

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JACQUELINE HAMILTON and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Milwaukee, WI

*Docket No. 01-2059; Submitted on the Record;
Issued April 11, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issues are: (1) whether appellant met her burden of proof to establish that she sustained a recurrence of disability on and after September 27, 2000 due to her accepted injury to her left shoulder of January 11, 1997 and her subsequent surgeries; and (2) whether the Office of Workers' Compensation Programs abused its discretion in refusing to reopen appellant's claim for further consideration of the merits pursuant to 5 U.S.C. § 8128.

On January 12, 1997 appellant, then a 34-year-old clerk, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that on January 11, 1997 she sustained a shoulder injury while loading mail. By letter dated March 24, 1997, the Office accepted appellant's claim for left shoulder and chest strains. Subsequently, appellant underwent two operations to her shoulder, *i.e.*, a left shoulder arthroscopy on May 6, 1997 and an arthroscopy with excision of bone on January 12, 1998. Both of these operations were approved by the Office.

By decision dated June 9, 1999, the Office noted that appellant had been employed as a modified mail processor since June 6, 1998, that this position fairly and reasonably represented her wage earning capacity, that her wages were equal to or greater than the current grade and step of her date-of-injury job, that this position fairly and reasonably represented her wage-earning capacity and that she had no current entitlement to wage-loss compensation.

On September 28, 2000 appellant filed a recurrence of disability and claim for continuation of pay/compensation (Form CA-2a) alleging that she sustained a recurrence of her January 11, 1997 accepted injury on September 27, 2000. She stated that her work aggravated her injury.

By letter dated October 23, 2000, the Office requested further information from appellant.

In a September 27, 2000 doctor's note, Dr. Dean W. Ziegler, appellant's treating Board-certified orthopedic surgeon, indicated that appellant should be "off work due to an aggravation

of her left rotator cuff tendinitis from work.” In an October 25, 2000 note, Dr. Ziegler returned appellant to her usual duties “as per permanent restrictions.”

In a November 8, 2000 medical report, Dr. Ziegler indicated as follows:

“Basically [appellant] has continued to have problems with the shoulder as she had in the past. With excessive use, she has had persistent irritation in the shoulder. She notes pain over the acromioclavicular joint, pain with provocative test for clavicular irritation as well as irritation when we test the supraspinatus tendon of her rotator cuff.

“At the present time I believe her problems include possibility of partial thickness tearing of the supraspinatus tendon of the rotator cuff and that her options include living with the shoulder as it is or proceeding with surgery which would include arthroscopy, arthroscopic debridement, possible partial thickness rotator cuff repair. We would also evaluate the [acromioclavicular] joint and treat it as needed.

“I do believe that this problem in her shoulder is related to her original injury and that the rotator cuff just continues to be irritated. I know that she has been on a limited-duty position and while she is able to do it, it does still irritate her shoulder. I think that the factors of her employment have caused aggravation of her current condition.”

By decision dated December 26, 2000, the Office denied appellant’s claim for a recurrence, as it found that she had not met her burden of proof for establishing that the claimed recurrence of disability on September 27, 2000 was causally related to the injury of January 11, 1997.

By note dated January 22, 2001, appellant requested reconsideration. In a decision dated June 18, 2001, the Office denied reconsideration, finding that appellant neither raised substantive legal questions nor included new and relevant evidence.

The Board finds that this case is not in posture for decision.

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 the 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 However, it is well established that the proceedings under the Act² are not adversarial in nature and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.³

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

² 5 U.S.C. §§ 8101-8193.

³ *Mary A. Wright*, 48 ECAB 240, 242 (1996).

In the case at hand, appellant, a clerk at the time of her injury, was reassigned by the employing establishment to a position as a modified mail processor. Dr. Ziegler took appellant off work from September 27 to October 25, 2000, “due to an aggravation of her left rotator cuff tendinitis from work.” In his November 8, 2000 opinion, he explained that he believed that appellant’s current problem in her shoulder was related to her original injury. Dr. Zeigler noted that appellant had been in a limited-duty status and that performing these duties had continued to irritate her shoulder. He also concluded that the factors of appellant’s employment had caused aggravation of her current condition. While these reports do not clearly establish that appellant sustained a recurrence of her accepted injury of January 11, 1997 and are therefore insufficient to meet appellant’s burden of proof, they raise an uncontroverted inference between appellant’s claimed recurrence of disability and her January 11, 1997 employment injury and are sufficient to require the Office to further develop the medical evidence and the case record.⁴

Accordingly, the case will be remanded to the Office for further evidentiary development regarding the issue of whether appellant sustained a recurrence of disability on or after September 27, 2000 due to her accepted employment injury. The Office should prepare a statement of accepted facts and obtain a further medical opinion on this matter. After such development of the case record as the Office deems necessary, an appropriate decision should be issued.⁵

The decisions of the Office of Workers’ Compensation Programs dated June 18, 2001 and December 26, 2000 are vacated, and this case remanded for further proceedings consistent with this opinion.⁶

Dated, Washington, DC
April 11, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

⁴ *Id.*

⁵ Due to the disposition of this issue, it is not necessary for the Board to address whether the Office abused its discretion by refusing to reopen appellant’s claim for consideration of the merits on January 22, 2001.

⁶ Appellant attempted to submit additional evidence on appeal. The Board’s review is limited to the evidence that was before the Office at the time of its final decision. The Board therefore cannot consider this evidence. 20 C.F.R. § 501.2(c).