

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TERRY JONES and U.S. POSTAL SERVICE,
POST OFFICE, St. Louis, MO

*Docket No. 98-1211; Submitted on the Record;
Issued February 22, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
BRADLEY T. KNOTT

The issue is whether appellant has established that she sustained a recurrence of disability from December 26, 1995 to April 29, 1996.

In the present case, appellant alleged that she injured her back in the performance of duty on April 26, 1995, when she stepped off a driveway and twisted her back. The Office of Workers' Compensation Programs has accepted a lumbar strain and a herniated L4-5 disc. The record indicates that appellant returned to light duty in May 1995, then was off work from May 31 to September 11, 1995, before returning to work in a light-duty position. She stopped working on December 26, 1995, and again returned to work on April 30, 1996. On February 11, 1997 appellant filed a notice of recurrence of disability for the period December 26, 1995 to April 29, 1996.

By decision dated April 21, 1997, the Office denied appellant's claim for a recurrence of disability during this period. In a decision dated February 9, 1998, an Office hearing representative affirmed the prior decision.

The Board has reviewed the record and finds that appellant has not established a recurrence of disability during the period December 26, 1995 to April 29, 1996.

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 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 this case, appellant alleged that her light-duty job became more demanding and that she was forced to work outside her restrictions. She asserted, for example, that she was required

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

to sit for up to seven hours a day, while her restrictions were for two hours of sitting. The employing establishment, however, refuted the allegations in a memorandum dated April 7, 1997. Appellant's supervisors stated that appellant was not required to stay seated for extended periods, and her duties of telephone monitoring necessitated movement from her chair. Appellant has not submitted any probative evidence establishing a change in her light-duty job requirements on December 26, 1995.

With respect to the medical evidence, the record does not contain any probative evidence establishing an employment-related disability for the light-duty job commencing December 26, 1995. An attending physician, Dr. Matthew F. Gornet, an orthopedic surgeon, submitted a report dated December 27, 1995, stating that appellant had reported an injury in April 1995 while working as a mail carrier, and had been treated conservatively since June 1995. Dr. Gornet stated that appellant continued to have low back, right buttock and leg pain. He noted a magnetic resonance imaging (MRI) scan revealed a disc herniation, which was essentially the same as a previous MRI scan, and he recommended a microdiscectomy. His report does not discuss disability for work as of December 26, 1995, nor does it establish a material change in her condition as of that date.² It is appellant's burden of proof to establish the claimed recurrence of disability, and the Board finds that the evidence is not sufficient in this case.

The decisions of the Office of Workers' Compensation Programs dated February 9, 1998 and April 21, 1997 are affirmed.

Dated, Washington, D.C.
February 22, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

Bradley T. Knott
Alternate Member

² Dr. Gornet signed a work capacity evaluation (Form OWCP-5c) on December 27, 1995, but did not complete the relevant portions of the form.