

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of QUINTINA D. PARKER and U.S. POSTAL SERVICE,  
POST OFFICE, Detroit, MI

*Docket No. 03-1145; Submitted on the Record;  
Issued July 25, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof in establishing that she sustained recurrences of disability, due to the January 27, 2001 employment injury, for the periods August 4 to September 10, 2001 and from September 27 to October 2, 2001.

The Office of Workers' Compensation Programs accepted appellant's claim for contusion of the right foot and contusion of the right knee. On December 6, 2001 appellant, then a 32-year-old letter carrier, filed a claim for a recurrence of disability of the January 27, 2001 employment injury commencing August 4, 2001. On December 6, 2001 appellant filed a claim for a recurrence of disability of the January 27, 2001 employment injury, commencing September 27, 2001. Appellant indicated that she was seeking disability compensation from August 4 to September 10, 2001 and from September 27 through October 2, 2001.

By letter dated January 9, 2002, the union secretary, Steve Burt, stated that appellant experienced some complications during her pregnancy and her doctor took her off her delivery duties but not her six hours of other duties, and after her pregnancy appellant resumed the two hours of delivery. Mr. Burt stated that, when appellant informed management that she had to stop delivering mail, management told appellant to stop working which created eight hours of wage loss instead of two hours of wage loss. Mr. Burt stated that, when appellant was able to resume two hours of delivery, management kept appellant off work a few more days.

A disability note dated August 6, 2001 from Dr. Michael L. Berke, a Board-certified obstetrician and gynecologist, stated that appellant needed to do light-duty work for a week with no mail delivery. A disability note dated August 14, 2001 from Dr. Berke stated that appellant could not work from August 6 through September 10, 2001, but also that she required light-duty work with no mail delivery due to complications from her pregnancy. Duty status reports dated September 9 and November 12, 2001 and January 8, 2002 from Dr. Stanley M. Poleck, an osteopath, indicated that appellant could carry mail for two hours and should not climb stairs. In a duty status report dated September 10, 2001, Dr. Poleck stated that appellant could carry mail for two hours but could not do more because of her pregnancy.

By decision dated March 7, 2002, the Office denied appellant's claims for the recurrences of disability, stating that the first recurrence of disability beginning August 4, 2001 appeared to be due to appellant's disability from her pregnancy, and the claim for a second recurrence of disability commencing September 27, 2001 lacked evidence supporting either the disability or that the employing establishment pull her from restricted duty for that period. In the decision, the claims examiner stated that in an attempt to substantiate the attempt for any job withdrawal, she called the injury compensation office and spoke with the compensation specialist. The compensation specialist informed her (*i.e.*, the claims examiner) that she did not have any written records that demonstrated that appellant's limited or light duty was pulled during the period claimed. The compensation specialist told the claims examiner that she had informed appellant that there were forms appellant had to submit to the employing establishment which appellant did not submit, and therefore the injury compensation specialist could neither confirm nor deny that the job was withdrawn for the days in question.

On April 9, 2002 appellant requested an oral hearing before an Office hearing representative which was held on September 24, 2002. At the hearing, appellant described the original injury to her right knee, and stated that she had never returned to full duty and the injury did not get much better. She stated that, when she goes upstairs, her knee gives out. Appellant stated that initially she carried no mail, but then they moved her up to carrying mail for two hours, and after her pregnancy she was moved up to carrying mail for four hours with no stair climbing. Appellant testified that she became pregnant in June 2001 and had complications with bleeding in August 2001 and her doctor took her off work. Appellant also explained the disability notes from Dr. Berke and Dr. Poleck, an osteopath. She testified that, when she returned to work on October 4, 2001, she had a 15-pound weight restriction. Appellant stated that between September 10 and 27, 2001 she was performing the same restrictions, carrying the mail two hours and working six hours on the inside. She stated that approximately on September 24, 2001 the employing establishment started to demand more paperwork from her and she missed a week commencing September 27, 2001 because they would not let her work.

In a duty status report dated May 9, 2001, Dr. Poleck indicated that appellant could work full time, carry up to 35 pounds for 2 hours, sit 4 to 8 hours and walk 4½ hours. In a duty status report dated June 19, 2001, Dr. Poleck stated that appellant could carry for two hours and walk four and a half hours. A form presumably from the employing establishment signed by appellant on May 14, 2001, appellant accepted a light-duty, full-time job which involved five hours of walking and carrying up to five hours. On a form dated October 9, 2001, Dr. Poleck stated that appellant could carry four hours.

In a disability note dated August 10, 2001, Dr. Berke stated that appellant was unable to work until further notice due to complications related to her pregnancy. In a disability note dated August 15, 2001, Dr. Berke stated that appellant was having a lot of complications related to her pregnancy, and required light-duty work from August 6 through September 10, 2001 with no mail delivery. In a disability note dated September 10, 2001, Dr. Berke stated that appellant could return to work on September 11, 2001 but could carry more than 10 pounds for the mail delivery. In a disability note dated October 2, 2001, Dr. Berke stated that appellant could not lift more than 15 pounds.

By letter dated October 21, 2002, a representative from the employing establishment, Charlotte A. Gaines, stated that, on May 9, 2001, Dr. Poleck released appellant to five hours of fieldwork. She stated that light-duty requests are addressed based on the union contract and employees' Labor/Management Manual Decision and the availability of work within the light-duty restrictions. Ms. Gaines stated that in offices with an abundance of employees with work-related restrictions, it was not unusual for light-duty requests to be denied or approved with reduced hours. She stated that, on September 10, 2001, the obstetrician placed weight restrictions on appellant and Dr. Poleck reduced appellant's time for mail delivery to two hours a day. Ms. Gaines note stated that the recurrence period was governed by appellant's obstetrician and not her treating physician.

By letter dated November 12, 2002, appellant's union representative, Mr. Burt, stated that appellant testified that prior to the recurrences she was typically working two hours of mail delivery, and even an analysis of her exact delivery hours from July 28 through 30, 2001 and on August 2, 2001, showed that she worked less than five hours. Mr. Burt stated that, even appellant lost as much as five hours of delivery capacity, it was not fair of management to lay her off for the entire period of the disability, as she could have worked the remaining three hours of the day.

By letter dated November 25, 2002, Ms. Gaines stated that the fact that the employing establishment did not utilize appellant prior to her recurrences of disability up to her five-hour delivery capacity did not negate her treating physician's releasing her for five hours of delivery. Ms. Gaines stated that appellant's pregnancy complications prevented the employing establishment from fully utilizing appellant within the restrictions provided for her job-related condition.

By letter dated December 17, 2002, Mr. Burt emphasized that the partial reduction in appellant's work capacity due to the pregnancy did not warrant the absolute wage loss suffered by appellant since she still had the capacity to perform some of her limited-duty work.

By decision dated January 13, 2003, the Office hearing representative affirmed the Office's March 7, 2002 decision.

The Board finds that appellant did not establish that she sustained recurrences of disability from August 4 to September 10, 2001 and from September 27 to October 2, 2001.

An individual who claims a recurrence of disability, due to an accepted employment-related injury, has the burden of establishing by the weight of the substantial, reliable, and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.<sup>1</sup> 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 by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that she cannot perform such light duty.<sup>2</sup> As part of this burden, the

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<sup>1</sup> *Dominic M. DeScala*, 37 ECAB 369 (1986); *Bobby Melton*, 33 ECAB 1305 (1982).

<sup>2</sup> *George DePasquale*, 39 ECAB 295, 304 (1987); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

employee must show a change in the nature and extent of the light-duty job requirements or a change in the nature and extent of the injury-related condition.<sup>3</sup> This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury, and supports that conclusion with sound medical reasoning.<sup>4</sup> An award of compensation may not be made on the basis of surmise, conjecture, or speculation or an appellant's unsupported belief of causal relation.<sup>5</sup>

Regarding the period of the first alleged recurrence of disability, from August 4 to September 10, 2001, Dr. Berke's disability notes dated from August 6 through 15, 2001 stated that appellant was having a lot of complications related to her pregnancy, and either could not work at all from August 4 to September 10, 2001 or required light work with no mail delivery. In a duty status report dated September 10, 2001, Dr. Poleck indicated that appellant could carry for two hours but could not do more because of her pregnancy. Thus, appellant has not shown for the time period August 4 to September 10, 2001 that her injury-related condition changed. Rather, she showed that her ability to carry for two hours was impaired due to her pregnancy. She also did not show that her light-duty work requirements changed. Although Mr. Burt stated that, even if during that time period, August 4 to September 10, 2001, appellant was unable to perform mail delivery due to her pregnancy, she still should have been allowed to perform her light-duty work inside which might have been up to six hours (depending on whether one accepts appellant could carry for two to five hours prior to her recurrences). The employing establishment suggested, however, that it was not necessarily able to provide a job with reduced hours and, in any event, appellant's capacity to carry for five hours, which she agreed to do in her acceptance of the job offer, was reduced due to her pregnancy. While it seems unfortunate the employing establishment could not provide work for appellant with reduced hours while she was having complications due to her pregnancy, the employing establishment's response indicates that it did not have such work available.

Regarding the period of the second recurrence of disability from September 27 to October 2, 2001, no medical evidence of record establishes either that appellant's light-duty work requirements were changed or that she had a change in her work-related condition. Duty status reports from Dr. Poleck indicated that as of September 10, 2001 appellant could carry for two hours. On October 9, 2001 he increased the amount she could carry to four hours. In a disability note dated September 10, 2001, Dr. Berke stated that appellant could carry 10 pounds for mail delivery. In a disability note dated October 2, 2001, Dr. Berke stated that appellant could not lift more than 15 pounds. Further, as noted above, in the Office's first decision, the claims examiner stated that she spoke with a compensation specialist who informed her that she did not have any written records that demonstrated that appellant's limited or light duty was pulled during the period claimed and appellant did not submit forms the injury compensation specialist told her that she needed to submit. Thus, the record also does not contain evidence that appellant's job was withdrawn during the time period of the second recurrence of disability.

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<sup>3</sup> *Id.*

<sup>4</sup> *See Nicolea Brusco*, 33 ECAB 1138 (1982).

<sup>5</sup> *See William S. Wright*, 45 ECAB 498, 503 (1994).

The January 13, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
July 25, 2003

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member