

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DENISE Y. JOHNSON and U.S. POSTAL SERVICE,
POST OFFICE, Houston, TX

*Docket No. 02-831; Oral Argument Held June 11, 2003;
Issued August 21, 2003*

Appearances: *Denise Johnson, pro se; Douglas S. Collica, Esq.*,
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability on February 1, 2001, causally related to her May 17, 1990 employment injury.

On June 13, 1990 appellant, a 36-year-old manual distribution clerk, filed a traumatic injury claim alleging that she injured her back on May 17, 1990 while bending over a hamper to lift and remove trays.¹ The Office accepted appellant's claim for lumbar strain,² and she returned to light duty on September 6, 1990.³ She subsequently participated in a work hardening program in February 1992.⁴ Appellant again returned to light duty on April 16, 1992. After several attempts to return appellant to regular duty, she accepted a permanent reassignment to a limited-duty position, effective October 23, 1999.

¹ The record reflects that appellant also filed an occupational disease claim on June 13, 1990, indicating that she sustained a herniated disc as a result of her employment. In a September 19, 1990 memorandum to the file, the Office of Workers' Compensation Programs accepted that appellant sustained a lumbar strain as a result of her work activities. The Office also accepted that appellant sustained a traumatic injury to her low back on May 17, 1990.

² The record reflects that appellant had preexisting congenital dextroscoliosis of the spine and preexisting degenerative joint disease at L4-5 and lumbosacral areas.

³ A January 4, 1991 radiological report was taken of the lumbar spine to rule out a herniated nucleus pulposus, by Dr. C.W. McCluggage, a Board-certified radiologist, who opined that appellant had degenerative lumbar disc disease at L4-5 and L5-S1 with dorsal bulging. Dr. McCluggage noted that the bulge appeared somewhat more significant at the L5-S1 level, however, the clinical significance of the findings was uncertain as discreet root impression was not consistently identified. Dr. McCluggage indicated his impression was a negative examination.

⁴ The Office accepted appellant's work absence as a recurrence of her May 17, 1990 injury.

On July 17, 2000 appellant filed a recurrence claim, alleging disability beginning March 6, 2000.

By decision dated October 2, 2000, the Office denied appellant's claim for a recurrence of disability.

On March 5, 2001 appellant filed another claim for recurrence, alleging disability beginning February 1, 2001. She stated that, shortly after opening the lobby of the employing establishment, while talking with her supervisor, she heard a loud crack and experienced a severe pain to her lower back and could not stand on her left leg.

In support of her claimed recurrence of disability, appellant submitted medical records from Dr. Glenn M. Shipley, an osteopathic physician. In February 1, 2001 reports, he diagnosed a lumbar strain, prescribed physical therapy and opined that appellant could return to work that day with restrictions of no repetitive lifting over 10 pounds, no bending, no pushing and or pulling over 20 pounds of force and sitting 90 percent of the time with limited use of the back. In a February 5, 2001 report, Dr. Shipley again diagnosed a lumbar strain and prescribed conservative treatment of physical therapy and nonsteroidal anti-inflammatory medication, and again opined that appellant could immediately return to work with some restrictions. In a February 12, 2001 report, he diagnosed "lumbar pain" and indicated that appellant could return to regular duty.

By letter dated September 18, 2001, the Office requested additional factual and medical information and afforded appellant 30 days within which to comply. Appellant submitted nothing further and, in a decision dated November 20, 2001, the Office denied appellant's claim for recurrence of total temporary disability for the period beginning February 1, 2001 on the grounds that the medical evidence failed to establish that the claimed recurrence was causally related to the May 17, 1990 employment injury.

The Board finds that appellant failed to establish that she sustained a recurrence of disability on February 1, 2001, causally related to her May 17, 1990 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 light-duty position, or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden of establishing 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 employment-related condition or a change in the nature and extent of the light-duty job requirements.⁵

At the time of her claimed recurrence of disability on February 1, 2001, appellant was on permanent light duty, working as a modified postage due clerk. Her particular duties included sorting, distributing and rating postage due mail, and other duties as assigned within her physical restrictions. In support of her claim, appellant submitted several reports from Dr. Shipley dating

⁵ *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R Hedman*, 38 ECAB 222 (1986).

from February 1 to 12, 2001. In his February 1 and 5, 2001 reports, Dr. Shipley diagnosed lumbar strain and advised that appellant could return to work with certain restrictions. He did not offer any opinion with respect to the cause of appellant's condition. In his February 12, 2001 reports, he diagnosed lumbar pain and released appellant to regular duty. Dr. Shipley did not indicate in any of his reports that appellant could not perform her light-duty position.⁶ In fact, in all of his reports, he advised that appellant could return to modified duty and/or regular duty. The Board therefore finds the reports of Dr. Shipley insufficient to satisfy appellant's burden.

On appeal, appellant alleged that her degenerative disc disease and herniated disc at L5-S1 were related to her accepted employment injury. However, the record reflects that appellant's condition was accepted for a lumbar strain, and she has submitted no rationalized medical evidence to indicate that these further conditions were caused by factors of employment. Further, a January 4, 1991 lumbar myelogram was reported as negative. The Board therefore finds that, in the instant case, appellant failed to demonstrate a change in the nature and extent of the employment-related condition or a change in the nature and extent of the light-duty job requirements. She therefore failed to establish that she sustained a recurrence of disability causally related to the May 17, 1990 employment injury.

The November 20, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
August 21, 2003

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁶ Appellant 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. *See Richard E. Konnen*, 47 ECAB 388 (1996).