

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TERESA DAVIS and U.S. POSTAL SERVICE,
POST OFFICE, Camden, NJ

*Docket No. 03-1277; Submitted on the Record;
Issued October 14, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
MICHAEL E. GROOM

The issue is whether appellant sustained a recurrence of disability beginning March 19, 1999.

The Office of Workers' Compensation Programs accepted that appellant sustained tenosynovitis of both wrists in the performance of her duties as a window clerk. Following authorized surgery on her right wrist and hand, appellant returned to part-time limited duty on March 28, 1998, answering telephones using a headset.

By May 9, 1998 appellant had returned to working full time in this position. As recommended by her attending osteopath, Dr. Scott Fried, and pursuant to offers by the employing establishment, appellant decreased her hours of work to six per day on July 28, 1998 and to four per day on September 28, 1998. On January 27, 1999 appellant filed a claim for a recurrence of disability beginning July 28, 1998.

On March 12, 1999 appellant filed a claim for a recurrence of disability, on which she listed the date of the recurrence as March 12, 1999 and the date she stopped work as March 19, 1999. With use of four hours of annual leave on March 19, 1999, appellant, who had been working four hours per day, five days per week, began working four hours per day, four days per week. In a note dated March 12, 1999, Dr. Fried stated: "Please decrease work to four hours a day, four days a week due to exacerbation of symptoms in upper extremities."

By decisions dated April 30, 1999, the Office found that appellant had not established that she sustained a recurrence of disability beginning July 28, 1998, and that she had no further disability or need for medical treatment causally related to her accepted condition. Following a hearing held at appellant's request on October 26, 1999, an Office hearing representative, by decision dated January 13, 2000, found that appellant "failed to establish that she had continuing disability causally related to her accepted work injury of June 18, 1993. A final decision with regard to whether or not there are any residuals of the work injury entitling the claimant to

continuing medical care will need to be further addressed by the Office once the claim file is returned.”

By decision dated May 2, 2000, the Office found that appellant was not entitled to further medical treatment, that she had no continuing residual disability, and that she did not sustain a recurrence of disability on March 19, 1999.

Appellant appealed the Office hearing representative’s January 13, 2000 decision to the Board. By decision and order dated March 18, 2002, the Board found that the Office had not resolved a conflict of medical opinion regarding the extent of appellant’s ability to work beginning July 28, 1998.¹

By decision dated April 24, 2002, the Office accepted that appellant sustained a recurrence of partial disability on July 28, 1998 when she reduced her hours from eight to six per day. The Office also found that, since a recurrence of disability was now accepted, its April 30, 1999 decision terminating appellant’s compensation could not be considered valid, since the Office did not provide appellant notice of its proposal to terminate her compensation.

By decision dated January 22, 2003, the Office’s Branch of Hearings and Review² found that appellant had not established that she sustained a recurrence of disability on March 19, 1999, as the weight of the medical evidence did not establish a change in her “disability factors” and the factual evidence did not establish a change in her light-duty assignment. The termination of appellant’s medical benefits was reversed, and the case was returned to the Office for adjudication of appellant’s claim for a recurrence of disability in September 1998, when she reduced her number of work hours per day from six to four.

The Board finds that appellant has not established that she sustained a recurrence of disability beginning March 19, 1999.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee 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 to show that he or 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 job requirements.³ These principles apply not only to situations where an employee is claiming a recurrence of total disability but also to situations such as appellant’s, where the claim for a recurrence is that the extent of partial disability increased.⁴

¹ Docket No. 00-1644.

² A hearing was held on March 13, 2002 but the Office hearing representative who conducted this hearing left the employment of the Office before issuing a decision.

³ *Terry R. Hedman*, 38 ECAB 222 (1986).

⁴ *See Mary A. Howard*, 45 ECAB 646 (1994).

Appellant has not shown that her physical condition changed so that she was no longer able to perform her limited duty for four hours per day, five days per week. Dr. Fried's March 12, 1999 note requested that appellant's work schedule be reduced from five to four part-time days "due to exacerbation of symptoms in upper extremities." The Office's procedure manual states that an increase in pain does not establish an increase in disability.⁵ In addition, Dr. Fried, in a March 7, 1999 report, concluded that appellant should "try and stay on four hours per day." Dr. Fried's recommendation to reduce appellant's workdays is also contrary to the opinion of Dr. Gary Goldstein, a Board-certified orthopedic surgeon to whom the Office referred appellant to resolve a conflict of medical opinion.⁶ In this report, prepared two days before appellant's disability is claimed to have recurred, Dr. Goldstein concluded, "I have no question, in my mind, at this time, that the patient can work full time in her limited-duty status." The weight of the medical evidence does not establish that appellant's condition changed on March 19, 1999 so that she was unable to perform part-time limited duty for five days per week.

Appellant also has not established that her limited duty changed to the extent that it exceeded her work tolerance limitations. Appellant testified at a March 13, 2002 hearing that in March 1999 the number of telephone calls she answered increased from about 25 per day to 50 to 60 when another zone was added to her office. Even if this is accepted as accurate, it does not show that the increased duties exceeded her work tolerance limitations.⁷

In his March 7, 1999 report, Dr. Fried stated that on a functional capacity evaluation on February 9, 1999 appellant "showed sedentary work capabilities," that "she should use a headset for [tele]phone activities," and that "she needs to be on non-demand self-paced work. She does not tolerate the ability to proceed with any repetitive hand, wrist or arm activities with gripping, pushing, pulling and the like." In response to appellant's claim for a recurrence of disability on March 19, 1999, appellant's supervisor reported on April 22, 1999 that appellant was provided with a headset and had "to push a single button to route the calls," that she did "not have to dial a [tele]phone for any reason," that she had "no other duties," that she was allowed "to take breaks from her duties as needed," and that she was permitted "to be very lax [sic] in her work duties." Even at appellant's higher estimate of 60 calls per four-hour day, which is equal to an average of one every four minutes, it would be hard to characterize appellant's duties as repetitive. Appellant has not shown a change in her duties that would preclude her from continuing her part-time limited duty on a five-day-per-week basis.

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.7a(1) (May 1997).

⁶ The conflict of medical opinion was not on the question of whether appellant sustained a recurrence of disability on March 19, 1999.

⁷ See *Fallon Bush*, 48 ECAB 594 (1997).

The January 22, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
October 14, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member