

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ELLA M. MURRAY and U.S. POSTAL SERVICE,
PROCESSING & DELIVERY CENTER, Oakland, CA

*Docket No. 03-143; Submitted on the Record;
Issued July 29, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has met her burden of proof in establishing that she developed a recurrence of disability on or after February 14, 2002 causally related to her July 21, 1997 employment injury.

Appellant, a 54-year-old mailhandler, filed a notice of occupational disease on January 29, 1992 alleging that she developed a sharp pain in her right shoulder due to duties of her federal employment. The Office of Workers' Compensation Programs accepted appellant's claim for right shoulder tendinitis and bursitis on July 9, 1992. Appellant alleged that she sustained a recurrence of disability on February 1, 1995. The Office accepted that appellant sustained a right shoulder rotator cuff tear and impingement syndrome on May 25, 1995. Appellant alleged a recurrence of disability on July 28, 1997. The Office also accepted the additional condition of strains of the cervical spine and trapezius on December 15, 1997.

On March 15, 2002 appellant claimed that she sustained a recurrence of disability on February 14, 2002 due to her July 21, 1997 employment injury. In a letter dated April 22, 2002, the Office requested additional factual and medical evidence. Appellant responded and stated that her light-duty job requirements had changed. By decision dated June 26, 2002, the Office denied appellant's claim noting that appellant's attending physician stated that her employment-related condition remained the same.¹

The Board finds that the case is not in posture for decision.

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 to establish

¹ Following the Office's June 26, 2002 decision, appellant submitted additional new evidence. As the Office did not consider this evidence in reaching a final decision, the Board will not review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c).

by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that 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 requirements.²

In support of her claim, appellant submitted work release notes from her physician, Dr. Bowen Wong, a Board-certified neurologist, stating that appellant was totally disabled from February 14 to June 13, 2002. These notes did not provide a diagnosis, a history of injury or any opinion on the causal relationship between appellant's current condition with resultant disability and her accepted employment injury. Therefore, these notes are not sufficient to meet appellant's burden of proof in establishing that she developed a recurrence of total disability due to her employment on February 14, 2002.

In a report dated April 30, 2002, Dr. Wong stated that appellant's condition had not changed and that appellant continued to have the same work restrictions. He stated, "However, it appears that she is getting tired of working and, therefore, perhaps she should officially retire rather than go off on work-related total temporary disability. From a medical perspective, I think she can still perform her duties given the extremely limited nature of her work as well as the accommodation provided by the [employing establishment]." Dr. Wong concluded that appellant should be able to work and that her absence was her choice and not due to a worsening of her employment-related condition. This report does not support appellant's claim for a recurrence of total disability due to her employment injuries and is not sufficient to meet her burden of proof.

Appellant accepted a light-duty assignment on April 6, 1998. Her duties were to work eight hours a day in the office performing miscellaneous duties, traying up letters of flats, rewrapping in nixie, stacking plastic trays and performing shrink wrap as well as tagging pallets. Appellant's position description required her to lift up to 10 pounds for 15 minutes each hour, walk intermittently, stand continuously, sit and bend intermittently, and key for 30 minutes per hour. Appellant was not allowed to push, pull, reach above the shoulder, climb, nor carry. The employing establishment noted that appellant was unable to lift objects above the shoulder level and that she could not hold her head up or down for long periods of time.

Appellant alleged that her light-duty assignment changed. She stated that her work station was changed and that she was required to work in the middle of the aisle in front of the open doors and that she was exposed to cold air from the air conditioning vents. She stated that her duties changed from "processing waste mail to pulling tape from the dispenser and placing it onto tags which was more demanding and repetitive work." Appellant submitted identical statements from four coworkers substantiating her changed work environment and duties.

Appellant indicated that her work duties and station had changed and that her recurrence of total disability was due to this change. The Office did not develop the factual evidence by providing the employing establishment with appellant's description of the changes of her duties and did not request that the employing establishment comment on appellant's allegations.³ As

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

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.7.a(3) (May 1997).

the Office did not comply with its own procedures in developing the evidence in this case, the Board finds that the case must be remanded for additional development of the factual evidence in accordance with the Office's procedure manual. After this and such other development as the Office's deems necessary, the Office should issue an appropriate decision.

The decision of the Office of Workers' Compensation Programs dated June 26, 2002 is hereby set aside and remanded for further development consistent with this decision of the Board.

Dated, Washington, DC
July 29, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member