U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of APRIL L. PATTON and U.S. POSTAL SERVICE,
POST OFFICE, Wilmington, DE

Docket No. 02-2261; Submitted on the Record;
Issued February 11, 2003

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has established that she sustained a recurrence of disability commencing October 5, 1994, December 7, 1995 or February 18, 1996, causally related to her March 27, 1989 left arm sprain.

The Office of Workers' Compensation Programs accepted that on March 27, 1989 appellant, then a 30-year-old distribution clerk, sustained a sprain of her left arm from pulling a tub of mail, for which she underwent neurolysis, a scalenectomy and a sympathectomy. On November 25, 1991 the Office also accepted that appellant had thoracic outlet syndrome. On June 6, 1994 appellant's treating physician, Dr. Favil I. Chavin, a Board-certified orthopedic surgeon, noted that her diagnosis was "emotional stress," and he released appellant to return to regular duty noting that "the examination that I performed was negative, only subjective symptoms. [Appellant] has not any restrictions placed upon her."

On March 1, 1994 appellant was offered a limited-duty job working in "registry" and performing manual casing and sorting mail by hand into cases. This job offer required no lifting over 20 pounds and repetitive work 6 to 8 hours per day. Appellant accepted this limited-duty job offer on March 16, 1994.

On October 5, 1994 appellant filed a Form CA-2a claim for recurrence of disability commencing October 5, 1994. She failed to submit any supporting medical evidence and her claim was denied by Office decision dated January 5, 1995.

Appellant changed physicians and began treating with Dr. Pierre LeRoy, a Board-certified neurosurgeon, and Dr. Don G. Hunt, a Board-certified general surgeon, both of whom advised that she required work restrictions. By report dated October 16, 1995, Dr. Hunt opined that appellant had an ongoing brachial plexopathy which would be aggravated by lifting more than 15 to 20 pounds and he recommended no heavy lifting or repetitive work. On December 11, 1995 he diagnosed "acute [and] chronic cervical syndrome [with] [thoracic outlet syndrome]." On December 15, 1995 Dr. LeRoy noted that appellant was able to return to work

on December 17, 1995 to light duty with limited stooping and bending and no lifting over five pounds. He noted restrictions on repetitive actions, with no extending above the shoulder and no casing, and with moderate to light-job duty.

On December 10, 1995 appellant filed a Form CA-1 claim for traumatic injury on December 7, 1995 which she claimed occurred as she was casing mail, reaching and aggravated an old injury.[1] This claim was denied by decision dated February 14, 1996.

On February 18, 1996 appellant filed another Form CA-2a claim for recurrence of disability commencing December 7, 1995 and February 18, 1996, asserting that her condition was causally related to the March 27, 1989 employment injury. By letter dated April 4, 1996, the Office requested additional information. After nothing was submitted, the claim was denied by decision dated May 28, 1996.

On July 8, 1996 the employing establishment advised that it could not accommodate appellant's new work restrictions on lifting more than five pounds and no repetitive motion of the arms.

Appellant requested an oral hearing before an Office hearing representative, which was held on November 20, 1996, at which she testified. She submitted a December 11, 1995 report from Dr. Hunt, who stated that appellant complained of increased pain in her neck, shoulders and chest wall. Dr. Hunt opined that she could return to light-duty work with no casing on December 12, 1995.

In a December 16, 1996 report, Dr. Hunt opined that appellant "would be unable to perform her usual duties at the [employing establishment] as of December 7, 1995. It is also my medical opinion that her inability to perform the duties is a result of brachial plexopathy which resulted from her initial injury in 1989."

By decision dated January 31, 1997, the Branch of Hearings and Review affirmed the Office's May 28, 1996 decision, finding that appellant had failed to establish a causal relationship between her original injury and the claimed recurrence of disability.

On April 25, 1997 appellant, through her representative, requested an appeal before the Board. The appeal was docketed as No. 97-1786. By letter dated May 12, 1997, appellant requested that the appeal be dismissed in order that a request for reconsideration could be pursued. The Board issued an order dismissing appeal on June 11, 1997.

By letter dated August 26, 1997, appellant, through her representative, requested reconsideration of the January 31, 1997 decision. She submitted a narrative report from Dr. Hunt, who stated with respect to her December 16, 1996 job limitations, as follows:

> "[S]he was unable to perform her usual duties at the [employing establishment] because of work-related injury dating back to December 7, 1995. To be specific, I do not believe that she will be able to case mail because the repetitive action of

[1] This was treated as a separate claim.

casing mail perpetuates the injury which she had sustained. This is true even though she has had a brachial plexis decompression. It is well documented in medical literature that patients with this problem have a difficult time returning to work that requires repetitive action of any type."

By decision dated December 11, 1997, the Office denied modification of the January 31, 1997 decision. The Office found that Dr. Hunt's report did not provide a well-reasoned opinion as to the relationship between appellant's current restrictions and her 1989 injury, but, in fact, referenced a December 7, 1995 work injury as causal, which had never been accepted by the Office as having occurred as alleged.

Thereafter appellant appealed to the Board. The appeal was docketed as No. 98-1179, but was remanded to the Office on May 6, 1999 for reconstruction and proper assemblage of the case record.

By decision dated June 7, 2002, the Office again denied modification of its prior decisions.

The Board finds that appellant has failed to establish that she sustained a recurrence of disability commencing October 5, 1994, December 7, 1995 or February 18, 1996, causally related to her March 27, 1989 left arm sprain employment injury.

An employee returning to light duty or whose medical evidence shows the ability to perform light duty, has the burden of proof to establish a recurrence of temporary total disability by the weight of reliable, probative and substantial evidence and to show that he or she cannot perform the light duty.[2] As part of this burden, the employee must show a change in the nature and extent of the injury-related conditions or a change in the nature and extent of the light-duty requirements.[3]

Appellant accepted and returned to limited duty on March 16, 1994. She continued to successfully work at this assignment until October 5, 1994 when she claimed a recurrence of disability. However, appellant failed to submit any probative evidence establishing that on that date she experienced a change in the nature and extent of her injury-related condition or a change in the nature and extent of her limited-job duties. She returned to work, but on December 10, 1995 she claimed, alternatively, a new injury and a recurrence of disability on December 7, 1995. Appellant's claim for a new injury on December 7, 1995 was denied in a separate claim. In support of her claim for a December 7, 1995 recurrence of disability, she cited Dr. Leroy's changed work limitations. However no further probative evidence was submitted which established a change that date in the nature and extent of either her injury-related condition which necessitated such changed activity restrictions or in her limited-duty job requirements. No rationale was given by Dr. LeRoy for his reduction in appellant's lifting limit or her restriction from repetitive work, and no objective change in her condition was identified. A year later Dr. Hunt opined that appellant "would be unable to perform her usual duties at the

[2] *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

[3] *Id.*

[employing establishment] as of December 7, 1995. It is also my medical opinion that her inability to perform the duties is a result of brachial plexopathy which resulted from her initial injury in 1989." However, no rationale for this opinion was given, no identification of any objective change in the nature or extent of appellant's injury-related condition on December 7, 1995 was identified, and the condition of brachial plexopathy was not an accepted condition as being causally related to her 1989 left arm sprain injury or its subsequent surgery. Therefore this evidence does not support that appellant sustained a recurrence of disability on December 7, 1995.

Appellant also alleged a recurrence of disability commencing February 18, 1996, the date she filed her recurrence claim for December 7, 1995 and for February 18, 1996. The Office requested further supporting information, however, nothing was submitted and this claim was denied on May 28, 1996.

Appellant has therefore failed to submit sufficient evidence to establish that she sustained a 1989 injury-related recurrence of disability on October 5, 1994, December 7, 1995 or February 18, 1996 by demonstrating a change in the nature and extent of her injury-related condition or a change in the nature and extent of her limited-duty job requirements.

The altered activity restrictions recommended for a December 17, 1995 could, *arguendo,* be evidence of a change in her injury-related condition, however, no objective physical evidence was identified which supported the need for these work-restriction changes and no claim for a December 17, 1995 recurrence of disability has been made. When these altered activity limitations were reiterated by Drs. LeRoy and Hunt, again they were not supported by objective evidence of a change in the nature and extent of appellant's injury-related condition which required these stricter limitations. Further, when the employing establishment advised appellant that they could not accommodate her increasingly strict activity limitations, this did not establish a change in the nature and extent of her limited-duty job requirements, as her accepted limited-duty position remained available and unchanged.

As appellant has failed to submit sufficient probative evidence to establish that she sustained a change in the nature and extent of her injury-related condition on the dates alleged or that on these dates, there was a change in the nature and extent of her limited-duty job requirements, she has failed to establish any of her recurrence claims.

Accordingly, the decision of the Office of Workers' Compensation Programs dated June 7, 2002 is hereby affirmed.

Dated, Washington, DC
February 11, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member