United States Department of Labor
Employees' Compensation Appeals Board

KAREN STOPA, Appellant	)	
and	)	**Docket No. 04-2230**
	)	**Issued: April 11, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Boston, MA, Employer	)	

Appearances:
Karen Stopa, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On September 3, 2004 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated August 20, 2004, in which an Office hearing representative affirmed the denial of a recurrence of total disability as of September 22, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof in establishing that she sustained a recurrence of disability on and after September 22, 2003 causally related to her April 24, 1999 employment injury.

FACTUAL HISTORY

The record reflects that appellant has several work-related injuries concerning both her cervical and lower back dating back to October 2, 1991, which have been combined into the present claim. On April 24, 1999 appellant, then a 48-year-old mail handler, filed a claim for

injury to her upper back sustained while in the performance of her duties that day. She did not stop work. The Office accepted the claim for a cervical strain and paid appropriate compensation. On March 30, 2001 appellant returned to work for two hours a day and continued to receive wage-loss compensation for six hours a day. She stopped work on September 22, 2003 and was removed from the employing establishment on December 1, 2003 due to unacceptable conduct.

In a Form OWCP-5c dated April 29, 2003, Dr. Robert L. Van Uitert, a treating Board-certified neurologist, set forth updated work restrictions for a two-hour workweek. On September 25, 2003 the Office was provided with a copy of appellant's current modified assignment (limited duty).

On October 7, 2003 the Office received an undated routing slip from the employing establishment which noted that appellant was currently in an emergency placement in an off-duty status. On October 29, 2003 the Office received an undated letter from appellant advising that she had been out of work since September 22, 2003 and wished to be paid wage-loss compensation for the two hours of time she would have been working. She additionally indicated that the employing establishment failed to provide her with a limited-duty job offer. On November 13, 2003 the Office received another undated letter from appellant in which she alleged that she was subjected to extreme harassment by management to have her removed and that the union was trying to get her job back.

In a letter dated November 14, 2003, the Office advised appellant that the limited-duty job offer to which she referred related to a request of the Office for a description of her position she was working and was not a limited-duty job offer. The Office additionally advised appellant that since she stopped work September 22, 2003 and wished to be paid compensation, she must file a claim for a recurrence of total disability. The Office informed appellant of the evidence required to establish a recurrence claim.

On November 12, 2003 appellant filed a Form CA-7 claim for compensation for the period on and after September 21, 2003. In a separate letter, she asserted that she never had a job assignment for the two hours she was supposed to work and that she did not receive a job assignment after she got new work restrictions on April 29, 2003. On appellant's CA-7 claim form, the employing establishment indicated that appellant was put on administrative leave for disciplinary reasons.

In a June 4, 2003 medical report, Dr. Van Uitert advised that appellant continued to experience neck and arm pain due to the April 24, 1999 work incident and recommended that further objective testing be performed. He additionally advised that appellant was still working, although she could not work when her pain became severe.

By decision dated December 15, 2003, the Office denied appellant's claim for a recurrence of disability. The Office noted that appellant did not submit any medical evidence demonstrating that she was incapable of working the two hours a day limited-duty job the employing establishment offered her on September 25, 2003. The Office further found that appellant was not currently working the two hours per day due to disciplinary issues.

On December 30, 2003 appellant requested a hearing before an Office representative, which was held on June 21, 2004. Appellant did not submit any additional evidence. Evidence from the employing establishment included a September 24, 2003 letter, which advised that appellant was placed in an emergency off-duty status, without pay, effective 9:30 p.m. on September 21, 2003 for threatening to kill a postal employee by getting a gun and shooting them; a November 5, 2003 notice that she would be removed from the employing establishment on December 1, 2003 on the charge of unacceptable conduct; and a July 20, 2004 memorandum from the employing establishment noting that a grievance on the November 5, 2003 notice of removal was arbitrated on May 25, 2004 and was pending decision.

By decision dated August 20, 2004, an Office hearing representative affirmed the December 15, 2003 decision denying the recurrence of disability claim.

LEGAL PRECEDENT

As used in the Federal Employees' Compensation Act,[1] the term "disability" means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.[2] A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[3] Thus, 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 of record establishes that he can perform the light-duty position, the employee has the burden of establishing by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he cannot perform such light duty. As part of his 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.[4] The definition of a recurrence of disability also includes a work stoppage caused by withdrawal of a light-duty assignment made specifically to accommodate the claimant's condition due to the work-related injury. However, this withdrawal must have occurred for reasons other than misconduct or nonperformance of job duties.[5]

ANALYSIS

Appellant requested wage-loss compensation for two hours a day commencing September 22, 2003. The record reflects that, since March 2001, appellant had been working two hours a day and receiving wage-loss compensation for the remaining six hours. She worked

[1] 5 U.S.C. §§ 8101-8193.

[2] 20 C.F.R. § 10.5(f) (1999).

[3] 20 C.F.R. § 10.5(x).

[4] *Terry R. Hedman*, 38 ECAB 222 (1986).

[5] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(1) (May 1997). *See* 20 C.F.R. § 10.5(x).

in this capacity until September 22, 2003, when she was placed on an emergency off-duty status to misconduct. On December 1, 2003 she was removed from the employing establishment due to misconduct.

The medical evidence of record fails to establish that appellant was totally disabled due to her employment-related back or neck conditions on or after September 22, 2003. Although the record indicates that Dr. Van Uitert changed appellant's work restrictions on April 29, 2003, there is no indication of record that she could not work within the specified restrictions or was totally disabled during the period claimed. In a June 4, 2003 report, Dr. Van Uitert advised that appellant was able to work within her restrictions, but that she might not be able to work on the days when she experienced severe pain. There is no other current medical evidence of record.

Appellant argued that the employing establishment never gave her a job description to accommodate her restrictions, which is not relevant to the issue of her claim of disability on or after September 22, 2003. The evidence of record establishes that her work stoppage on September 22, 2003 occurred because of misconduct. As noted above, a recurrence of disability does not include a work stoppage caused by withdrawal of a light-duty assignment where the reason for the withdrawal is misconduct.[6] While the record reflects that appellant has disputed her removal and has taken the matter before an arbitrator, the record before the Board contains no evidence to indicate that the employing establishment acted erroneously in removing appellant from her work assignment due to her alleged threat to kill another employee. Consequently, appellant has not met her burden of proof in establishing a recurrence of disability.

CONCLUSION

The Board finds that appellant has not established that she sustained a recurrence of disability on and after September 22, 2003 causally related to her April 24, 1999 employment injury.

[6] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated August 20, 2004 is affirmed.

Issued: April 11, 2005
Washington, DC

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member