

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ARTHUR D. MOBLEY and U.S. POSTAL SERVICE,
POST OFFICE, Baltimore, Md.

*Docket No. 96-1876; Submitted on the Record;
Issued June 4, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof to establish that he sustained a recurrence of disability on or after November 2, 1993 causally related to his accepted employment injury.

On February 25, 1993 appellant, then a 50-year-old address management system analyst, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that his carpal tunnel syndrome was due to his federal employment. On July 13, 1993 the Office of Workers' Compensation Programs accepted appellant's claim for bilateral wrist strain. On July 15, 1993 the Office also accepted appellant's claim for neck strain; upper back strain; low back strain, myofascial pain syndrome neck, upper and lower back; headaches; shoulder strain; bilateral elbow strain and bilateral wrist strain.

In a note dated December 21, 1993, Dr. Van E. Lomis, appellant's treating Board-certified internist, noted that appellant was off work and that his hypertension was out of control. Appellant was returned to work on January 19, 1994 by Dr. Lomis.

On February 1, 1994 appellant filed a recurrence of disability claim alleging that he sustained a recurrence of disability on November 2, 1993 causally related to his accepted employment injury. Appellant returned to work on January 19, 1994.

In a report dated March 21, 1994, Dr. Robert S. Pincus, appellant's treating counselor/psychotherapist, noted that appellant had been diagnosed with major depression, with diabetes, fibromyalgia and hypertension, which has "impaired his ability to work." Dr. Pincus recommended that appellant be given a "position that was intellectually stimulating and with moderate social stress" and opined that his current position was unsuitable "as indicated by his not being able to work."

In a letter dated March 28, 1995, the Office advised appellant of the information needed to support his claim for a recurrence of disability.

By letter dated April 12, 1995, the employing establishment noted that appellant was in a limited-duty assignment from March 8, 1993 until August 3, 1994, when he retired. The employing establishment noted appellant's duties as:

“Verifying accuracy of congressional district data using a printout and election board rosters; verifying discrepancies between AMC and class data bases using printout and calling delivery units by telephone to determine which information was correct; performing street reviews, verbally instructing unit personnel on completing AMS reporting forms and completing various tasks within the office that did not entail using the computer.

“The physical requirements of this limited-duty assignment were: ability to discuss AMS reporting procedures, ability to perform tasks in sedentary position, chair with arms and back support, ability to speak clearly on phone, ability to drive to various units for street supervising or instructing.

“Physical restrictions: No lift[ing], no use of keyboard of any type, ability to move and shift positions as needed, ability to stand, walk, stretch as needed.”

The employing establishment also noted that it had contested appellant's recurrence claim as appellant was sent to a medical unit, which confirmed his blood pressure was at a dangerous level and that this was a condition unrelated to the accepted injury of carpal tunnel and fibromyalgia. Upon appellant's return to work, the employing establishment noted that on January 25, 1994 appellant “was involved in a verbal altercation with another employee” and filed a stress claim which the Office denied.

In a letter dated April 27, 1995, appellant noted that he was in a modified light-duty job and alleged that the stress of the job caused his blood pressure to get out of control. Appellant also stated that his condition had changed little since February 25, 1993 and that he was constantly in pain and discomfort. He described his allegations of harassment. Appellant requested that his retirement be converted to workers' compensation disability retirement.

By decision dated November 16, 1995, the Office denied appellant's claim for a recurrence of disability causally related to his accepted employment injury. The Office found that appellant's absence from November 2, 1993 through January 19, 1994 was due to his hypertension condition and unrelated to this accepted musculoskeletal conditions.

Appellant requested a review of the record by an Office hearing representative on December 8, 1995.

In a decision dated April 11, 1996, the hearing representative affirmed the November 16, 1995 decision. The hearing representative found that the record contained no evidence that appellant's accepted employment injury worsened such that he was unable to perform his limited-duty job requirements or that there was a change in the nature and extent of the job

requirements. The hearing representative found that the medical evidence of record established that appellant was unable to work during this period due to a worsening of his hypertension.

In a letter dated May 6, 1996, appellant submitted evidence in support of his contention that his retirement on August 3, 1994 was due to his accepted employment injury and referred to the Americans with Disabilities Act of 1990. In support of his argument appellant submitted the limited-duty agreement dated March 3, 1993, reports dated January 27, 1994 and October 18, 1993 by Dr. Robert S. Pinkus, a licensed counselor/psychotherapist, an October 27, 1993 report by Dr. Leo I. Korotki,¹ and reports dated May 19 and 24, 1994 by Dr. Chul S. Kwon,² the duties of an address management system specialist, EAS 15 and materials related to a settlement agreement between appellant and the employing establishment, a memorandum opinion by a Senior United States District Judge remanding appellant's case to the state court; and various letters from appellant to the employing establishment regarding their duty to handicapped employees.

In an undated letter received on May 6, 1996, appellant contended that the employing establishment changed his limited-duty assignment without consulting his physician and asked that his retirement be converted to workers' compensation retirement retroactive to March 22, 1994.

In a letter dated May 19, 1996, appellant requested that he be compensated for time he lost due to doctor's visit and time from work as well as a schedule award for his disability. In support of his request, appellant submitted a discharge note dated April 21, 1995 from Dr. Korotki in support of his request for a schedule award and a list of the paid leave for which he sought reimbursement.

In a letter dated May 20, 1996, appellant requested reconsideration of the issue of whether he was entitled to leave repurchase for the period November 2, 1993 to January 19, 1994 and January 27 to March 22, 1994. Appellant again contended that the Office changed his light-duty assignment without consulting his physician.

By decision dated June 28, 1996, the Office denied modification of its prior decisions. The Office found the evidence submitted in support of his request for reconsideration was insufficient to establish that his stoppage of work was due to his accepted conditions or to establish a change in the nature and duty of his light-duty job requirements.

The Board finds that appellant has not met his burden of proof to establish that he sustained a recurrence of disability on or after November 2, 1993 causally related to his accepted employment injury.

¹ Dr. Korotki noted that he supports appellant's "desire for disability retirement, based on my findings that he will never be able to fully perform the duties of the position he now holds."

² Dr. Kwon diagnosed depression and anxiety related to events in the past. Dr. Kwon's opinion are not probative of whether appellant's recurrence of disability was due to his accepted employment injury as the physician does not address this issue.

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he 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 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 the present case, appellant worked his light-duty position from March 8 until November 3, 1993, when he was on leave due to his high blood pressure. Appellant returned on January 19, 1994 to this light-duty position and retired on August 3, 1994. Appellant has asserted that he was disabled from his light-duty position due to his work injury. The medical evidence of record establishes, however, that appellant was unable to perform his light-duty position from November 3, 1993 until January 18, 1994, due to his high blood pressure, a condition which has not been accepted as employment related. The Office properly denied appellant's recurrence of disability claim as not related to his accepted employment conditions.

The decisions of the Office of Workers' Compensation Programs dated June 28 and April 6, 1996 and November 16, 1995 are hereby affirmed.⁴

Dated, Washington, D.C.
June 4, 1998

George E. Rivers
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

³ See *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Stuart K. Stanton*, 40 ECAB 859, 864 (1989); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁴ The Board notes that the issue of a schedule award is not before the Board as the Office has not issued a decision on this issue.