United States Department of Labor
Employees' Compensation Appeals Board

L.T., Appellant	)	
and	)	**Docket No. 06-1907**
	)	**Issued: April 5, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Detroit, MI, Employer	)	

Appearances:
Meletios T. Golematis, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 14, 2006 appellant filed a timely appeal from a July 10, 2006 decision of the Office of Workers' Compensation Programs affirming the denial of her claim for a recurrence of total disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant has established that she sustained a recurrence of disability from December 31, 2003 to December 19, 2004 causally related to the accepted cervical, thoracic and lumbar strains, a contusion of the left lower leg and a posterior labrum tear of the right shoulder.

FACTUAL HISTORY

The Office accepted that on December 15, 2003 appellant, then a 27-year-old casual letter carrier, sustained cervical, thoracic and lumbar strains and a lower left leg contusion when she slipped and fell down two icy steps in the performance of duty. On December 8, 2004 the

Office also accepted a tear of the posterior labrum of the right shoulder. The Office also approved right shoulder arthroscopy. Appellant returned to work on December 16, 2003 in limited-duty status. She was terminated from the employing establishment effective December 31, 2003 due to "failure to maintain regular attendance."[1]

On October 4, 2004 appellant filed a claim for a recurrence of disability commencing December 31, 2003. She also claimed wage-loss compensation from December 31, 2003 to December 19, 2004. In an October 28, 2004 letter, the Office advised appellant of the additional medical and factual evidence needed to establish her claim for recurrence of disability. The Office emphasized the need to submit a rationalized report from her attending physician explaining how and why the accepted injuries would totally disable her for work for the claimed period.

In a November 22, 2004 letter, appellant stated that she attended community college for part of the January to May 2004 semester and again from July to August 2004. She took 13 credit hours in the Fall 2004 semester. Appellant noted that she could drive, take her children to dinner and go to the library and a computer lab to do web design assignments. She submitted medical evidence.

In a December 16, 2003 report, Dr. Anthony D'Silva, an attending Board-certified internist, diagnosed cervical and thoracolumbar strains, a left knee contusion and a strain and contusion of the left leg. In reports from December 17, 2003 to January 13, 2004, he noted appellant's continued complaints of back pain with paraspinal spasms. Dr. D'Silva found that appellant was able to perform light-duty work with restrictions against lifting, carrying, pulling or pushing over 10 pounds, no reaching above shoulder level, no climbing, no awkward or repetitive motions of the back.

Dr. M. David Jackson, an attending Board-certified physiatrist, provided reports from January 22 to December 15, 2004 diagnosing a right shoulder strain, lumbosacral, thoracic and cervical strains caused by the December 15, 2003 slip and fall. He noted paraspinal muscle spasms in the shoulder girdle, neck, thoracic and lumbar regions.[2] Dr. Jackson treated appellant's symptoms with medication and epidural injections. He held appellant off work from August 18 to September 27, 2004 due to back, neck and right shoulder pain. Dr. Jackson found that the December 15, 2003 injuries permanently disabled appellant for work as a letter carrier. He noted that appellant was enrolled in classes during the Fall 2004 semester, recommended that she have "elevator access when at school" and supported her application for a handicapped parking permit. In a November 15, 2004 report, Dr. Jackson remarked that appellant was "overly obsessed with pain complaints" and "almost any issues within her body."

[1] In a January 11, 2005 letter, the employing establishment stated that appellant "was employed as a casual (temporary) employee who[se] term ended on December 31, 2003. [Appellant] entered on duty November 17, 2003 as a casual letter carrier.

[2] A July 1, 2004 lumbar magnetic resonance imaging (MRI) scan showed low volume facet effusions from L1-4 and a very minimal posterior disc bulge at L4-5. An August 9, 2004 cervical MRI scan showed small annular tears at C5-6 and C6-7 without frank herniation, stenosis or cord compression. An August 24, 2004 MRI scan of the right shoulder showed a posterior labral tear. A November 3, 2004 MRI scan showed frayed cartilage at the patellar apex in the left knee with subtle chondromalacia.

The Office requested that Dr. Jackson submit a supplemental report stating whether the accepted injuries disabled appellant for work from December 31, 2003 to December 19, 2004. In a December 15, 2004 letter, Dr. Jackson stated that he held appellant off work from April 13 through July 2004 "primarily … for her inability to attend classes that she was enrolled in, but also referred to work." He noted that appellant worked in the private sector during June and July 2004 but opined that she should not have done so.

On December 20, 2004 Dr. Jeffrey Michaelson, an attending Board-certified orthopedic surgeon, performed right shoulder arthroscopy with limited debridement of a posterior labral tear and a subacromial bursectomy. He held appellant off work through January 31, 2005 and released her to light duty on February 1, 2005.[3]

By decision dated January 11, 2005, the Office denied appellant's claim for a recurrence of total disability for the period December 31, 2003 to December 19, 2004 on the grounds that the medical evidence was insufficient to establish that she was totally disabled for that period. The Office noted that appellant's private sector employment in June and July 2004 demonstrated that she was not totally disabled for work.

Appellant requested an oral hearing and submitted additional evidence.[4]

Dr. Jackson submitted periodic reports from January 14 to November 22, 2005 noting a lack of objective findings to explain appellant's continued pain symptoms. He found appellant temporarily disabled for work from April 11, 2005 onward.

In a February 19, 2005 affidavit of earnings and employment, appellant stated that she worked for Forge Industrial Staffing from June 27 to August 1, 2004, "pushing a button and sitting up plastic bottles." She earned $9.00 an hour.

The Office obtained a second opinion report from Dr. Michael J. Geoghagan, an orthopedic surgeon, who submitted a March 22, 2005 report opining that the accepted injuries had resolved completely. He diagnosed status post posterior labrum tear without instability. Dr. Geoghagan found appellant capable of working as a letter carrier.

In an August 8, 2005 report, Dr. Dennis Bandemer, an attending osteopath associated with Dr. Jackson, noted that appellant had started a home-based clothing and accessories business.

The Office determined that there was a conflict of medical opinion between Dr. Jackson, for appellant and Dr. Geoghagan, for the government, regarding the duration and extent of appellant's injury-related disability. To resolve this conflict, the Office appointed Dr. Charles F. Xeller, a Board-certified orthopedic surgeon, as an impartial medical examiner.

[3] Appellant received wage-loss compensation for the period December 20, 2004 to January 21, 2005.

[4] Appellant initially requested the hearing on January 27, 2005. The Office did not take further action on appellant's request until after obtaining the second opinion and impartial examination reports.

In October 6 and 26, 2005 reports, Dr. Xeller provided a history of injury and treatment and reviewed the medical record. On examination, he found restricted lumbar and right shoulder motion. Dr. Xeller diagnosed "[c]ervical spine, low back and left knee strains, resolved," and "[s]tatus post right shoulder arthroscopy, for labral tear." He opined that appellant could return to full-time employment with permanent restrictions against overhead lifting.

An oral hearing was held on April 24, 2006. At the hearing, appellant asserted that she remained totally disabled for work due to the accepted injuries. After the hearing, she submitted January 25 and March 29, 2006 reports from Dr. Jackson and Dr. David Baker, an osteopath associated with Dr. Jackson, regarding appellant's chronic right shoulder pain. Neither report addressed the claimed period of recurrence of disability.

By decision dated and finalized July 10, 2006, an Office hearing representative affirmed the January 11, 2005 decision finding that appellant did not establish that she sustained a recurrence of total disability from December 31, 2003 to December 19, 2004. The hearing representative found that appellant submitted insufficient rationalized medical evidence substantiating total disability for the claimed period.

LEGAL PRECEDENT

As used in the Federal Employees' Compensation Act,[5] the term "disability" means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.[6] A recurrence of disability is defined by Office regulations as an inability to work, caused by a spontaneous change in a medical condition resulting from a previous injury or illness without an intervening injury or new exposure to the work factors that caused the original injury or illness.[7] If the disability results from new exposure to work factors, the legal chain of causation from the accepted injury is broken and an appropriate new claim should be filed.[8]

When 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.[9] This includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate

[5] 5 U.S.C. §§ 8101-8193.

[6] *Prince E. Wallace*, 52 ECAB 357 (2001).

[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3 (May 1997); *Donald T. Pippin*, 54 ECAB 631 (2003).

[8] *Id.*

[9] *Albert C. Brown*, 52 ECAB 152 (2000); *see also Terry R. Hedman*, 38 ECAB 222 (1986).

factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.[10] An award of compensation may not be made on the basis of surmise, conjecture, speculation or on appellant's unsupported belief of causal relation.[11]

While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such an opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and that such a relationship must be supported with affirmative evidence, explained by medical rationale and be based on a complete and accurate medical and factual background of the claimant.[12] Medical conclusions unsupported by medical rationale are of diminished probative value and are insufficient to establish causal relation.[13]

The Board will not require the Office to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify her disability and entitlement to compensation.[14]

ANALYSIS

The Office accepted that, on December 15, 2003, appellant sustained cervical, thoracic and lumbar sprains, a lower left leg contusion and a glenoid labrum tear in the right shoulder requiring arthroscopic repair on December 20, 2004. She returned to work in light-duty status on December 16, 2003 and was terminated from the employing establishment on December 31, 2003. Appellant then claimed a recurrence of disability beginning December 31, 2003 and wage-loss compensation through December 19, 2004, the day prior to her shoulder surgery. She has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed total disability from December 31, 2003 to December 19, 2004 and the accepted injuries.[15]

In support of her claim, appellant submitted reports from several physicians addressing her ability to work during the claimed period. In reports from December 17, 2003 to January 13, 2004, Dr. D'Silva, an attending Board-certified internist, opined that appellant was able to perform light-duty work. Dr. Jackson, an attending Board-certified physiatrist, stated that he

[10] *Ronald A. Eldridge*, 53 ECAB 218 (2001); *see Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

[11] *Patricia J. Glenn*, 53 ECAB 159 (2001); *Ausberto Guzman*, 25 ECAB 362 (1974).

[12] *Conard Hightower*, 54 ECAB 796 (2003).

[13] *Albert C. Brown*, *supra* note 9.

[14] *Amelia S. Jefferson*, 57 ECAB __ (Docket No. 04-568, issued October 26, 2005); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

[15] *Alfredo Rodriguez*, 47 ECAB 437 (1996).

held appellant off work from April 13 through July 2004 primarily because she was unable to attend academic classes, but that in hindsight, these restrictions would have also applied to work. The Board notes that appellant successfully held a private-sector job from June 27 to August 1, 2004, overlapping the period in which Dr. Jackson found her disabled for work. Dr. Jackson also held appellant off work from August 18 to September 27, 2004 due to back, neck and shoulder pain. However, statements about appellant's pain, not corroborated by objective findings of disability, do not constitute a basis for payment of compensation.[16]

Appellant submitted evidence regarding her activities during the claimed recurrence of total disability. In a November 22, 2004 letter, appellant described her ability to attend community college classes part time from January to May 2004 and in July and August 2004, drive to the computer lab or library and complete web design assignments. In a February 19, 2005 affidavit, she noted working from June 27 to August 1, 2004 for a private sector company. Appellant's own statements indicate that she was not totally disabled for work from December 31, 2003 to December 19, 2004.

None of appellant's physicians provided a rationalized medical opinion finding appellant disabled for work for any portion of the claimed period from December 31, 2003 to December 19, 2004 due to the accepted injuries. Therefore, the medical evidence submitted in support of her claim for recurrence of disability for that period is insufficient to meet appellant's burden of proof.[17] The Board notes that the Office advised appellant by October 28, 2004 letter, of the necessity of submitting rationalized medical evidence explaining how and why the accepted conditions would totally disable her for work for the claimed period. However, appellant did not submit such evidence.

CONCLUSION

The Board finds that appellant has not established that she sustained a recurrence of total disability from December 31, 2003 to December 19, 2004.

[16] *Paul D. Weiss*, 36 ECAB 720 (1985); *John L. Clark*, 32 ECAB 1618 (1981).

[17] *Alfredo Rodriguez*, *supra* note 15.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 10, 2006 is affirmed.

Issued: April 5, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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