

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONALD N. TAYLOR and DEPARTMENT OF JUSTICE,
IMMIGRATION & NATURALIZATION SERVICE, San Diego, CA

*Docket No. 02-1911; Submitted on the Record;
Issued January 2, 2003*

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
MICHAEL E. GROOM

The issue is whether appellant has established entitlement to compensation from February 22 to April 15, 2002.

On January 2, 2002 appellant, then a 54-year-old senior operation inspector filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1), alleging that he sustained injuries on January 1, 2002 when he was physically assaulted. The Office of Workers' Compensation Programs accepted the claim for chest and groin contusions and a lumbar strain. Appellant returned to a light-duty position, then stopped working on February 22, 2002. He filed a claim for compensation (Form CA-7) for the period February 22 to April 5, 2002.

By decision dated June 20, 2002, the Office denied appellant's claim for compensation commencing February 22, 2002, on the grounds that the medical evidence was insufficient to establish the claim.

The Board finds that appellant has not established an employment-related total disability from February 22 to April 15, 2002.

When an employee, who is disabled from the job he 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

In a report dated January 29, 2002, Dr. Peter Low, an occupational medicine specialist, indicated that appellant had been released to light duty as of January 2, 2002. Dr. Low noted physical restrictions such as a 10-pound lifting restriction. In a report dated February 13, 2002,

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

Dr. Roy Wong, an occupational medicine specialist, noted that appellant continued to work light duty, although sitting on a chair without a back support seemed to aggravate back pain. Dr. Wong indicated that appellant should continue light duty with restrictions that included a 10-pound lifting restriction and a chair with back support. In a report dated March 14, 2002, Dr. Low noted that appellant had been placed off work by his family practitioner; Dr. Low released appellant to light-duty work.

Appellant's claim for total disability as of February 22, 2002 is based on a February 21, 2002 report from Dr. Ralph Hernandez, a family practitioner, who noted that appellant had recently been assaulted on the job, and he was "concerned how this has affected his current medical illnesses, which have been exacerbated, and made worse because of the increased physical and emotional stress." Dr. Hernandez concluded that appellant must take a minimum of 45 days off work in order to recuperate. To the extent that Dr. Hernandez finds that the employment injuries aggravated appellant's medical condition, he does not explain what specific condition or conditions were aggravated or how the employment injuries aggravated appellant's medical condition. Dr. Hernandez stated that the employment injuries had affected appellant's current medical illnesses, without providing additional explanation. To be of probative value, the medical evidence must contain an opinion, based on a complete factual and medical background and supported by sound medical reasoning, on disability causally related to the employment injury.²

It is appellant's burden of proof to establish that total disability as of February 22, 2002 was causally related to his federal employment. The Board finds that the medical evidence of record is not of sufficient probative value to meet appellant's burden of proof in this case.

The decision of the Office of Workers' Compensation Programs dated June 20, 2002 is affirmed.

Dated, Washington, DC
January 2, 2003

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

² *Dennis J. Lasanen*, 43 ECAB 549 (1992); *Robert H. St. Onge*, 43 ECAB 1169 (1992).