

**United States Department of Labor
Employees' Compensation Appeals Board**

P.G., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Canfield, OH, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 09-2052
Issued: April 1, 2010**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 10, 2009 appellant, through her representative, filed a timely appeal from the July 13, 2009 merit decision of the Office of Workers' Compensation Programs, which denied her claim for total disability compensation beginning December 12, 2008. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUE

The issue is whether appellant sustained a recurrence of total disability beginning December 12, 2008 causally related to her March 31, 2008 employment injury.

FACTUAL HISTORY

On March 31, 2008 appellant, then a 48-year-old clerk, sustained an injury in the performance of duty when she tripped over a cooler of flats. The Office accepted her claim for lumbar strain, lumbosacral sprain (ligament), cervical strain, face contusion and left knee contusion. It later expanded its acceptance to include cervical disc displacement at C5-6 without myelopathy. Appellant received compensation for periods of disability. On August 6, 2008 she

accepted a modified assignment working four hours a day, three days a week, as prescribed by Dr. Ali Shakir, her physiatrist.

On December 12, 2008 appellant stopped work and claimed compensation for total disability. The Office advised that she would continue to receive compensation for 28 hours a week but that there was insufficient medical documentation to support total disability beginning December 12, 2008.

On January 21, 2009 Dr. Shakir reported that appellant described her pain as diffuse over her neck and low back. She did not have a radicular pain pattern to support the cervical disc protrusion being the source of the majority of her pain. On examination there were findings to support the presence of pain amplification, and Dr. Shakir noted that appellant had little to no desire to return to her previous work level. He addressed her disability:

“The patient’s condition has not deteriorated and has been stable for the past few months. Medical interventions utilized have not altered her presentation and her exam[ination] findings are more consistent with soft tissue injuries with pain amplification behavior and should have responded to the conservative treatments utilized and the time given. I feel that the patient should be able to tolerate light-duty work; however, the patient does not feel that she is capable of working.”

In a decision dated February 19, 2009, the Office denied appellant’s claim for total disability compensation beginning December 12, 2008. It found no medical evidence to support that she could not work 12 hours a week with restrictions, as provided by Dr. Shakir.

Dr. Shakir obtained a functional capacity evaluation on March 3, 2009 that indicated appellant could function at a sedentary-light physical demand level. High scores on pain questionnaires, associated with clients amplifying their pain or disability, indicated a significant trend toward disability behavior and her test was considered an inconsistent measure of appellant’s maximum functional ability. On May 3, 2009 Dr. Shakir completed a work capacity evaluation, finding appellant capable of working eight hours a day with restrictions.

In a decision dated July 13, 2009, an Office hearing representative affirmed the Office’s February 19, 2009 decision. The hearing representative found no medical evidence to support that appellant was totally disabled for work beginning December 12, 2008 as a result of her March 31, 2008 employment injury.

LEGAL PRECEDENT

The Federal Employees’ Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.¹ When an employee, disabled from her date-of-injury job on account of injury-related residuals, returns to a limited-duty position or the medical evidence of record establishes that she can perform the limited-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 she cannot perform such limited-duty work. As part of this burden, the employee must show a change in the

¹ 5 U.S.C. § 8102(a).

nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty job requirements.²

ANALYSIS

Following her March 31, 2008 employment injury, appellant returned to a modified assignment working four hours a day, three days a week. On December 12, 2008 she stopped work completely and claimed compensation for total disability. Appellant therefore has the burden to show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty job requirements.

Appellant has not shown a change in the nature and extent of her injury-related condition. Indeed, Dr. Shakir, her physiatrist, reported on January 21, 2009 that her condition had not deteriorated and had been stable “for the past few months.” Medical interventions did not alter her presentation, and her examination findings were more consistent with soft tissue injuries with pain amplification behavior that should have responded to conservative treatments. It was Dr. Shakir’s consistent opinion that appellant was not totally disabled for work.

Appellant also has not shown a change in the nature and extent of the limited-duty job requirements, such that she was no longer capable of performing her duties beginning December 12, 2008. She never implicated such a change.

Because the evidence does not establish that appellant was totally disabled for work beginning December 12, 2008, much less totally disabled as a result of her March 31, 2008 employment injury, the Board finds that she has not met her burden of proof. The Board will affirm the Office’s July 13, 2009 decision.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained a recurrence of total disability beginning December 12, 2008 causally related to her March 31, 2008 employment injury.

² See *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

ORDER

IT IS HEREBY ORDERED THAT the July 13, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 1, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board