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

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| **J.S., Appellant** | ) | |
| **and** | ) | **Docket No. 10-2104** |
| | ) | **Issued: June 6, 2011** |
| **U.S. POSTAL SERVICE, POST OFFICE, Oak Hill, OH, Employer** | ) | |

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

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
JAMES A. HAYNES, Alternate Judge

### *JURISDICTION*

On August 17, 2010 appellant, through her representative, filed a timely appeal from the July 7, 2010 merit decision of the Office of Workers' Compensation Programs, which affirmed the denial of her recurrence claim. Pursuant to the Federal Employees' Compensation Act[1] and 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 sustained a recurrence of partial disability beginning November 2, 2009 as a result of her August 17, 1998 employment injury.

### *FACTUAL HISTORY*

On August 17, 1998 appellant, a 49-year-old part-time flexible clerk, sustained an injury in the performance of duty when, as she maneuvered a bulk mail container down a short ramp, it pushed her into a wall. She did not stop work immediately but began working limited duty. The

[1] 5 U.S.C. § 8101 *et seq.*

Office accepted appellant's claim for left elbow abrasion, cervical strain, left arm strain, thoracic strain and lumbar strains.

On December 1, 2009 the officer-in-charge announced that hour reductions were put into place because of declining mail volumes and revenues for the office: "Plan hours have been reduced and therefore the hours of my [p]art[-]time flexible clerks have been reduced across the board. The reductions have been equal and justified." The officer-in-charge added that any reduction in hours had nothing to do with the duty status of any employee, limited duty or otherwise. The employer confirmed to the Office that appellant's hours were not cut because of her work restrictions but rather as part of an across-the-board reduction for all part-time flexible employees.[2]

Appellant filed a claim for partial disability beginning November 2, 2009 due to the reduction of her hours.

The Office denied appellant's claim for wage-loss compensation on the grounds that she failed to provide evidence establishing that the employer reduced her hours because of her August 17, 1998 work injury.

In a decision dated July 7, 2010, an Office hearing representative affirmed on the grounds that appellant's reduced hours were unrelated to her August 17, 1998 work injury. She found no evidence to support appellant's belief that the reduction occurred in retaliation for her Equal Employment Opportunity complaint. The hearing representative found no evidence that appellant was singled out for a reduction of hours and there were currently no formal administrative findings of agency error.

## ***LEGAL PRECEDENT***

The Act pays compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.[3] "Disability" means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total.[4]

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 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 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) or when the physical

[2] The union president's handwritten table comparing appellant's hours to the hours of some other clerk did not establish otherwise.

[3] 5 U.S.C. § 8102(a).

[4] 20 C.F.R. § 10.5(f).

requirements of such an assignment are altered so that they exceed her established physical limitations.[5]

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and who supports that conclusion with sound medical reasoning.[6]

When an employee who is disabled from the job she held when injured on account of employment-related residuals returns to limited duty or the medical evidence of record establishes that she can perform limited duty, the employee has the burden of establishing by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that she cannot perform such limited duty. As part of her burden, the employee must show a change in the nature and extent of her injury-related condition or a change in the nature and extent of her limited-duty job requirements.[7] However, when a claimant stops work for reasons unrelated to the accepted employment injury, there is no disability within the meaning of the Act.[8]

## ***ANALYSIS***

Appellant claims compensation for partial disability beginning November 2, 2009 due to a reduction in her limited-duty hours. She submitted no evidence to show that this reduction arose from her accepted employment injury. Instead, the evidence indicates that hour reductions were put in place across the board for all part-time flexible employees, regardless of duty status, because of declining mail volumes and revenues.

That makes appellant's case very similar to the case of *A.M.*[9] In *A.M.*, the claimant, a part-time distribution/window clerk, sustained a left shoulder and neck injury in the performance of duty. After she returned to limited duty, the employer reduced her hours because of a declining work flow and budget. The employer reduced the hours of all part-time flexible employees. Appellant alleged a recurrence of partial disability. Affirming the denial of that claim, the Board noted that she was not alleging that she could not perform her limited duties.

[5] *Id*. at § 10.5(x).

[6] *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956).

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

[8] *Hubert Jones*, 57 ECAB 467 (2006) (claimant did not sustain a compensable recurrence when he was removed from his job because of a reduction-in-force); *John I. Echols*, 53 ECAB 481 (2002) (record did not show that the employer withdrew the claimant's light-duty assignment and forced him to retire, nor did the record clearly establish that the claimant's retirement was involuntary or precipitated by his employment-related left knee condition); *John W. Normand*, 39 ECAB 1378 (1988) (the claimant was terminated from his position because of menacing behavior toward a supervisor and unofficial use of government property, not because of any physical inability to perform his assigned duties).

[9] Docket No. 09-1895 (issued April 23, 2010).

Rather, appellant was alleging that the reduction in her hours was due to the employer's reduction of hours for part-time flexible employees. The Board held that, as the reduction was unrelated to her employment injury, the Office properly determined that she failed to meet the definition of disability and was not entitled to wage-loss compensation for the period claimed.

Appellant has established no incapacity because of her employment injury to earn the wages she was receiving at the time of injury. She has not established a spontaneous change in her accepted medical conditions. Appellant has not established that the physical requirements of her assignment were altered such that they exceeded her established physical limitations. As in the case of *A.M.*, the record shows only that the reduction of the claimant's hours was part of an across-the-board reduction for all part-time flexible employees due to declining mail volumes and revenues. Like a true reduction-in-force, this was an independent cause unrelated to any injury. Because the reduction of appellant's hours was unrelated to the elbow abrasion and various strains she sustained on August 17, 1999, there is no disability within the meaning of the Act (incapacity because of employment injury). The Board will therefore affirm the Office's July 7, 2010 decision affirming the denial of her claim for wage-loss compensation.

## ***CONCLUSION***

The Board finds that appellant did not sustain a recurrence of partial disability beginning November 2, 2009 as a result of her August 17, 1998 employment injury.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the July 7, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 6, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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