United States Department of Labor
Employees' Compensation Appeals Board

MARIA J. PAPA, Appellant	)	
and	)	**Docket No. 04-490**
	)	**Issued: July 9, 2004**
U.S. POSTAL SERVICE, POST OFFICE, Newark, NJ, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On December 16, 2003 appellant, through her attorney, filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated January 16, 2003 denying her claim for recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that she sustained a recurrence of total disability on or after June 4, 2001.

FACTUAL HISTORY

On November 18, 1991 appellant, then a 26-year-old letter carrier, filed a notice of traumatic injury alleging that on that date she injured her back while lifting in the performance of her federal duties. The Office accepted appellant's claim for herniated discs at L4-5 and L5-S1 on May 6, 1992. Appellant returned to light-duty work and, on March 3, 1992 she filed a

recurrence of disability claim on February 19, 1992. The Office accepted appellant's claim for recurrence and entered her on the periodic rolls on June 14, 1993.

Appellant underwent a lumbar discography on February 17, 1994 as well as percutaneous laser disc decompression at L4-5 and a L4-5 laminectomy on January 27, 1995. Appellant also underwent a microdisectomy at L4-5 on May 9, 1996. Appellant's attending physician, Dr. Alfredo S. Prada, a Board-certified neurosurgeon, released her to return to full-time light-duty work on February 24, 1997. Appellant's work restrictions included standing, sitting and walking intermittently for four hours each, no bending, stooping, climbing, twisting or kneeling and no lifting over 10 pounds. Dr. Prada indicated that appellant should not work above her shoulder and should not push or pull. He found that appellant should not drive. However, he advised that appellant should be able to raise her arms to case mail. Appellant worked in a position within these restrictions from February 24, 1997 until June 4, 2001.

On June 12, 2001 appellant filed a notice of recurrence of disability alleging that on June 4, 2001 she became totally disabled. She stated that her condition had progressively worsened, affecting her back, legs and arm. Appellant submitted a form report from Dr. Prada in support of her claim. By letter dated October 17, 2001, the Office requested additional factual and medical evidence in support of her claim.

By decision dated February 25, 2002, the Office denied appellant's claim for recurrence of total disability finding that she failed to submit sufficient evidence to establish either a change in the nature and extent of her injury-related condition or a change in the nature and extent of her light-duty job requirements.

On February 28, 2002 appellant, through her attorney, requested an oral hearing. Appellant testified at her oral hearing on October 23, 2003.

By decision dated January 16, 2003, the hearing representative reviewed appellant's testimony as well as the additional evidence submitted and affirmed the February 25, 2002 decision.

LEGAL PRECEDENT

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 establish 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. 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 requirements.[1]

[1] *Terry R. Hedman*, 38 ECAB 222 (1986).

ANALYSIS

In support of her claim that she had experienced a change in the nature and extent of her injury-related condition, appellant submitted a series of form reports from Dr. Prada, a Board-certified neurosurgeon, who found that appellant experienced lumbar radiculopathy and diagnosed failed back syndrome beginning on June 29, 2001. He indicated with a checkmark "yes" that appellant's current condition was due to her employment. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's disability was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.[2] Furthermore, Dr. Prada's form reports dating from June 29 through December 28, 2001, do not provide any opinion regarding whether appellant's total disability was due to a change in the nature and extent of her injury-related condition.

Appellant also submitted a brief narrative report dated June 5, 2001 from Dr. Prada in which he stated that appellant experienced a recurring back injury. Dr. Prada did not provide any physical findings in support of his conclusion and did not offer any medical reasoning for his determination that appellant was totally disabled. This report is not sufficient to meet appellant's burden of proof and does not establish a change in the nature and extent of her accepted employment injuries.

In an undated report, received by the Office on November 25, 2002, Dr. Charles G. Kalko, a neurosurgeon, stated that he first examined appellant on August 26, 2002 more than one year after her alleged recurrence of total disability on June 4, 2001. Dr. Kalko noted appellant's history of injury and provided findings on physical examination. He diagnosed lumbar radiculopathy and recurrent sciatica. Dr. Kalko stated:

> "As to the issue of causality, it is a well documented fact that [appellant] had work injury in 1991 which resulted in three separate surgeries on the same level. She ultimately improved to the point where she was able to return to work until symptoms began to reappear in June 2001. Based on the patient's clinical presentation, history of injury and diagnostic review, I can say within a reasonable degree of medical probability that [appellant's] exacerbation of symptoms is related to the trauma she sustained in 1991."

While this report suggests that appellant's current condition is due to her accepted employment injury, Dr. Kalko did not describe a change in the nature and extent of appellant's employment-related condition. He merely stated that appellant experienced an "exacerbation of symptoms" without any physical findings establishing that appellant had an additional herniation of the accepted discs or any other change in her medical condition. As Dr. Kalko's report does not address the central issue in this case it is not sufficient to meet appellant's burden of proof.

At the oral hearing on October 23, 2002 appellant asserted that her recurrence of disability on June 4, 2001 was due to a change in the nature and extent of her light-duty job

[2] *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

requirements. Appellant stated that she was required to lift her arms, to stand more than 4 hours, to twist, to exceed her lifting restriction of 10 pounds, to bend and that the additional job requirement of delivery of "hot cases" had been added. Appellant described "hot cases" as a bundle of mail which she delivered in her own car to carriers on their routes. The employing establishment responded to appellant's allegations on December 3, 2002 and stated that appellant was not required to work beyond her physical restrictions. The employing establishment, however, stated that appellant was occasionally requested to "hot case" or drive and hand off letters to carriers as stated by appellant at the oral hearing.

The Board notes that the work restriction evaluations provided by Dr. Prada in 1996, indicated that appellant could not drive. Appellant's light-duty job descriptions in 1996 and 1998, did not include driving as one of her duties. Therefore appellant has established a change in the nature and extent of her light-duty job requirements as her position at the time of her recurrence of disability in June 4, 2001 required her to drive in violation of her physician's light-duty restrictions. Changes that cause the light-duty assignment to exceed the employee's work restrictions may result in a compensable recurrence of disability. An employee is not obligated to perform work that does not comply with the physical restrictions established by the medical evidence.[3]

CONCLUSION

The Board finds that appellant experienced a change in the nature and extent of her light-duty job requirements. On remand, the Office should determine any period of total disability that resulted from this change and issue an appropriate decision.

[3] *Kim Kiltz*, 51 ECAB 349, 353 (2000).

ORDER

IT IS HEREBY ORDERED THAT the January 16, 2003 decision of the Office of Workers' Compensation Programs is set aside and remanded for additional development consistent with this decision of the Board.

Issued: July 9, 2004
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member