-U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOANNNE M. BALTHAZOR and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Madison, Wis.

Docket No. 97-2278; Submitted on the Record;
Issued July 2, 1999

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant established that her recurrence of disability was causally related to her employment.

The Board has carefully reviewed the record evidence and finds that appellant failed to establish that her recurrence of disability was causally related to work factors.

Under the Federal Employees Compensation Act,[1] an employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the recurrence of the disabling condition for which compensation is sought is causally related to the accepted employment injury.[2] As part of this burden the employee must submit rationalized medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the current disabling condition is causally related to the accepted employment-related condition,[3] and supports that conclusion with sound medical reasoning.[4] Thus, the medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated, or aggravated by the accepted injury.[5]

When an employee, who is disabled from the job he held when injured, returns to a light-duty position, or the medical evidence of record establishes that he can perform the light-duty

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[1] 5 U.S.C. §§ 8101-8193.

[2] *Dennis J. Lasanen*, 43 ECAB 549, 550 (1992).

[3] *Kevin J. McGrath*, 42 ECAB 109, 116 (1990).

[4] *Lourdes Davila*, 45 ECAB 139, 142 (1993).

[5] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

position, the employee has the burden of establishing by the weight of the reliable, probative and substantial evidence that he cannot perform such light duty.[6] 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.[7]

In this case, appellant's notice of traumatic injury was accepted for a disc herniation at L5-S1, and a meniscus tear and sprain of her right knee after a rough-housing incident at work on September 12, 1976. Appellant returned to full-time, light-duty work, subsequently accepting a permanent light-duty job in 1986. She was on leave in 1992 because of a work-related right shoulder condition[8] but returned to her half-time, light-duty position in August 1992.

On April 7, 1993 the employing establishment offered appellant a revised rehabilitation job, with essentially the same physical restrictions but a change in her four-hour tour-of-duty from the morning to the afternoon. The employing establishment explained that its restructuring resulted in a shift in work load and required that all rehabilitation employees be reassigned to a different tour.

Appellant rejected the revised job offer and claimed total disability compensation from July 15, 1993 until April 15, 1996 when she returned to work.[9] On July 25, 1996 the Office denied appellant's claim on the grounds that the medical report from Dr. John R. Whiffen, a Board-certified orthopedic surgeon, failed to establish that appellant was incapable of working the four-hour afternoon shift.

Appellant requested an oral hearing, which was held on January 30, 1997. At the hearing, appellant argued that the Office of Workers' Compensation Programs had failed to comply with procedural due process in terminating her compensation. On April 17, 1997 the hearing representative denied the claim on the grounds that appellant had failed to meet her burden of proof in establishing disability for work during 1993 to 1996.

The Board finds that Dr. Whiffen's May 14, 1993 report is insufficient to establish that appellant's disability from July 15, 1993 to April 15, 1996 was causally related to work factors. Dr. Whiffen stated that appellant had been working fairly steadily during the morning hours and she had found that if she tried to work later in the day, her back pain increased. He recommended that appellant "do her work in the mornings" because "as the day goes on, she becomes more uncomfortable and has to lie down more frequently and is much less productive."

Dr. Whiffen added that while not impossible, it would be difficult for appellant to change to afternoon hours and would make her work less effective. Dr. Whiffen admitted that appellant

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[6] *Richard E. Konnen*, 47 ECAB 388, 389 (1996).

[7] *Gus N. Rodes*, 47 ECAB 518, 526 (1995); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

[8] Appellant received a schedule award for an 18 percent permanent impairment of her right upper extremity. The $30,309.55 award ran from October 28, 1992 to November 25, 1993.

[9] Appellant filed an Equal Employment Opportunity (EEO) complaint, which was settled with her return to work on April 15, 1996.

could revise her daily schedule to go to bed later and get up later, which in theory would not affect her physical condition, but stated that the normal circadian rhythms resulted in early morning awakening in most people. He concluded that appellant should work the morning hours.

Although Dr. Whiffen provided some medical rationale for his recommendation that appellant work during the morning hours, he did not address the question of any worsening of appellant's physical condition that would preclude her from performing the duties of the light-duty position in the afternoon. In fact, the disability form he completed on May 14, 1993 indicated exactly the same physical limitations he had found on August 19, 1992 when appellant returned to her light-duty job. Further, Dr. Whiffen admitted that appellant was capable of working the afternoon shift but simply felt that she would be more productive in the mornings. Such rationale is not sufficient to establish that appellant was incapable of working the afternoon shift to restricting at the employing establishment. Thus, the medical evidence does not establish that an afternoon shift would affect appellant's condition adversely.[10]

Appellant has also failed to establish any change in the nature and extent of the duties of her position. The revised rehabilitation job offer incorporated the same duties appellant had performed since 1986 with the one exception that the hours changed from morning to afternoon. However, the hours were not increased and the physical restrictions were not altered.

In rejecting the job offer appellant did not contend that the specified duties surpassed her limitations. Appellant argued only that the hours contravened Dr. Whiffen's recommendation. Appellant has produced no evidence showing any change in the nature and extent of the requirements of the offered position.[11] Therefore, the Board finds that appellant has failed to meet her burden of proof.

Appellant argues before the Board that the issue in this case is the Office's failure to provide appellant with due process in terminating her compensation because she refused to accept the 1993 job offer. The record indicates that appellant's wage-loss compensation for four hours a day was never terminated -- benefits were paid during the entire three years that appellant was not working. Inasmuch as the Office did not terminate appellant's compensation pursuant to section 8106(2), appellant's argument is irrelevant to the issue of whether she was disabled from working four hours a day at her light-duty position from July 15, 1993 to April 15, 1996.

[10] *Cf. Fallon Bush*, 48 ECAB ___ (Docket No. 95-2237, issued July 15, 1997) (finding that appellant established a change in the nature of his light-duty position when he was assigned to work nights and medical opinions limited him to working days because his arthritic hip became worse in the late afternoon and evening). The Board notes that appellant did work a four-hour shift in the afternoons from July 1, 1985 until February 1, 1986.

[11] *See Major W. Jefferson*, 47 ECAB 295, 298 (1995) (finding that a claimant who stops work for reasons unrelated to his work-related physical condition has no compensable disability within the meaning of the Act).

The April 17, 1997 and July 25, 1996 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
July 2, 1999

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member