

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

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**T.E., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Kansas City, MO, Employer**

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**Docket No. 09-2040  
Issued: July 27, 2010**

*Appearances:*

*Melford V. McCormick, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On July 20, 2009 appellant filed a timely appeal from a June 26, 2009 decision of the Office of Workers' Compensation Programs denying her recurrence of disability claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>1</sup>

**ISSUE**

The issue is whether appellant established that she sustained a recurrence of disability beginning June 18, 2008 causally related to her September 12, 2005 employment injury.

**FACTUAL HISTORY**

The Office accepted that appellant, a 51-year-old rural letter carrier, sustained a lumbosacral sprain/strain on September 12, 2005 due to delivering mail. Appellant missed

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<sup>1</sup> Appellant originally requested oral argument before the Board but withdrew the request on September 20, 2009.

intermittent periods of work and received wage-loss compensation benefits. She was released to light duty on January 16, 2006 and returned to modified duty.

A conflict in medical opinion arose between appellant's attending physician, Dr. James S. Zarr, Board-certified in physical medicine and rehabilitation, and Dr. Don B.W. Miskew, a Board-certified orthopedic surgeon, as to her residual disability and capacity for light-duty work. Appellant was initially referred to Dr. David Clymer, a Board-certified orthopedic surgeon, who advised on August 14, 2006 that her accepted strain had resolved and found that her continuing complaints were due to degenerative disc disease. Dr. Clymer provided temporary work restrictions for a two-month period. On February 16, 2007 Dr. Terrence Pratt, a Board-certified physiatrist, diagnosed multilevel bulging discs and spinal stenosis. He found that the September 12, 2005 injury had aggravated appellant's underlying degenerative disease. The Office found a conflict in medical opinion between Dr. Clymer and Dr. Pratt as to whether appellant's accepted injury had ceased and referred her to Dr. Joseph W. Huston, a Board-certified orthopedic surgeon, selected as the new impartial medical specialist. Based on Dr. Huston's July 27, 2007 report, it accepted that appellant sustained a permanent aggravation of lumbar degenerative disc disease with myelopathy for which work limitations of a sedentary nature were provided.

In an April 16, 2008 report, Dr. Zarr saw appellant in follow up for her low back pain and work restrictions. He noted that she reached maximum medical improvement by examination on May 30, 2006 and released her to full-time work with permanent restrictions. Dr. Zarr reiterated that appellant could not lift, push or pull greater than 15 pounds for up to three hours a day with walking, bending and stooping limited to a maximum of three hours a day.<sup>2</sup>

On June 16, 2008 the employing establishment offered appellant a temporary limited-duty carrier position in which she would answer telephones, work at computers, assist in updating information for three to eight hours a day and distribute mail to other stations and staff for one to five hours a day. The physical requirements of the modified assignment involved sitting, standing, reaching, driving/operating motor vehicle one to eight hours a day; walking, bending, stooping one to three hours a day; and pushing, pulling and/or lifting up to 15 pounds one to three hours a day. On June 16, 2008 appellant rejected the position contending that it did not comply with her physical restrictions. She stopped work that day and did not return. The employing establishment advised the Office that the temporary-duty assignment complied with Dr. Zarr's restrictions of April 16, 2008.

On June 20, 2008 Dr. Zarr advised the employing establishment that he reviewed the modified position and found it to be appropriate for appellant.

On June 27, 2008 the Office noted that appellant stopped work on June 16, 2008 and that it appeared she might claim a recurrence of disability. Appellant was advised that the medical evidence of record did not support a recurrence of total disability as of that day. She was advised to submit additional evidence necessary within 30 days.

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<sup>2</sup> On June 16, 2008 the employing establishment forwarded physical limitations recommendations from Dr. J. Simon Szeto, appellant's internist, dated May 19, 2008. Dr. Szeto found that appellant could work full time subject to specified restrictions. On June 19, 2008 he advised that he would no longer render medical treatment.

On June 26, 2008 Dr. Pratt stated that he reviewed job restrictions from May 2008 and a job description report, which exceeded the restrictions. He advised that appellant was limited in back movement in terms of twisting, bending or activities where she performed greater than sedentary level tasks. Dr. Pratt reiterated that the job description provided exceeded sedentary work, especially as to standing, reaching and driving one to eight hours.

In an August 7, 2008 decision, the Office denied appellant's claim for a recurrence of disability. It found that the medical evidence was not sufficient to establish that her accepted conditions worsened such that she became disabled from performing full-time modified duty.<sup>3</sup>

Appellant requested an oral hearing that was held on April 15, 2009. She submitted medical reports prior to the hearing.

On August 19, 2008 Dr. Pratt stated that he reassessed appellant on August 12, 2008 and recommended an MRI scan of the lumbar region. He stated that she should not perform route carrier tasks. Appellant was limited to sedentary level work due to her low back symptoms and spinal stenosis. On October 13, 2008 Dr. Pratt noted that appellant had right lumbar palpable tenderness and giveaway of both lower extremities on motor assessment with obtainable deep tendon reflexes. He noted that her movements were slow. A September 2, 2008 lumbar MRI scan diagnosed spinal stenosis, most severe at L4-5.

On January 2, 2008 Dr. Pratt stated that appellant experienced a decline in her functional abilities related to her job tasks and developed low back symptoms as a result of vocational activities. Appellant could perform sedentary tasks but had drowsiness related to her medication. She was restricted from driving in her employment and other driving limited to 30-minute intervals. Dr. Pratt recommended that appellant return to work over a one- to two-month duration and then follow up with him.

In a November 17, 2008 report, Dr. William S. Rosenberg, a Board-certified neurosurgeon, advised that there was no surgical procedure to alleviate appellant's symptoms.

At the hearing, appellant contended that she was given work outside her physical limitations and refused the job offer because it did not comply with her restrictions. Her attorney also contended that Dr. Zarr's restrictions were of diminished probative value and appellant could not perform the duties of the limited-duty job offer due to a worsening of her medical condition. On May 4, 2009 the employer responded that appellant's work assignments complied within the restrictions of Dr. Zarr.

In a June 26, 2009 decision, an Office hearing representative affirmed the August 7, 2008 decision. She found that appellant did not establish a change in the nature or extent of her light-duty requirements or that appellant was disabled from performing light duty due to her accepted conditions.

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<sup>3</sup> On September 23, 2008 the Office granted appellant a schedule award for one percent left leg impairment and three percent right leg impairment. Appellant did not appeal from this decision.

## **LEGAL PRECEDENT**

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 of record establishes that he or 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 he or she cannot perform such light duty. As part of this burden, the employee must show either 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.<sup>4</sup> To establish a change in the nature and extent of the injury-related condition, there must be probative medical evidence of record. The evidence must include a medical opinion, based on a complete and accurate factual and medical history and supported by sound medical reasoning, that the disabling condition is causally related to employment factors.<sup>5</sup>

## **ANALYSIS**

The Office accepted that appellant sustained a lumbosacral sprain/strain and a permanent aggravation of lumbar degenerative disease with myelopathy. Appellant was released to full-time modified duty on January 16, 2006 and worked under the physical restrictions of Dr. Zarr, her attending physician. On April 16, 2008 Dr. Zarr advised that, based on a functional capacity evaluation, appellant had permanent restrictions of no lifting, pushing or pulling greater than 15 pounds for more than three hours a day and no more than three hours of walking, bending and stooping a day. On June 16, 2008 the employing establishment offered her a modified position that required her to sit, stand, reach and allowed her to drive/operate a motor vehicle from one to eight hours a day; walk, bend, stoop no more than three hours a day; and push, pull or lift no more than 15 pounds from one to three hours a day. Appellant stopped work that day, contending that the job offer did not constitute appropriate light duty.

The Board finds that appellant did not submit sufficient medical evidence to establish a change in the nature or extent of her accepted conditions or factual evidence establishing a change in her limited-duty job requirements. The record reflects that appellant worked limited duty under the limitations of Dr. Zarr prior to June 16, 2008 when she stopped work. She did not contend prior to that time that her employer failed to comply with her restrictions. When presented the job offer, appellant stopped work contending that the position was not consistent with her medical restrictions.

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<sup>4</sup> *Albert C. Brown*, 52 ECAB 152, 154-55 (2000); *Terry R. Hedman*, 38 ECAB 222, 227 (1986); 20 C.F.R. § 10.5(x) provides that 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. This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force (RIF)) or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.

<sup>5</sup> *Mary A. Ceglia*, 55 ECAB 626, 629 (2004); *Maurissa Mack*, 50 ECAB 498, 503 (1999).

The May 19, 2008 work limitations forms submitted from Dr. Szeto are of diminished probative value on appellant's medical capacity for work. The record reflects that he referred appellant for examination and treatment by Dr. Zarr. On November 19, 2007 Dr. Szeto reviewed restrictions imposed by Dr. Zarr on March 20, 2007 and noted that he agreed with the limitations. There is no report from either physician addressing any examination of appellant on or about May 19, 2008 on which her new work limitations were based. Dr. Szeto found that appellant had the capacity for full-time limited duty, which does not support her claim of total disability for work as of June 16, 2008. On June 19, 2008 he advised that he would no longer provide medical treatment. These brief form reports are not sufficient to establish a change in the nature of her accepted conditions such that appellant was unable to continue at modified duty. The employing establishment referred a copy of the job offer to Dr. Zarr, an attending physician, who found on June 20, 2008 that she had the physical capacity to perform the duties described therein.

In a June 26, 2008 note, Dr. Pratt stated that he was provided restrictions from May 2008 to review. The limitations he described conform to those listed by Dr. Szeto on May 19, 2008. Dr. Pratt stated that he also reviewed a job description that exceeded the limitations recommended. He reiterated that appellant's low back limited twisting or bending activities or more than a sedentary nature. The Board finds that this evidence is of diminished probative value. Dr. Pratt did not set forth any findings on examination of appellant that day, noting only his prior examination of February 26, 2007. He did not address the nature of the work appellant performed prior to June 16, 2008 or address any change in her accepted conditions that caused or contributed to disability as of that date. Moreover, it appears Dr. Pratt was critiquing the limitations recommended by Dr. Szeto, which, as noted, are not those on which the June 16, 2008 job offer were based. The lack of any clinical findings from a current examination reduces the probative value of his stated conclusions. Dr. Pratt did not address why appellant became unable to continue work full time at light duty under the April 16, 2008 work restrictions of Dr. Zarr. The Board notes that the physical requirements of the June 16, 2008 modified job assignment comport with these recommended and approved by Dr. Zarr's work restrictions.

Dr. Pratt's subsequent notes of record do not provide a reasoned opinion describing a spontaneous or demonstrated worsening of any accepted condition resulting in total disability as of June 16, 2008. On January 2, 2008 he stated that appellant had a decline in her functional ability for jobs tasks but he did not explain how this was related to her accepted conditions. Moreover, this report was prior to the period of claimed disability. Dr. Pratt restricted appellant from driving due to her medication; however, he did not adequately explain how her restriction related to the accepted conditions or caused her to stop work on June 16, 2008. He diagnosed low back pain with spinal stenosis on October 13, 2008, but did not address appellant's disability from her light duty on June 16, 2008. The August 19, 2008 note did not clearly explain why the duties of the modified position, offered June 16, 2008, were inappropriate for appellant's accepted condition. The medical evidence submitted by appellant is insufficient to establish that she became unable to perform the modified duty made available to her beginning June 16, 2008 or that such light duty was inappropriate in light of her accepted conditions.

The Board finds that appellant did not establish that her disability beginning June 18, 2008 was due to a change in the nature or extent of her accepted conditions or a change in the nature and extent of the light-duty job requirements.

On appeal, appellant's representative states that appellant was in pain while working at modified jobs under restrictions and that her status never changed when she was reexamined by Dr. Zarr. He argued that appellant's injury never resolved and that she was unable to return to her date-of-injury position. The Office, however, did not find that appellant's accepted conditions resolved or that her employer required her to perform duties of her date-of-injury position. Rather, appellant worked under the restrictions specified by Dr. Zarr until June 16, 2008, when she stopped work.

**CONCLUSION**

The Board finds that appellant did not establish a recurrence of total disability commencing June 16, 2008 causally related to her accepted September 12, 2005 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decision dated June 26, 2009 is affirmed.

Issued: July 27, 2010  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board