

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of AUDREY W. JOHNSON and U.S. POSTAL SERVICE,
POST OFFICE, Houston, TX

*Docket No. 97-1859; Submitted on the Record;
Issued July 27, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue is whether appellant has established any periods of total disability on or after February 26, 1996 causally related to her employment injuries.

In the present case, the Office of Workers' Compensation Programs accepted that appellant sustained cervical strains in the performance of duty on May 25, 1992 and February 1, 1993. Appellant returned to a light-duty position at four hours per day in June 1993 and then stopped working in July 1993. On July 31, 1995 appellant again returned to work in a light-duty position at four hours per day.

By decision dated October 4, 1995, the Office determined that appellant's light-duty position represented her wage-earning capacity.

On March 26, 1996 appellant filed a notice of recurrence of disability for the period February 26 to March 26, 1996. The record indicates that appellant also filed claims for compensation on account of disability (Form CA-8) commencing July 20, 1996.

In a decision dated February 27, 1997, the Office found that appellant had not established any period of total disability after July 31, 1995 causally related to her employment injuries.

The Board has reviewed the record and finds that appellant has not established a recurrence of total disability on or after February 26, 1996.

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.¹

In the present case, appellant returned to a light-duty position at four hours per day on July 31, 1995 and the Office determined that this position reflected her wage-earning capacity and reduced her compensation accordingly. Appellant remains entitled to compensation based on her wage-earning capacity; in this case she filed a claim for a recurrence of total disability for the period February 26 to March 26, 1996. The medical evidence of record, however, is not sufficient to meet appellant's burden of proof for the period claimed. For the period February 26 to March 26, 1996, there is no probative medical evidence supporting total disability causally related to the employment injuries. A duty status report (Form CA-17) dated March 18, 1996 from Dr. Edward A. Talmage, a specialist in pain management, lists dates of total disability from February 26 to March 25, 1996, without providing any additional explanation or discussion. In the absence of a reasoned medical opinion, this report is of little probative value.²

With respect to the claimed periods of total disability commencing in July 1996, it would appear that appellant is claiming that her wage-earning capacity determination should be modified. Once the wage-earning capacity of an injured employee is determined, a modification of such determination is not warranted unless there is a material change in the nature and extent of the injury-related condition, the employee has been retrained or otherwise vocationally rehabilitated, or the original determination was, in fact, erroneous.³ The burden of proof is on the party attempting to show a modification of the wage-earning capacity determination.⁴ In this case, the medical evidence is also of diminished probative value to the issue presented. Dr. Talmage completed a form report (Form CA-20a) dated August 9, 1996, stating that appellant had been unable to work since July 23, 1996, but again he did not provide additional detail or explanation. The only narrative report in which Dr. Talmage discusses disability for work is an undated report, stamped received by the Office on December 31, 1996. In this report, Dr. Talmage stated that appellant was taken off work on July 23, 1996, noting that appellant had neck and shoulder pain, headaches and discoloration in the left arm and hand, "which arrives from chronic cervical sprain injury sustained on February 1, 1993, an avulsion injury to the sensory parts of the brachial plexus." Dr. Talmage then stated that appellant had informed him that her light-duty job involved casing mail, which required turning and bending of the neck and resulted in pain in the neck and shoulder. To the extent that Dr. Talmage is relating appellant's condition to an aggravation caused by the light-duty job, this would be relevant to a new occupational disease claim, which is not currently before the Board.⁵

The issue is whether there was a spontaneous change in the nature and extent of the employment-related condition, and in this respect Dr. Talmage's reports are of diminished

¹ *Terry R. Hedman*, 38 ECAB 222 (1986).

² *Carolyn F. Allen*, 47 ECAB 240 (1995).

³ *Sue A. Sedgwick*, 45 ECAB 211 (1993).

⁴ *Id.*

⁵ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3 (January 1995).

probative value. There are no contemporaneous medical reports from July 1996 nor is there a reasoned opinion establishing a change in the injury-related condition on July 23, 1996. The Board accordingly finds that the medical evidence is not sufficient to meet appellant's burden of proof in establishing any periods of disability on or after February 26, 1996.

The decision of the Office of Workers' Compensation Programs dated February 27, 1997 is affirmed.

Dated, Washington, D.C.
July 27, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member