right shoulder suprascapular nerve inflammation in January 1997, that he then switched to carrying mail "using a waist belt satchel exclusively," and that a May 5, 1998 evaluation of routes and work methods by "outside supervisors" resulted in significant changes: he held flats in his left arm and handfuls of letters at eye level while casing, his route was increased, his delivery case was changed from a two-bundle to a one-bundle system requiring him to cradle more mail in his left arm while walking and his postal vehicle was removed resulting in fewer opportunities to rest his shoulder.

Appellant submitted medical reports from his attending physician, Dr. Russell R. Bond, an osteopath. A June 16, 1999 report stated that appellant had developed a reoccurrence of numbness and pain in his left shoulder and arm after recent job changes and recommended that appellant case mail from a ledge rather than holding it and that he return to a two-bundle system with flats in one bag and letters in another bag. A September 20, 1999 report stated that the June 1999 recommendations were not followed and appellant was using sick and annual leave. January 5 and February 7, 2000 reports indicated that appellant's job was not aggravating his

condition and that he could do his job adequately and a February 9, 2000 report set forth work restrictions of lifting less than 10 pounds intermittently with the left arm, alternating arm use when pushing/pulling and no reaching above 90 degrees with the left shoulder. An April 26, 2000 report stated that appellant had learned to adjust to the one-bundle system by carrying the bundle in his right arm and that the modification was reasonable to continue, as it did not reaggravate his condition.

By letter dated May 17, 2000, the Office advised appellant and the employing establishment that it had accepted the claim for a recurrence on May 5, 1998; the accepted condition was left shoulder entrapment. The Office determined that appellant was entitled to compensation during intermittent periods he used leave between August 12, 1999 and June 19, 2000 if he bought back the leave.

On June 5, 2000 the employing establishment offered appellant a limited-duty position as a city carrier, with restrictions of alternate arm use, no reaching above 90 degrees with the left arm and intermittent lifting of less than 10 pounds with the left arm. Appellant accepted this offer on June 9, 2000 indicating that he signed the offer under protest.

In a report dated June 19, 2000, Dr. Bond described the limited-duty offer and stated that the restrictions were reasonable and should be made permanent.

Appellant stopped work on July 11, 2000. On that day he called the Office and stated that the employing establishment was not honoring his restrictions and had not modified his job and that he was "off work today because he has made himself sick over this." The Office called the employing establishment on July 20, 2000 and was advised that appellant was not being worked outside his restrictions and that all his duties were within the prescribed work limitations. The Office then called appellant who "could not identify an activity, which he's doing that is outside the [work tolerance limitations]."

In a report dated August 14, 2000, Dr. Bond stated that appellant told him "that his job situation has changed because of increased automation and he has not been able to continue on with the job restrictions, which we have recommended and do his job adequately and has not been working for approximately one month. He does not report history of any change in the physical changes that have been reviewed in the previous dictations." In a report dated September 6, 2000, Dr. Bond noted that appellant had "continued discomfort of the left upper extremity" even with reasonable adaptations to his job duties. After describing appellant's findings on physical examination, which included decreased grip and pinch testing on the left, Dr. Bond concluded: "Modifications were recommended to be permanent; however, it was felt that even with these changes at this time he is not able to continue his current job as a postal carrier."

By letter dated September 1, 2000, appellant's attorney contended that appellant was disabled by "work-related emotional stress that is affecting his physical well being." An August 30, 2000 note from Dr. James E. Bright, a Board-certified psychiatrist, stated that appellant was "unable to return to work indefinitely." An August 11, 2000 report from Dr. Dacey Miller, a Board-certified gastroenterologist, noted appellant's feeling that his complaints of diarrhea, weight loss and upset stomach were stress related and appellant's report

of "a lot of stress at work" and inability to perform his duties at work. Dr. Miller diagnosed diarrhea and nonspecific abdominal discomfort and reported weight loss and stated that he advised appellant that his "symptoms could be related to stress associated with anxiety, etc."

By letter dated September 27, 2000, the Office advised appellant that his claim had not been accepted for an emotional condition and that a detailed medical report on this condition was required.

On April 4, 2001 appellant filed a claim for compensation for total disability beginning July 11, 2000.

In an April 16, 2001 telephone conversation, the employing establishment advised the Office that it had provided appellant light duty approved by Dr. Bond. In a May 24, 2001 letter, the employing establishment stated that no limited-duty offers were made to appellant prior to the one dated June 5, 2000, but that appellant was provided with limited duty within the restrictions indicated by Dr. Bond on February 9, 2000.

In a report dated May 22, 2001, Dr. Bright stated that he had treated appellant for "work-related stress and anxiety" since August 15, 2000, that appellant's chief complaint was "losing job," and that he had been unable to work since August 15, 2000 "due to the emotional component created by all the stress and anxiety." In a report dated May 23, 2001, Dr. Bond stated that appellant was "not able to do the job performance within the guidelines requested by the [employing establishment] from the information we were supplied or offered." In a report dated June 27, 2001, Dr. Bond stated that there had been no change in appellant's diagnosis since April 22, 1999 it remained: "Chronic left shoulder pain, suprascapular nerve entrapment, with lesser degree of neuropathic residual pain and mild left shoulder weakness, which was work related."

By decision dated August 22, 2001, the Office found that appellant failed to meet his burden of proof to establish a recurrence of disability beginning July 11, 2000, as the evidence failed to establish that his employment-related conditions prevented him from performing the duties of the limited-duty position offered on June 5, 2000.

By letter dated September 20, 2001, appellant requested a hearing. He submitted a notice of removal dated October 15, 2001, notifying him that he would be removed from the employing establishment on November 24, 2001 for inability to perform his assigned job. The notice noted that appellant had been absent from work since July 11, 2000 and that the various impairments documented in Dr. Bond's June 27, 2001 report[1] precluded his future employment with the employing establishment. He also submitted affidavits from three coworkers stating that appellant was forced to work overtime, made to hold letters in the air while casing, written up for moving his head too much while casing and watched and followed on his route.

At a hearing held on May 24, 2002, appellant testified that the postmaster made informal accommodations after his return to work following his shoulder surgery, that on May 5, 1998

[1] In this report Dr. Bond diagnosed, in addition to a left shoulder problem, a nonwork-related problem of urinary frequency that required modification of his route to allow reasonable access to restrooms.

new supervisors made changes for more efficiency, that the switch to the one-bundle system resulted in numbness, tingling and fatigue of his left arm, that his attempts to hold flats while casing resulted in numbness and shaking of his left arm and that he was written up for not holding flats and for turning his head too much while casing. Appellant testified that the only accommodations were in the June 5, 2000 limited-duty offer and did not address the bundles, that he quit going to work on his attorney's advice, that he was required to work overtime from July 1 to 10, 2000 despite being on the no overtime desired list, that this violated a "union-won right" and that on July 10, 2000 he was required to work overtime after he could not finish his duties in eight hours because the markers for his case were changed. Appellant testified that on July 10, 2000 he soiled his pants and that he was "physically unable to work because of the gastrointestinal and diarrhea."

By decision dated September 9, 2002, an Office hearing representative found that the evidence failed to establish that appellant sustained a recurrence of disability beginning July 11, 2000. The hearing representative found that the employing establishment's June 5, 2000 limited-duty offer was appropriate as it was found suitable by Dr. Bond, that the employing establishment was under no obligation to accommodate nonwork-related conditions, that appellant's claim for a May 5, 1998 recurrence was not accepted until May 2000, that the employing establishment offered to accommodate appellant promptly and that appellant had not shown that his restrictions were violated thereafter. The hearing representative also found that appellant had not shown harassment or abuse in the employing establishment's monitoring or criticism of appellant and that there were no compensable factors shown to support a claim for a gastrointestinal or emotional condition.

The Board finds that appellant has not established that he sustained a recurrence of disability beginning July 11, 2000 causally related to his accepted left shoulder condition.

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 establishes that the employee 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 to show that he or she 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 job requirements.[2]

Appellant has not established a change in his working conditions following his acceptance of the employing establishment's June 5, 2000 limited-duty offer. In a telephone conversation with the Office on July 11, 2000 and in the histories given to Dr. Bond, he alleged that the employing establishment was not honoring his restrictions. Appellant, however, has not described any specific duties that were changed, nor has he described, which of his restrictions were not honored. The employing establishment specifically denied that appellant was assigned any work outside his work tolerance limitations. Appellant has not shown that the limited-duty

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

position, which Dr. Bond reviewed and endorsed as appropriate, changed so that he exceeded his physical limitations and he could no longer perform it.[3]

Appellant also has not shown that his physical condition changed so that he could no longer perform the limited-duty position he accepted on June 5, 2000. Dr. Bond's reports subsequent to appellant's stoppage of work on July 11, 2000 do not reflect a change in his physical condition. The first such report which is dated August 14, 2000, indicates appellant reported that he had no change in his physical condition. This report indicated that appellant could no longer perform his job due to changes in the job, which as noted above, appellant has not established. Dr. Bond's June 27, 2001 report indicated that appellant's diagnosis, which included neuropathic residual pain and mild left shoulder weakness, had not changed since April 22, 1999. Dr. Bond indicated in other reports, such as his September 6, 2000 and May 23, 2001 reports, that appellant could no longer perform his limited-duty position, but did not describe any change in appellant's physical condition that would prevent him from continuing in this position. In a June 27, 2001 report, Dr. Bond attributed appellant's inability to work to the employing establishment's lack of accommodation, which appellant also has not established.

It is not at all clear that appellant stopped work on July 11, 2000 because of his left shoulder condition. His testimony at the May 24, 2002 hearing indicated that he stopped work because of diarrhea or a gastrointestinal condition. In support of his claim for a recurrence of disability beginning July 11, 2000, appellant submitted an August 30, 2000 note from Dr. Bright, a psychiatrist, stating that he was unable to return to work indefinitely. In a May 22, 2001 report, Dr. Bright stated that appellant was unable to work due to an emotional component created by stress and anxiety.

Appellant attributed his gastrointestinal condition and his emotional condition to stressful events at work, including being required to work beyond his limitations, being forced to work overtime when he was on the no overtime desired list, being monitored by managers and being written up for his casing technique. While being required to work beyond one's physical limitations can constitute a compensable factor of employment, appellant, as discussed above, has not shown that this occurred. Monitoring of employee's work is an administrative matter not covered in the absence of a showing of error or abuse.[4] Appellant has not submitted any evidence that shows error or abuse in the employing establishment's monitoring of his work. He also has not submitted any evidence that would tend to show error or abuse occurred when he was written up regarding his casing.[5]

The Board has held that actions of an employee's supervisor, which the employee characterizes as harassment or discrimination may, constitute factors of employment giving rise to coverage under the Federal Employees' Compensation Act. However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that

[3] Although appellant has shown that his duties changed on May 5, 1998, these changes have no bearing on his ability to do the limited-duty position offered by the employing establishment on June 5, 2000.

[4] *Jimmy Gilbreath*, 44 ECAB 555 (1993).

[5] *See Sharon R. Bowman*, 45 ECAB 187 (1993).

harassment or discrimination did in fact occur. Mere perceptions alone of harassment or discrimination are not compensable under the Act.[6] Appellant has not submitted any evidence that he was harassed and has not described specific incidents, in which he allegedly was harassed.

Appellant also alleged that the employing establishment erred by requiring him to work overtime when he was on the no overtime requested list. While violation of the collective bargaining agreement between the employing establishment and the union can show error by the employing establishment,[7] appellant has not shown such a violation. He has not submitted the relevant section of the collective bargaining agreement, the no overtime desired list, or evidence that he was required to work overtime from July 1 to 10, 2000 as alleged. If the medical evidence lent any support to the proposition that required overtime in violation of the collective bargaining agreement contributed to appellant's conditions, the Board might require further development of the evidence on this contention, including submissions by the employing establishment. However, in the absence of such evidence, appellant has not met his burden of proof.

The September 9, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
April 25, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

[6] *Donna Faye Cardwell*, 41 ECAB 730 (1990).

[7] *See Alice M. Washington*, 46 ECAB 382 (1994); *Frank A. McDowell*, 44 ECAB 522 (1993).