

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of CARMEN BASSO and U.S. POSTAL SERVICE,  
MORGAN GENERAL MAIL FACILITY, New York, NY

*Docket No. 98-2002; Submitted on the Record;  
Issued December 15, 1999*

---

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether appellant has established a recurrence of disability commencing January 30, 1997 causally related to her October 10, 1996 employment injury.

In the present case, the Office of Workers' Compensation Programs accepted that appellant sustained a cervical sprain and medial epicondylitis of the left elbow in the performance of duty on October 10, 1996. Appellant returned to light duty on October 15, 1996, filed a recurrence of disability claim on October 17, 1996 and remained off work until January 7, 1997, when she returned to a light-duty position. On February 8, 1997 appellant filed a Form CA-2a alleging that she sustained a recurrence of disability on January 30, 1997.

By decision dated August 14, 1997, the Office denied appellant's claim on the grounds that the weight of the medical evidence, as represented by the second opinion referral physician Dr. Howard E. Finklestein, an orthopedic surgeon, established that her employment-related disability had ceased.

In a decision dated March 13, 1998, an Office hearing representative affirmed the August 14, 1997 Office decision.

The Board has reviewed the record and finds that the case is not in posture for decision.

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 establishes that light duty can be performed, the employee has the burden to establish by the weight of reliable, probative and substantial evidence a recurrence of total disability. As part of this burden of proof, 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 requirements.<sup>1</sup>

---

<sup>1</sup> Terry R. Hedman, 38 ECAB 222 (1986).

In the present case, appellant's attending physician, Dr. Ronald Richman, an orthopedic surgeon, indicated in a note dated January 30, 1997 that appellant had been under his care for cervical sprain and left elbow epicondylitis, and that appellant was unable to return to work. The Office referred appellant, along with a statement of accepted facts and medical records, to Dr. Finklestein. The questions posed to Dr. Finklestein included an inquiry as to whether a recurrence of disability on January 30, 1997 was causally related to the October 10, 1996 employment injury.

The June 20, 1997 report from Dr. Finklestein does not, however, adequately address the recurrence of disability issue. Dr. Finklestein provided a history and results on examination, stating that he was unable to substantiate the subjective complaints. He further stated:

“Objectively, I find a full range of motion of the affected joints without any diminution in muscle strength nor sensation. At the time of this examination it was my impression that she could return to her usual work upon a full-time basis. By history the recurrence of disability of January 3[0], 1997 is related to the accepted work injury of October 10, 1996. As she describes limited motion associated with pain in that period of time and if such is the case, relationship exists.”

The Office noted that Dr. Finklestein reported appellant could return to work,<sup>2</sup> but the issue in this case is whether appellant had an employment-related recurrence of disability commencing January 30, 1997. On this issue Dr. Finklestein noted appellant's description of pain and limited motion during that period, without discussing the medical history, the nature of the employment injury, or otherwise providing a reasoned opinion as to whether there was a worsening of appellant's employment-related condition on or after January 30, 1997.

Since the Office referred appellant to Dr. Finklestein, it has the obligation to secure a report that resolves the issue presented in the case.<sup>3</sup> On remand, the Office should secure a medical report containing a reasoned medical opinion on the relevant issue in this case. After such further development as the Office deems necessary, it should issue an appropriate decision.

---

<sup>2</sup> The record indicates appellant did return to work on June 21, 1997.

<sup>3</sup> See *Mae Z. Hackett*, 34 ECAB 1421 (1983); *Richard W. Kinder*, 32 ECAB 863 (1981).

The decision of the Office of Workers' Compensation Programs dated March 13, 1998 is set aside and the case remanded for further action consistent with this decision of the Board.

Dated, Washington, D.C.  
December 15, 1999

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member