United States Department of Labor
Employees' Compensation Appeals Board

M.C., Appellant	)	
and	)	**Docket No. 06-1744**
	)	**Issued: January 19, 2007**
U.S. POSTAL SERVICE, OCEAN VIEW POST OFFICE, Miami, FL, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 24, 2006 appellant filed a timely appeal from the May 30, 2006 decision of the Office of Workers' Compensation Programs, which denied her claim for compensation on the grounds that she failed to establish that she sustained a recurrence of her accepted employment injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(1), the Board has jurisdiction over the merits of this case. In her appeal, appellant argued that she was not given adequate time and assistance in gathering medical evidence and that she was entitled to compensation because of the permanent nature of her injury.[1]

ISSUE

The issue is whether appellant established that she sustained a recurrence of disability causally related to her accepted April 4, 1989 employment injury.

[1] Appellant's appeal mentions a wrist injury in addition to her accepted knee injury. The Board notes that the accepted knee injury is the only one properly before it.

FACTUAL HISTORY

On April 4, 1989 appellant, then a 24-year-old letter carrier, filed a traumatic injury claim, Form CA-1, alleging that she was struck on the right knee by a floor buffer at the employing establishment. On May 5, 1989 the Office accepted appellant's claim for contusion of the right knee. Appellant was totally disabled from work from April 4 to May 2, 1989 and partially disabled from work from May 3 to September 21, 1989. On September 22, 1989 appellant underwent an arthroscopic knee surgery and was diagnosed with a tear in her right medial meniscus. She was totally disabled from the time of the operation until December 8, 1989[2] when her physician, Dr. Alfonso F. Petti, a Board-certified orthopedic surgeon, released her to perform "sedentary-type work."

To accommodate appellant's partial disability, the employing establishment created a light-duty position for her in the accounting department. Appellant remained in this light-duty assignment from January 1990 until some time in 1991.[3] On December 14, 1990 Dr. Petti wrote a letter regarding appellant's continued disability and stated that he believed she had sustained a 15 percent permanent impairment of her lower extremity and that she would require periodic follow-up for her symptoms. Appellant continued to work under certain light-duty restrictions dictated by Dr. Petti following her reassignment from the accounting department. In 1990, appellant received a third-party settlement for her injury, which resulted in a surplus of $13,314.08. Appellant was placed on nonpay, nonduty status on June 15, 1993 and was terminated from the employing establishment on April 1, 1994 for misconduct unrelated to her employment injury.

On November 9, 2004 appellant filed a recurrence of disability claim, Form CA-2a, alleging that she had been in constant pain since her surgery in 1989. She did not provide a specific date on which the recurrence allegedly occurred. Appellant indicated that she had great difficulty walking and could not bend her knee. She stated that her knee could not improve, it could only get worse. She also stated that she was not working, but did not provide the exact date she stopped working. Appellant reported that she worked for Lockheed Martin in 1998 and 1999 as an office assistant. She indicated that she was not seeking compensation for lost wages.

The employing establishment controverted appellant's claim on the grounds that she had not provided medical evidence to show a causal relationship between the April 4, 1989 employment injury and the alleged recurrence. The employing establishment emphasized that appellant had not been employed by them for 10 years.

On August 18, 2005 the employing establishment provided additional arguments and evidence for its controversion, including administrative records related to her third-party settlement and her termination from employment.

[2] A December 20, 1989 document dates the end of total disability as December 26, 1989.

[3] The record does not indicate the exact dates of her work assignment changes.

By letter dated September 1, 2005, the Office requested that appellant provide additional factual and medical information to support her claim. It specifically requested a comprehensive medical report that established a causal relationship between the employment injury and her current condition. The Office gave appellant 30 days to provide the additional information. Appellant did not submit the requested medical or factual information during this time.

By decision dated October 12, 2005, the Office denied appellant's claim for compensation on the grounds that she had not provided adequate evidence to establish that her April 4, 1989 employment injury had recurred. It stated that her medical benefits should not be impacted by the decision.

On October 19, 2005 appellant requested an oral hearing, which was set for March 14, 2006. At the hearing, appellant stated that she held a variety of sedentary jobs from the time she left the employing establishment in 1994 until approximately 2002, when her knee kept her from working full time. She stated that she regularly saw a family doctor about her knee complaints. Appellant also stated that she believed she needed another surgery but that, because Dr. Petti retired, she could not afford to see another specialist. Appellant stated that she had no outside hobbies involving physical activity because her knee was in too much pain.

By decision dated May 30, 2006, the Office denied modification of its earlier decision. The Office hearing representative found that the record contained no medical evidence since 1992 and that appellant had not provided any medical evidence as to her current condition. For these reasons, the Office hearing representative found that appellant had not met her burden of proof.

LEGAL PRECEDENT

The Office's regulation defines a recurrence of disability as an employee's inability to work, following a return to work, caused by a spontaneous change in a medical condition that resulted from a previous injury or illness without an intervening injury or new exposure. The term also means the 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 for when such withdrawal occurs for reasons of misconduct, nonperformance of the job duties or a reduction-in-force (RIF).[4]

When claiming recurrence of disability, an employee who was given a light-duty position to accommodate the effects of an employment injury has the burden of establishing that she cannot perform the light-duty tasks. This must be shown by the weight of the reliable, probative and substantial evidence. As part of the burden, 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.[5]

[4] *See* 20 C.F.R. § 10.5(x).

[5] *Richard A. Neidert*, 57 ECAB ___ (Docket No. 05-1330, issued March 10, 2006); *Terry R. Hedman*, 38 ECAB 222 (1986).

ANALYSIS

Appellant claimed compensation for recurrence of the accepted employment injury to her right knee. She alleged that the ongoing pain in her right knee disabled her for work from 2002 to the present. The Board finds that appellant has not met her burden of proof to establish that she sustained a recurrence of disability causally related to the April 4, 1989 employment injury.

Appellant was on light-duty status from December 1989 until her last day of work at the employing establishment in June 1993. Because of this light-duty status to qualify for disability compensation appellant must demonstrate either that her condition has changed such that she could not perform the activities required by her previous light-duty status or that the requirements of light duty have changed or were withdrawn.

Appellant has not met the burden of establishing that her condition has changed such that she could not perform a job containing the light-duty restrictions in place at the time of her termination. The record contains evidence that Dr. Petti, a Board-certified orthopedic surgeon, opined that appellant would continue to experience symptom flare-ups as a result of her April 4, 1989 employment injury. While this evidence supports the need for light-duty requirements, it does not establish the state of appellant's employment-related condition from 2002 onward or provide proof that she could not perform a job with the restrictions indicated by Dr. Petti due to the effects of her April 4, 1989 employment injury. Appellant has presented no medical evidence to support the claim that she is currently disabled. Appellant's own statements and belief are not adequate to prove her case:[6] under the Federal Employees' Compensation Act, only the medical opinion of a physician can form the basis for compensation.[7] The Board finds that, in the absence of current medical evidence, appellant has not met her burden of proof.

Moreover, appellant has not shown that she is entitled to disability compensation because of the withdrawal of light-duty status. Under the Office regulations, an employee is not entitled to disability compensation when light-duty status tailored to her abilities is withdrawn because of misconduct, refusal to do the work or a RIF. The record in this case indicates that appellant was terminated for misconduct in 1994. Though this termination acted effectively as a withdrawal of light-duty status, it cannot form the basis for a disability compensation claim because the termination had nothing to do with appellant's ability to perform the light-duty requirements.[8]

Appellant has argued that the Office did not allot her adequate time to get medical records from her family doctor and did not provide assistance in this process. The Board has held that it is ultimately the responsibility of claimants to gather the medical information

[6] *See Kenneth R. Love*, 50 ECAB 193 (1998) (an award for compensation may not be based upon a claimant's own belief that there is a causal relationship between the claimed condition and the employment).

[7] 5 U.S.C. § 8121.

[8] *John W. Normand*, 39 ECAB 1378 (1988).

necessary to establish a claim.[9] Appellant's difficulty in accessing her medical records does not change the fact that the record does not currently contain adequate medical evidence of her alleged disability.

The Board finds that appellant has not met her burden of proof of establishing that she sustained a recurrence of disability causally related to the April 4, 1989 employment injury.

CONCLUSION

The Board finds that appellant has not established that she sustained a recurrence of disability causally related to her accepted April 4, 1989 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 30, 2006 is affirmed.

Issued: January 19, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

[9] *Mary A. Ceglia*, 55 ECAB 626 (2004).