United States Department of Labor
Employees' Compensation Appeals Board

W.M., Appellant	)	
and	)	**Docket No. 06-1471**
	)	**Issued: February 26, 2007**
U.S. POSTAL SERVICE, POST OFFICE, VILLAGE STATION, New York, NY, Employer	)	

Appearances:
Charles J. Carnes, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 19, 2006 appellant filed a timely appeal from a March 23, 2006 decision of the Office of Workers' Compensation Programs denying his recurrence of disability claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant had established that he sustained a recurrence of disability on or about February 12, 1990 causally related to the accepted injury of August 14, 1982.

FACTUAL HISTORY

This case is before the Board for the fourth time. The factual findings and conclusions set forth in the Board's prior decisions are hereby incorporated by reference.[1] The relevant facts are noted. On August 20, 1982 appellant, then a 29-year-old auxiliary window clerk, filed a

[1] Docket No. 96-956 (issued November 27, 1996); Docket No. 97-1704 (issued July 9, 1998); Docket No. 02-170 (issued July 22, 2002).

traumatic injury claim alleging that on August 14, 1982 he sustained an injury to his lower back from lifting heavy packages. The Office accepted his claim for low back derangement and awarded appropriate compensation benefits for total disability. Appellant returned to work in a limited-duty position on September 13, 1986 and his compensation was reduced accordingly.

On February 28, 1990 appellant filed a recurrence of disability claim beginning February 12, 1990. In a decision dated July 9, 1998, the Board affirmed the Office's March 13, 1997 decision denying appellant's claim. The Board found that there was no evidence of record to establish any change in the nature or extent of appellant's permanent light-duty position. The Board also found that the medical evidence was insufficient to establish that appellant was disabled from his light-duty position due to a change in the nature or extent of his accepted back injuries.[2]

On July 8, 1999 appellant requested reconsideration on the grounds that his modified window clerk assignment was changed in early 1987. He alleged that his duties in his next assignment were much more strenuous which resulted in a recurrence of disability on February 12, 1990. In a February 25, 1999 statement, Elmra Nixon stated that Intelpost was always busy and that appellant did his best to push and store packages. She also noted that appellant sat for long periods of time. In a statement dated April 13, 1999, Donald Grant stated that appellant worked as an Intelpost operator until he became totally disabled on February 12, 1990. The Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant further merit review. In a July 22, 2002 decision, the Board found that the evidence was sufficient to require the Office to review appellant's case on the merits and remanded the case.[3]

By letter dated October 29, 2003, appellant requested reconsideration. In a statement accompanying his request, he indicated that he was initially injured on August 30, 1983. Appellant noted that he returned to work in a limited-duty position as a modified window/distribution clerk for four hours a day. The position had restrictions against any climbing, bending, twisting, pushing or pulling and limited him to no more than 10 to 20 pounds of lifting on an intermittent basis not to exceed one hour a day. Appellant contended that in 1987 he was reassigned to a position as an Intelpost clerk/operator with more strenuous duties. This position involved continuous sitting/standing and walking activity, bending, twisting, pushing and pulling. Appellant noted that he was responsible for loading, unloading and storing boxes of envelopes weighing four pounds each and that were shipped in containers weighing 30 pounds or more, and cases of facsimile paper weighing 13½ pounds each and rolling facsimile paper weighing approximately 50 pounds a piece. He also noted that sometime in 1989 the Intelpost workstation was relocated to another area of the lobby. Appellant was given responsibility for the relocation and moved the entire operation, including all supplies and furniture, without the assistance of other employees. During the relocation work, he experienced severe pain, discomfort and loss of mobility in his back and upper body areas.

[2] Docket No. 97-1704 (issued July 9, 1998).

[3] Docket No. 02-170 (issued July 22, 2002).

In a letter dated October 30, 2002, the employing establishment responded to appellant's allegations. The employing establishment noted that his position at Intelpost did not have a separate job description. The occupational code did not change as the physical requirements imposed by appellant's physician remained in effect in the Intelpost clerical position. The employing establishment noted that appellant first argued that his change in position resulted in a change in job duties which worsened his condition nine years after the alleged recurrence. The employing establishment argued that there was no change in appellant's lifting requirements. The employing establishment also stated that as a general practice no employee was required to physically move their workstation, mail handlers move furniture and equipment.

Appellant submitted statements from four coworkers and a medical report from his treating physician, Dr. Knolly E. Millett, a Board-certified family practitioner. In a statement dated October 29, 2003, Ruth Carter indicated that she worked with appellant and witnessed his daily work as an Intelpost operator from 1987 until the time he became disabled on February 12, 1990. In a statement dated October 31, 2003, Donald Grant stated the same thing. In an undated statement received by the Office on November 6, 2003, Henry L. McKimez stated that his office was located next to appellant's office and that he saw appellant work the machines many times. In another undated statement received by the Office on November 6, 2003, Ms. Nixon noted that she worked with appellant on numerous occasions and stated:

> "[Appellant] was assigned to the Intelpost Operations from 1987 to [February 12, 1990] when he was deemed totally disabled because of heavy lifting; pulling; shoving; etc. [He] was given the assignment from Washington, D.C.
>
> "Intelpost was an International Fax Service for foreign countries, only.
>
> "On any given day, thousands of messages were sent from foreign countries around the world, for delivery around the tri-state area.
>
> "[Appellant] was the primary contact for the New York region. Intelpost required a lot of sitting, standing, bending, walking [and] lifting. [He] had the responsibility of documenting daily, weekly, monthly and yearly reports. It was his responsibility to order and distribute supplies to all area post offices. This consisted of heavy cases of facsimile papers, envelopes, cover sheets, plastic bags and sacks which weighed anywhere from 20 to 50 pounds.
>
> "These supplies had to be stored in the supply room which [appellant] had to do.
>
> "Before [appellant] became totally disabled on [February 12, 1990], he had to physically move the entire Intelpost Operation from one area of the lobby at J.A.F. post office to another, due to renovations. That consisted of moving heavy tables, decks, file cabinets, chairs, fax machines, records and boxes of supplies.
>
> "This resulted in him reinjuring his neck."

By decision dated March 23, 2006, the Office denied modification of its prior decision.

LEGAL PRECEDENT

Where an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. 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.[4]

Office regulations provide that 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.[5] This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force) or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.[6]

ANALYSIS

Appellant alleged that he sustained a recurrence of total disability on February 12, 1990 that was caused by a change in the nature and extent of his job requirements. He alleged that he returned to work on September 13, 1986 in a light-duty position but that in the early part of 1987 his position was changed. Appellant alleged that the new position required him to exceed his physical restrictions in that he was required to perform continuous sitting and to push and pull heavy packages. He alleged that he hurt himself doing heavy lifting while moving his office across the lobby. The employing establishment disagreed with appellant's allegations. It noted that appellant's new position was not more strenuous and was within his prescribed physical limitations.

Appellant alleged that his job position changed in 1987. However, it was not until 1999, or 12 years later, that he described the change in his job requirements. Such a delay casts serious doubt on the validity of appellant's statements specifically in conjunction with the statement by the employing establishment. The statements by his witnesses with regard to his job duties are dated in February 1999, at least nine years after the alleged activities casts doubt on the witnesses recall. Most of the witnesses simply stated that appellant worked at Intelpost. The statements do not provide useful evidence, appellant's duties or indicate the physical requirements of the job. The sole exception is a November 6, 2003 statement by Ms. Nixon, who indicated that she worked with appellant on numerous occasions. Ms. Nixon noted that

[4] *Jackie D. West*, 54 ECAB 158 (2002); *Terry R. Hedman*, 38 ECAB 222 (1986).

[5] 20 C.F.R. § 10.5(x).

[6] *Id.*

appellant's position required a lot of sitting, standing, bending, walking and lifting. She also noted that appellant moved office furniture which resulted in him reinjuring his neck. The Board finds that her statement is of diminished probative value. There is no indication as to how Ms. Nixon accessed the weight of the bags that appellant allegedly moved. The statement is dated over 10 years after appellant and Ms. Nixon worked together. The Board notes that her statements as to appellant's duties are strikingly similar to those of appellant despite the lapse of time which raises a question as to the independence of her statement.

Appellant's attorney argues that the Office's decision is in error contending that the statements of appellant's witnesses were sufficient to establish that his position had changed its physical requirements. However, the Board previously found that these statements constituted new and relevant evidence addressing the issue of a change in appellant's employment duties. The Board remanded the case to the Office to evaluate this evidence. The Office determined that the statements were not sufficient to establish that appellant's new position resulted in a change in the nature and extent of the light-duty job requirements.

The Board finds that appellant has failed to establish that the requirements of his light-duty position changed to the degree that he could not perform his employment.

CONCLUSION

The Board finds that appellant has not established that he sustained a recurrence of total disability causally related to the accepted injury of August 14, 1982 on or about February 12, 1990.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 23, 2006 is affirmed.

Issued: February 26, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board