

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINDA BEALE and U.S. POSTAL SERVICE,
POST OFFICE, Somerset, N.J.

*Docket No. 97-1606; Submitted on the Record;
Issued May 6, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established a recurrence of disability commencing March 21, 1995, causally related to her August 12, 1989 employment injuries.

In the present case, the Office of Workers' Compensation Programs accepted that appellant, a letter carrier, sustained contusions to the left shoulder and back when she was involved in a motor vehicle accident in the performance of duty on August 12, 1989. The record indicates that appellant returned to a light-duty position, then stopped working from December 1992 to June 1994.¹ She returned to work in a light-duty position, and stopped working on March 22, 1995.

On May 10, 1995 appellant filed a notice of recurrence of disability commencing March 21, 1995, identifying the original injury as August 12, 1989. By decision dated January 31, 1996, the Office denied the claim for a recurrence of disability commencing March 21, 1995. In a decision dated January 22, 1997, the Office reviewed the case on its merits and denied modification.

The Board has reviewed the record and finds that appellant has not established a recurrence of disability commencing March 21, 1995 causally related to her August 12, 1989 employment injuries.

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 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

¹ Appellant filed a claim for recurrence of disability commencing December 15, 1992, which was denied by the Office in decisions dated May 27, 1993, September 23, 1994 and October 16, 1995. The record also indicates that appellant filed a claim for injuries due to a slip and fall in the performance of duty on April 15, 1991.

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.²

In this case, there is no probative medical evidence establishing causal relationship between any disability on or after March 21, 1995 and the August 12, 1989 employment injuries. In a report dated May 14, 1996, Dr. Mark A. Feldman, an orthopedic surgeon, provided a history and diagnosed bilateral impingement syndrome of the shoulders with left-sided AC (acromioclavicular) joint dysfunction. Dr. Feldman indicated that appellant was seen on March 22, 1995, with appellant stating that her shoulders were bothering her constantly, and they decided that she could not work any longer.

The Board notes that a shoulder impingement syndrome has not been accepted as causally related to the August 12, 1989 employment injury. Dr. Feldman stated, “the injury that the patient sustained in the motor vehicle accident of August 12, 1989, to the left shoulder was exacerbated by her work in casing mail and that lead to her severe impingement syndrome necessitating surgery. On the right side, the patient developed an impingement syndrome from casing mail during the above-mentioned period of time.” Dr. Feldman’s statement as to causal relationship implicates appellant’s continuing light-duty job duties, which is relevant to a new claim rather than a recurrence of disability.³ The record indicates that appellant has filed new claims for a right shoulder condition, but these claims are not before the Board. The issue in this case is whether appellant has established a recurrence of disability commencing March 21, 1995. The Board finds that Dr. Feldman’s report does not establish that any disability on March 22, 1995 was due to a change in the nature and extent of the August 12, 1989 employment injury.

In a report dated November 1, 1995, Dr. Theodore Hiller, a chiropractor, indicated that x-rays were taken on June 26, 1995, and his diagnoses included multiple subluxations. Since he does diagnose subluxations as demonstrated by x-ray, he is considered a physician under the Act.⁴ His report is, however, of limited value to the recurrence of disability issues presented. The diagnosis of subluxation has not been accepted as causally related to the August 12, 1989 injury, and Dr. Hiller’s statements on causal relationship appear to again implicate appellant’s light-duty job duties. Dr. Hiller stated that he believed that appellant sustained soft tissue damage, which did not allow for proper support of the spine or allow for proper alignment of the vertebrae. He then noted that this condition is also aggravated by any work involving lifting, reaching, prolonged standing, walking, or sitting. To the extent that Dr. Hiller relates a subluxation to appellant’s light-duty job, it would not, as noted above, constitute probative evidence of a recurrence of disability from the August 12, 1989 injury. With respect to disability

² *Terry R. Hedman*, 38 ECAB 222 (1986).

³ A recurrence of disability includes a work stoppage caused by a spontaneous material change in the employment-related condition without an intervening injury. If the disability results from new exposure to work factors, an appropriate new claim should be filed; *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3 (January 1995).

⁴ Section 8101(2) of the Act provides that the term “‘physician’ ... includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.” 5 U.S.C. § 8101(2).

for the light-duty job, Dr. Hiller indicated in his history that appellant worked until March 21, 1995, when she experienced a lot of pain in her back, neck and left shoulder. He did not provide further detail as to disability on or after that date. The Board finds that Dr. Hiller's report does not contain sufficient medical reasoning to establish a change in the nature and extent of an injury-related condition on or after March 21, 1995.

The remainder of the medical evidence does not address the relevant issues presented. In a report dated August 4, 1995, Dr. Saadia J. Griffith-Howard, an internist, discussed appellant's employment-related condition, but appears to limit her discussion to the period prior to December 1992. Dr. Griffith-Howard does not discuss disability on or after March 21, 1995.

It is appellant's burden of proof to establish a recurrence of disability, and the Board finds that she has not submitted sufficient evidence to met her burden in this case.

The decision of the Office of Workers' Compensation Programs dated January 22, 1997 is affirmed.

Dated, Washington, D.C.
May 6, 1999

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member