

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LASHEA WALKER and U.S. POSTAL SERVICE,
POST OFFICE, Detroit, MI

*Docket No. 03-741; Submitted on the Record;
Issued January 28, 2004*

DECISION and ORDER

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

The issues are: (1) whether appellant established that she sustained a recurrence of disability on or after May 24, 2001 causally related to her accepted work-related shoulder condition; and (2) whether the Office of Workers' Compensation Programs properly terminated appellant's medical benefits.

On August 25, 1992 appellant, then a 34-year-old distribution clerk, filed a notice of occupational disease alleging that she sustained repetitive motion injuries to the neck and shoulder as a result of her work duties. The record reflects that at the time she filed her claim she was working limited duty.¹ The Office accepted the claim for permanent aggravation of a preexisting right shoulder impingement syndrome and paid compensation for intermittent periods of total disability from August 4 to 10 and December 17, 1992 to January 8 and August 3 to 20, 1993. Appellant returned to her limited-duty job following each of these periods of total disability. Appellant filed a claim for a recurrence of disability for the period March 25 to April 4, 1994, which was denied by the Office on July 19, 1994.

Appellant filed a claim for a recurrence of disability and a CA-7 claim for wage-loss compensation beginning May 24, 2001.

By letter dated June 15, 2001, the Office advised appellant of the medical and factual evidence required to establish her claim for a recurrence of disability. The Office requested that a rationalized medical opinion be submitted from appellant's treating physician explaining how appellant's work-related condition worsened or the requirements of her limited duty changed to the extent that she was now disabled for work. No additional information was received.

¹ Appellant sustained a prior work injury on March 4, 1989 when she fell backwards while sitting in a chair and struck the back of her head against the floor. The Office accepted this claim for head contusion and cervical strain. Appellant was released to limited duty on May 5, 1989 with the following restrictions: no lifting greater than 10 pounds with the left arm; no repetitive bending in the cervical spine; and no shoulder activities with either arm, no pushing, pulling or dragging of weight greater than 10 pounds.

In a decision dated July 26, 2001, the Office denied appellant's claim for a recurrence of disability on the grounds that the evidence failed to establish that appellant had any continuing disability causally related to her work-related right shoulder condition. The Office noted that prior authorization for medical benefits was terminated. Appellant disagreed with this decision and requested a written review of the record. By decision dated April 10, 2002, an Office hearing representative affirmed the Office's July 26, 2001 decision.

Appellant subsequently filed a request for reconsideration on October 17, 2002 and submitted a report from Dr. Muzaffar K. Awan, a family practitioner and pain management specialist, dated May 15, 2002.² Dr. Awan indicated that appellant continued to have limitations of the neck and shoulder due to her original work injury of March 4, 1989, and that she should not perform repetitive movements of the shoulder or lift, push, pull or drag greater than 10 pounds. In a November 25, 2002 decision, the Office denied modification of its prior decision.

The Board finds that appellant failed to establish that she sustained a recurrence of disability on or after May 24, 2001 causally related to her accepted work-related shoulder condition.

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

In this case, appellant did not submit any medical evidence to establish that she was disabled for work on or after May 24, 2001 due to her accepted work injuries. The Board notes that Dr. Awan's May 15, 2002 report references appellant's traumatic injury claim of March 4, 1989 but the physician does not address the relevant issue of whether appellant sustained a recurrence of disability as of May 24, 2001 resulting from her accepted claim. Dr. Awan's opinion fails to demonstrate that appellant was unable to perform her limited-duty job on or after May 24, 2001 since he essentially stated that appellant's work restrictions remained the same as when she was first assigned to limited duty. Dr. Awan did not offer an opinion that appellant was unable to perform her limited-duty assignment, and there is no evidence of record from which to find that the requirements of appellant's limited-duty job changed or that the limited-duty position was no longer in compliance with her medical restrictions.

² In a September 25, 2002 letter, appellant alleged that the Office misled her in filing a claim for a new occupational disease on August 25, 1992 as opposed to a claim for a recurrence of disability causally related to the traumatic injury of March 4, 1989. The Office correctly explained to appellant that, since she stated on the CA-2 claim of August 25, 1992 that her right shoulder condition was due to work factors which occurred over more than one workday, then the claim filed on August 25, 2002 met the definition of an occupational disease claim and not one for a recurrence of disability.

³ *Linda Thompson*, 51 ECAB 695 (2000); *William M. Bailey*, 51 ECAB 197 (1999).

As appellant did not submit any medical evidence to establish a change in the nature and extent of her light-duty job requirements or a change in the nature and extent of her light-duty job such that she was disabled for work, she failed to carry her burden of proof in establishing a recurrence of disability on or after May 24, 2001. Accordingly, the Office properly denied compensation for a recurrence of disability.

The Board, however, notes that the Office's July 26, 2001 decision stated in part that appellant's authorization for further medical treatment was terminated based on the denial of appellant's claim for a recurrence of disability. In order to terminate compensation, the Office must follow proper procedure to notify appellant of any proposed termination of her compensation.⁴ Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation.⁵ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁶ To terminate authorization for medical treatment, the Office must establish that appellant no longer has any residuals on an employment-related condition that requires further medical treatment.⁷ Although the Office properly denied the recurrence of disability claim, the Office has not established that the residuals due to the accepted employment-related conditions have resolved. Moreover, the Office did not provide prior notice of its intent to terminate medical benefits. The Office improperly held that appellant was no longer entitled to medical benefits.

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.6(b)(4) (March 1997).

⁵ *John W. Graves*, 52 ECAB 160 (2000); *Curtis Hall*, 45 ECAB 316 (1994).

⁶ *Frederick Justiniano*, 45 ECAB 491 (1994).

⁷ *Id.*

The decisions of the Office of Workers' Compensation Programs dated November 25 and April 10, 2002 are affirmed, in part, and reversed, in part, and the case is remanded for proceedings consistent with this opinion.

Dated, Washington, DC
January 28, 2004

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member