U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ISAIAH ISRAEL and U.S. POSTAL SERVICE,
CHICAGO BULK MAIL CENTER, Forest Park, IL

Docket No. 03-1950; Submitted on the Record;
Issued October 10, 2003

DECISION and ORDER

Before COLLEEN DUFFY KIKO, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant established that he was entitled to wage-loss compensation for the period of February 9 to March 18, 2001.

On August 1, 2000 appellant, then a 37-year-old distribution clerk, sustained a left elbow contusion while in the performance of duty. He did not cease work at the time of his August 1, 2000 injury. On August 7, 2000 appellant sustained another traumatic injury to his right shoulder. He did not stop work following his August 7, 2000 injury, but instead accepted an August 8, 2000 limited-duty assignment as a debris processor, which allowed him to work while using only one hand. The employing establishment extended the light duty debris processor assignment on January 22, 2001, which appellant accepted. The Office of Workers' Compensation Programs accepted appellant's August 7, 2000 employment injury for right shoulder strain and subacromial impingement.

Dr. Jason L. Koh, an orthopedic surgeon, examined appellant on February 8, 2001 and diagnosed subacromial impingement, acromioclavicular joint arthritis and adhesive capsulitis. He stated that appellant was totally disabled as of February 8, 2001 and recommend arthroscopic surgery for his right shoulder.[1] Appellant stopped working on February 9, 2001.

The employing establishment wrote to Dr. Koh on February 9, 2001 inquiring about appellant's ability to work and the proposed surgery. Additionally, the employing establishment provided Dr. Koh a copy of a recent limited-duty job offer for his review. On February 13, 2001 Dr. Koh noted his approval of the January 22, 2001 light duty, debris processor position.

On February 20, 2001 Dr. Koh submitted another report (Form CA-20), in which he reiterated his earlier diagnosis. However, unlike his February 8, 2001 report, he stated that appellant was capable of performing light-duty work effective February 8, 2001. Dr. Koh further

[1] Dr. Koh submitted a formal request for authorization of surgery on February 14, 2001.

indicated that appellant was only able to perform work involving his left arm and that he was scheduled for surgery on March 19, 2001.

On March 1, 2001 the Office approved Dr. Koh's request for surgery and on March 19, 2001 he performed a right shoulder arthroscopic labral repair and subacromial decompression.

With Dr. Koh's approval, the employing establishment offered appellant a limited-duty position effective November 17, 2001. On December 5, 2001 the Office found the offered position to be suitable. Appellant did not return to work, but instead opted for disability retirement through the Office of Personnel Management. He retired effective December 3, 2001.[2]

Appellant filed numerous claims for compensation (Form CA-7), dating back to February 9, 2001 and he received appropriate wage-loss compensation for a majority of the time claimed. However, he did not receive wage-loss compensation for the approximate five-week period preceding his March 19, 2001 authorized surgery. In a decision dated February 5, 2002, the Office found that appellant failed to establish that he was disabled during the period of February 9 to March 18, 2001. The Office explained that, while Dr. Koh initially indicated that appellant was totally disabled beginning February 8, 2001, he later reported on February 20, 2001 that appellant was only partially disabled for work beginning February 8, 2001. The Office further noted that it had requested additional medical evidence clarifying Dr. Koh's position regarding the extent of appellant's disability, but no such evidence had been received.

Appellant requested reconsideration on or about August 12, 2002. He argued that the employing establishment's injury compensation specialist provided false and misleading information to Dr. Koh, which resulted in his change of opinion regarding appellant's ability to work during the period of February 9 to March 18, 2001.

By decision dated October 24, 2002, the Office denied modification of the February 5, 2002 decision. The Office explained that appellant failed to establish a recurrence of disability on or about February 9, 2001, because the evidence did not demonstrate a worsening of his condition or a change in the nature and extent of his limited-duty job assignment.

The Board finds that appellant failed to establish that he was entitled to wage-loss compensation for the period of February 9 to March 18, 2001.

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[3] 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

[2] The Office issued a decision on February 26, 2002 finding that appellant was not entitled to future compensation benefits, including a schedule award, due to his refusal to accept an offer of suitable employment. Appellant did not subsequently challenge the Office's February 26, 2002 decision.

[3] 20 C.F.R. § 10.5(x).

burden of establishing 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 employment-related condition or a change in the nature and extent of the light-duty job requirements.[4]

The record indicates that appellant began performing limited-duty work on August 8, 2000 and that this same position was extended on January 22, 2001. He stopped work on February 9, 2001 based on the advice of his physician, Dr. Koh, who on February 8, 2001 indicated that appellant was totally disabled due to right shoulder subacromial impingement, acromioclavicular joint arthritis and adhesive capsulitis. However, after communicating with the employing establishment, Dr. Koh approved appellant's January 22, 2001 light-duty assignment as a debris processor and he noted on February 20, 2001 that appellant was capable of performing light-duty work effective February 8, 2001. Dr. Koh limited appellant to performing work involving only his left arm pending the right shoulder arthroscopic surgery scheduled for March 19, 2001.

Dr. Koh subsequently explained his change of opinion regarding appellant's work status effective February 8, 2001. In his August 30, 2001 progress notes, he advised that he had an extensive discussion with appellant that day regarding his disability status dating back to February 8, 2001. Dr. Koh stated that, when he first evaluated appellant on February 8, 2001 appellant advised him that "there was no such thing as one-handed work available." He further stated that because appellant told him there was no one-handed work available, he placed him on total disability because of his inability to use his right arm. Dr. Koh explained that he later received a copy of a January 22, 2001 letter from the employing establishment to appellant regarding the availability of one-handed work, which appellant had signed. He stated that based on the prior information he received from appellant and the duties described in the January 22, 2001 letter, he determined that appellant could perform one-handed work and notified him accordingly on February 21, 2001. Dr. Koh also stated that, when he first examined appellant on February 8, 2001 he was unaware that appellant had already been performing limited duties as described in the January 22, 2001 position description.

During their August 30, 2001 discussion, appellant became upset and he reiterated his contention that there was truly no one-handed work available. Dr. Koh stated that he was unable to make the determination of whether this was true or not and, therefore, he adhered to his February 20, 2001 assessment that appellant was capable of performing limited-duty work. He specifically stated that "given [appellant'] physical examination of February 8[, 2001] and the description of the one-handed work provided by the [employing establishment], I felt that at least to the best of my ability, I was able to determine that [appellant] was able to do this one-handed job."

In the instant case, appellant failed to demonstrate a change in the nature and extent of the employment-related condition or a change in the nature and extent of the light-duty job requirements. There is no evidence that his limited-duty assignment as a one-handed debris processor changed. Although appellant alleged that there was no one-handed work available for

[4] *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222 (1986).

him, he did not submit any evidence to substantiate his allegations. Additionally, Dr. Koh indicated that appellant was capable of performing the duties described in the January 22, 2001 job offer. Moreover, he fully explained that his February 8, 2001 finding of total disability was based on an incomplete history of the type of work appellant had been performing and the continued availability of light duty at the employing establishment. Accordingly, the Office properly denied appellant's claim for wage-loss compensation during the period of February 9 to March 18, 2001.

The October 24, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
October 10, 2003

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member