

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM SALUS and U.S. POSTAL SERVICE,
POST OFFICE, Edison, NJ

*Docket No. 02-2023; Submitted on the Record;
Issued June 17, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant sustained a recurrence of total disability beginning January 8, 2001 causally related to his work injury of January 26, 2000.

On January 26, 2000 appellant, then a 56-year-old letter carrier, filed a notice of traumatic injury and claim for compensation (Form CA-1), alleging that he slipped on ice while delivering mail and injured his back, shoulder and knee. An emergency room medical report dated January 26, 2000 diagnosed lumbosacral sprain, right knee sprain and acromion separation, closed. In a duty status report dated January 17, 2000, Dr. Harlan Hiramoto, a Board-certified orthopedic surgeon, placed appellant on restricted duty. On February 17, 2000 the Office of Workers' Compensation Programs accepted the claim for right shoulder sprain, right knee sprain, contusion of the knee and lumbar sprain. A magnetic resonance imaging test done on March 21, 2000 revealed an undersurface tear of the posterior horn of the medial meniscus and the Office accepted this condition. In a May 25, 2000 letter, the Office approved arthroscopic surgery on appellant's right knee.

In an August 11, 2000 report, Dr. Hiramoto wrote that appellant had surgery performed on June 24, 2000 but he was still experiencing pain and his knee would occasionally buckle when he tried to get up. In a September 11, 2000 report, he indicated that appellant could return to work 20 hours a week in a sedentary capacity provided he could get up and walk around every 30 minutes. In an October 9, 2000 report, Dr. Hiramoto indicated that appellant could walk and stand 6 hours a day, reach above his shoulder 4 hours a day, squat and kneel 2 hours a day and lift no more than 25 pounds and pull and push no more than 30 pounds.

On October 27, 2000 the employing establishment offered appellant a position as modified city carrier based on Dr. Hiramoto's restrictions.

In a November 2, 2000 report, Dr. Hiramoto wrote that appellant was still having pain in his knee and shoulder, but that it was time for him to return to work to see how it goes. In a

November 7, 2000 letter, appellant wrote that he could neither accept nor reject the offered position until he could see his physician.

In an October 17, 2000 postal investigation report, appellant was observed walking up and down stairs, fixing his lawn mower, carrying boat batteries and other physical activities outside his medical restrictions. In a November 15, 2000 progress note, Dr. Hiramoto wrote that appellant was anxious to return to work but feared the position as described would not allow him enough time to rest his knee. On examination he found appellant to have a normal gait with no effusion. Dr. Hiramoto also indicated that he would contact appellant's rehabilitation specialist to see if this job description could be modified to allow a 30-minute break of sitting prior to walking 30 minutes.

On November 27, 2000 appellant accepted the job offer and returned to work on December 4, 2000. In a December 12, 2000 duty status report, Dr. Hiramoto repeated appellant's restrictions but did not mention sitting for 30 minutes prior to walking.

In a December 12, 2000 letter, Robert Sans, a rehabilitation counselor wrote to Dr. Hiramoto that he had visited appellant's work, observed him working and that his modified job had two parts; the first three hours appellant stood on a rubberized floor and sorted mail. He said appellant's supervisor lowered the top level of the mail sorter to fit appellant's medical restrictions. Appellant was also provided a stool to sit on so he could sit whenever he felt it necessary. After the mail was sorted, Mr. Sans wrote, appellant's supervisor would push the cart of mail to the van and load it and then appellant would deliver the mail for approximately five hours. Mr. Sans wrote that appellant was not constantly on his feet during the first 45 minutes and during at least 1 period appellant delivered mail from the postal van. He indicated that the Office was giving appellant assistance in both casing and delivering his mail, yet appellant was unhappy with the job assignment and wanted to work elsewhere.

On January 6, 2001 appellant stopped work. In a January 16, 2001 report, Dr. Julie Ann S. Juliano, specializing in family medicine, wrote to the postmaster that a computerized tomography scan revealed a large mass in appellant's lower abdomen. On January 9, 2001 he underwent a procedure to drain the abscess, following which it became infected. Dr. Juliano advised the postmaster that appellant did not respond to therapy and was hospitalized on January 11, 2001 and still in the hospital as of the time of her report.

On February 8, 2001 appellant filed a notice of recurrence and claim for compensation (Form CA-2a), indicating that the job he returned to on December 4, 2000 exceeded his work restrictions. Appellant's supervisor indicated on the back of the CA-2a, that appellant said he could not do the work assigned to him because it exceeded his medical restrictions. The supervisor said that appellant was given assistance in performing his duties and allowed to rest when "deemed necessary."

In a February 12, 2001 report, Dr. Hiramoto wrote that appellant continued to complain of pain in his knee, particularly with increased use. On examination he found the knee unchanged; it had good motion and no effusion.

In a February 20, 2001 letter, Theodore Stirling, the postmaster, wrote that appellant's duties were within his medical restrictions, yet he complained about the job on the first day he returned. Mr. Stirling indicated that appellant received assistance on most days that he worked. On January 6, 2001 he requested, but was denied assistance because he was ahead of schedule on his route. According to Mr. Stirling, appellant then said he did not feel well and left the facility.

In a February 28, 2001 letter, the Office requested more information from appellant regarding his recurrence claim. In a March 5, 2001 report, Dr. Hiramoto wrote that appellant was still having persistent pain in his right knee and that x-rays showed early degenerative changes occurring in the medial compartment. He stated: "[W]ith reasonable medical probability, diminished functional capacity referable to the right shoulder and right knee will remain permanently. Appellant's current symptoms and treatment to date appears to directly relate to the injuries of January 2000." He indicated that appellant was applying for disability retirement.

In a March 14, 2001 report, Dr. Hiramoto wrote that appellant still had pain in his knee and shoulder that seemed to be getting worse. He diagnosed contusion of the right shoulder with mild tendinitis and sprained right knee with a small ganglion cyst.

In a March 15, 2001 letter, appellant wrote that he was allowed to sit a total of 70 minutes during his entire workday; that during the first 4 hours and 30 minutes of work when he set up the delivery route he had no breaks to sit. The only time he can sit on his delivery route was when he drove from one point to the next and during two 10-minute breaks. Appellant further wrote that because of his injuries he could not do the route in the allotted eight hours and he repeatedly needed assistance. He indicated that he started his modified assignment on December 4, 2000 and everyday the pain was worse until he could no longer do the job on January 8, 2001.

In response to appellant's statement, the employing establishment wrote that it had done several things to accommodate appellant, including reconfiguring his equipment to allow him to case mail without having to raise his arm past his shoulder and providing a stool to sit on while performing other duties such as updating his route book, writing up certified slips etc. They also disputed appellant's contention that he was not allowed to sit, that casing mail required lifting above his shoulder and that he was erroneously denied assistance.

In an April 3, 2001 decision, the Office denied appellant's recurrence claim finding that the evidence of record did not establish that his work duties exceeded his medical restrictions.

In an April 10, 2001 decision, appellant requested a hearing. At the hearing he testified that while his equipment was reconfigured he still was exceeding his restrictions because the mail would pile up in certain slots and, therefore, exceed the height limitations of his restrictions, that he was provided a stool, but was told he could not use it while casing mail, that while he could sit while driving for 70 minutes on the route, the sitting was intermittent, not continuous.

In an October 5, 2001 report, Dr. Hiramoto wrote:

"[Appellant] had a functional work capacity performed at Somerset Medical Center.... [He] has a standing tolerance from 6 [to] 33 percent of an 8-hour

workday. With regard to elevated work, which would be reaching above the shoulder, he has a tolerance of 6 [to] 33 percent of an 8-hour workday. With regard to lifting a horizontal lift up to 17.5 pounds, he has a work tolerance of 1 [to] 5 percent of an 8-hour workday. Lifting from waist to overhead lift, he has a limit of 12.5 pounds and floor to waist lift also 12.5 pounds. It is recommended in the functional capacity evaluation that he can only do this one [to] five percent of an eight-hour workday. With regard to repetitive squats, [appellant] is capable of doing this maneuver 6 [to] 33 percent of an 8-hour workday.

“With regard to the job description described for [appellant], the limitations with regard to walking, standing and reaching above the shoulder will not be appropriate for [him].”

In a December 20, 2001 decision, the hearing representative denied appellant’s claim finding that the evidence did not establish that his job duties exceeded his medical restrictions; nor did the medical evidence establish that appellant’s condition had worsened.

Appellant requested reconsideration. In support of his request, he submitted the functional capacity evaluation referenced by Dr. Hiramoto in his October 5, 2001 report. The report indicated that appellant was cooperative and his objective tests were consistent with his subjective pain.

In an April 26, 2002 decision, the Office denied modification of its previous decisions, finding that appellant has not established that his job duties exceeded his medical restrictions.

The Board finds that appellant has not met his burden of proof to establish that he sustained a recurrence of total disability.

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 of record establishes that he 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 he 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 job requirements.¹

Appellant has not established a change in the nature or extent of his light-duty job. He consistently maintained that he could not perform the light-duty job, but it was an assignment he accepted and his treating physician indicated that he could perform. While appellant has argued that his job duties exceeded his medical restrictions, the employing establishment refuted those allegations by pointing out that they modified his work station to accommodate his restrictions, allowed him to rest when needed and provided additional assistance to appellant to ease and complete his route.

¹ *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

The medical evidence is also insufficient to establish a recurrence of total disability. While Dr. Hiramoto supports appellant's contention that he experienced pain, he does not clearly state that appellant was totally disabled as of January 8, 2001 due to his accepted injuries. In his November 2, 2000 report, Dr. Hiramoto indicated that appellant was still having pain in his knee and shoulder, but that he was releasing him to perform the light-duty job assignment. In his January 13, 2001 report, Dr. Hiramoto indicated that appellant complained of pain after a lengthy period on his feet and that x-rays revealed degenerative changes, but he did not indicate that appellant was disabled from performing his light-duty job. In his October 5, 2001 report, Dr. Hiramoto interpreted a November 28, 2001 functional capacity evaluation and opined that the limitations with regard to walking, standing and reaching above the shoulder were not appropriate for appellant, but he did not indicate that appellant was totally disabled or that his condition was causally related to the accepted conditions.

The evidence required to establish causal relationship is rationalized medical evidence, based on a complete factual and medical background, showing a causal relationship between the claimed medical condition and the identified factors.² Dr. Hiramoto did not explain why appellant was totally disabled on or after January 8, 2001, nor has he provided a rationalized opinion necessary to meet appellant's burden of proof. He did not explain why the diagnosed degenerative knee condition was causally related to the employment injury or why appellant's accepted condition has changed for the worse to the point where appellant can no longer do his specific restricted job. This rationalized opinion is necessary because a postal investigation showed appellant's activities outside work exceeded his medical restrictions. Moreover, the medical evidence establishes that appellant had an abscess in his abdomen drained on January 9, 2001. Dr. Juliano reported that due to an infection arising after this procedure, appellant was hospitalized as of January 11, 2001. This evidence mitigates against appellants disability on or after January 8, 2001 arising as a recurrence of an accepted condition.

The Board finds that appellant has not met his burden of proof to establish a recurrence of total disability. The evidence of record does not establish that his light-duty job requirements changed; nor does the medical evidence establish that his injury-related condition changed to the extent that he was totally disabled.

² *Id.*, *Dennis Mascarenas*, 49 ECAB 215 (1997).

The decisions of the Office of Workers' Compensation Programs dated December 20 and April 3, 2001 and April 26, 2002 are affirmed.

Dated, Washington, DC
June 17, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member