United States Department of Labor
Employees' Compensation Appeals Board

A.H., Appellant	)	
and	)	**Docket No. 08-2061**
	)	**Issued: June 1, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Seattle, WA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 21, 2008 appellant filed a timely appeal from an October 1, 2007 decision of the Office of Workers' Compensation Programs that denied his claims for compensation. 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 his burden of proof to establish that he was totally disabled for the periods November 17 to December 30, 2005, January 1 to April 30 and July 1 to September 30, 2006.

FACTUAL HISTORY

This case has previously been before the Board. By decision dated July 24, 2007, the Board found that, by its September 28, 2005 decision, the Office properly refused to reopen appellant's case for further consideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a), that he failed to meet his burden of proof to establish that he was totally disabled for the period December 1 to 15, 2004 and that the Office properly denied his April 19, 2006

reconsideration request.[1] The law and the facts of the previous Board decision are incorporated herein by reference.

On August 21, 2006 appellant filed a Form CA-2a, recurrence claim, alleging that he sustained a recurrence of disability on November 17, 2005 as a result of work stoppage caused by withdrawal of his limited-duty assignment. The employing establishment challenged the claim, noting that appellant was assigned as a clerk on the small parcel and bundle sorter (SPBS) machine but was unable to perform these duties and had not provided medical documentation when asked. Appellant had also filed CA-7 forms, claims for compensation, for periods through September 30, 2006.[2]

Appellant's attending Board-certified orthopedic surgeon, Dr. Stephen E. Fuhs, submitted a January 5, 2005 report in which he advised that appellant's right upper extremity had "dramatically improved" and he could continuously lift 35 to 40 pounds and intermittently lift 70 pounds, with no other restrictions. On January 13, 2005 he reported that appellant could return to full duties as of January 5, 2005. By report dated February 9, 2005, Dr. Fuhs noted that he had discussed two jobs with appellant and completed two duty status reports that reflected the two positions: (1) clerk mail processor position in which he advised that appellant could not case mail and could not repetitively move his thumb and wrist and could not perform simple grasping with a continuous 20-pound and intermittent 35-pound restriction; and (2) a clerk manual position in which he advised that scanning and labeling papers and sacks was okay but appellant could not case due to a permanent ligament tear and had a continuous 35- to 40-pound and an intermittent 70-pound weight restriction. On a February 14, 2005 duty status report for a parcel post distributor machine operator, the only restriction Dr. Fuhs provided was continuous lifting restricted to 45 pounds and intermittent to 70 pounds.

On September 20, 2005 the Office asked that Dr. Fuhs clarify appellant's restrictions and he responded that an appointment was needed. A notification of personnel action, effective October 15, 2005, advised that, at appellant's request, he held the position of parcel post distributor with duties of keying and sweeping on the small parcel and bundle sorter and additional work on the news belt, manual primary letters and flats and other clerk duties as assigned. By report dated October 19, 2005, Dr. Fuhs noted that appellant had a ganglion cyst on his left wrist that was not part of his workers' compensation claim. He advised that appellant could tolerate his new job and provided a duty status report indicating that he could continuously lift 35 to 40 pounds and intermittently lift 70 pounds and was to minimize repeated grasping and releasing, was to rotate tasks, was not to case with the right upper extremity and that intermittent keyboarding was okay. On December 12, 2005 Dr. Fuhs advised that appellant was not tolerating a new position and advised that he could not case mail and should not perform repetitive motion of the thumb or wrist or simple continuous grasping. Lifting was restricted to 20 pounds continuously and 35 pounds intermittently.

[1] Docket No. 06-1823 (issued July 24, 2007). The Board notes that, by decision dated June 19, 2002, the Office found that appellant's actual earnings as a modified mail processor fairly and reasonably represented his wage-earning capacity.

[2] The record also contains CA-7 form claims for dates subsequent to September 30, 2006, not at issue in the present case.

By letter dated February 8, 2006, the employing establishment advised appellant that, given his current limitations and medical restrictions, no work was available. On February 27, 2006 Dr. Fuhs reported that appellant had symptoms of carpal tunnel syndrome with complaints of nighttime numbness. Physical examination demonstrated positive Tinel's and Phalen's signs. A telephone memorandum on June 1, 2006 noted that appellant began a new job in the fall of 2005 with the same job title but different duties. In a June 19, 2006 report, Dr. Fuhs advised that appellant's carpal tunnel syndrome had not progressed. An employing establishment duty status form dated June 22, 2006 provided restrictions of no simple grasping or repetitive thumb or wrist motion and no casing with a weight restriction of 30 pounds continuously and 75 pounds intermittently. On June 28, 2006 appellant filed an Equal Employment Opportunity Commission (EEOC) claim. A telephone memorandum dated July 28, 2006 advised that appellant bid for a new position in October 2005, went through the training, but stopped work in November 2005, stating that he was being asked to perform work beyond his restrictions. On August 7, 2006 appellant filed a grievance for failure to accommodate his work-related restrictions. By letter dated August 23, 2006, the employing establishment advised that the position appellant held before October 2005 was no longer available.

A conference was held on September 11, 2006 between the employing establishment and the Office. The employing establishment advised that appellant was fully aware of the physical requirements of the bid position and that the "casing" he was asked to perform was to remove small bundles of mail weighing from 8 ounces to 10 pounds. By letter dated September 13, 2006, appellant advised the Office that he was not aware that the bid position required casing. On September 21, 2006 Cornelius Rosser, appellant's supervisor, advised that appellant reported to the bid position on October 15, 2005. He noted that the SPBS machines had a high volume from September to November 2005, primarily due to Christmas catalogs and that appellant performed these duties until November 2005 when there was a decline in mail volume. Mr. Rosser stated that appellant was then instructed to work the news belt where workers were positioned standing on one side to sort mail, stating that this required placing a roll or bundles of news material, weighing from several ounces to eight pounds, into a container matching the address of the material for dispatch. He stated that appellant did not notify him that these duties were outside his restrictions but that he could not perform them due to back spasms, noting that he was off work from November 12 to 14, 2005 and that upon his return to work he was asked to submit medical documentation but did not do so.

By letter dated September 25, 2006, the employing establishment advised Dr. Fuhs that the position for which appellant successfully bid in August 2005, parcel post distribution clerk, required the operators to rotate every one to two hours from keying to sweeping, moving and replacing the hampers for dispatch. When not working on the SPBS machine, appellant was assigned to the news belt operation where he did not case mail but picked up a small bundle of newspapers from a conveyor belt that weighed from several ounces up to eight pounds and sorted them on sacks ready for dispatch. There was no twisting of the wrist on this operation. The employing establishment stated that appellant was never sent to the "Manual Primary Letters and Flats" operation, since that operation involved repetitive casing. Dr. Fuhs referred the employing establishment to his February 27 through June 19, 2006 reports.

By decision dated October 20, 2006, the Office denied appellant's claims for compensation for periods from November 17, 2005 to September 30, 2006 on the grounds that the evidence did not establish that the employing establishment withdrew the SPBS position and that the medical evidence did not establish that he could not perform the position.

In a letter dated October 12, 2006, received by the Office on October 23, 2006, John Griffin, distribution operations manager, controverted the claim. Mr. Griffin stated that appellant had taken sick leave from November 12 through 14, 2005 due to back spasms, that November 15 and 16, 2005 were nonscheduled days and that on November 17, 2005 he told his supervisor that he could not work because he could not do his bid job and reported to work as usual on November 18, 2005. Additional employing establishment correspondence included letters dated May 24 and August 31, 2006 regarding appellant's employment status and letters dated October 17, November 2 and December 30, 2006 regarding his claim.

On November 14, 2006 appellant requested a hearing and submitted June 19, 2006 reports in which Dr. Fuhs advised that appellant could answer telephones, file and verify mail, either sitting or standing and could distribute mail into employing establishment boxes but could not case mail and could not perform repetitive movements of the thumb and wrist or simple grasping. Dr. Fuhs provided permanent lifting restrictions of 30 pounds continuous and 75 pounds intermittent and advised that appellant could return to work, including overtime. In an October 9, 2006 report, he advised that Tinel's and Phalen's tests were negative and in an October 10, 2006 report reiterated appellant's restrictions. In a May 23, 2007 report, Dr. Fuhs provided physical examination findings and advised that Tinel's and Phalen's tests were negative and there were no findings or wrist tenosynovitis. He advised that no further treatment was planned and that he had no future plans for seeing appellant.

At the hearing, held on July 18, 2007, appellant testified that he was physically capable of performing the duties of the bid position of SPBS clerk but that Mr. Rosser improperly removed him from the position, based on his right wrist injury and that he had not returned to work since stopping in November 2005. He argued that he should therefore receive wage-loss compensation or be offered an appropriate position. Appellant noted that, although the SPBS position did not require casing, he could case mail with his left hand and that he had filed a grievance regarding his job withdrawal but that no final decision had been issued. He stated that, although he occasionally had back spasms, these did not preclude him from performing the SPBS position.

Subsequent to the hearing, the employing establishment submitted correspondence including a June 2, 2006 rebuttal in which Mr. Rosser advised that appellant bid for the SPBS clerk position in October 2005 and provided a medical report stating that he was fully capable of performing all the duties of the position but complained when he was assigned duties other than working on the SPBS machine and that, when asked, he did not provide medical documentation. Mr. Rosser stated that appellant's trainers and coworkers complained about appellant's lack of knowledge regarding the position and that he constantly requested a change in schedule to get weekends off, when the bid position was for Tuesdays and Wednesdays off. He stated that he suggested that appellant try to bid for another position due to his medical restrictions and to accommodate different days off. On June 7, 2007 Mr. Rosser described a November 27, 2005 meeting held with appellant to discuss his inability to perform his bid assignment as SPBS clerk. He stated that, when appellant told him he was not able to perform this position and wanted to be

accommodated in another job, he was told that he would be assigned to duties in accordance with employing establishment policies and, if no work was available, he would have to take annual or sick leave. Mr. Rosser stated that he repeatedly requested that appellant renew his medical restrictions.

The employing establishment also submitted a description of appellant's bid position, effective October 15, 2005, an August 24, 2006 conference memorandum, attended by appellant, employing establishment management and a union steward, regarding his status, a December 8, 2006 letter informing him that he was being carried as absent without leave, a January 10, 2007 letter informing him to report for an investigative interview, including questions to be covered, his February 2, 2007 deposition taken for an EEOC claim, a February 13, 2007 letter informing him that a grievance was denied, that was appealed by him on February 26, 2007, a June 25, 2007 duty status form signed by appellant and an employing establishment nurse documenting Dr. Fuhs' restrictions, a July 8, 2007 letter advising him to report for an investigative interview on July 13, 2007, an August 3, 2007 notice of separation for inability to perform the duties of the SPBS position and August 16, 2007 letters in which the employing establishment again noted that, when he bid for the SPBS position, he provided medical documentation showing that he could perform the duties and that, although he provided a later report from Dr. Fuhs that contradicted the October 19, 2005 report, the employing establishment could not get clarification from Dr. Fuhs regarding the changes. The employing establishment noted that appellant testified at the hearing that he did not perform any duties beyond his medical restrictions.

By decision dated October 1, 2007, an Office hearing representative affirmed the October 20, 2006 decision, finding that the employing establishment did not withdraw the bid position and that the medical evidence did not establish that appellant was not able to work beginning November 17, 2005 as a result of the accepted injury-related conditions.

LEGAL PRECEDENT

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] A person who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which she claims compensation is causally related to the accepted injury. This burden of proof requires that an employee furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.[4] Where no such rationale is present, medical evidence is of diminished probative value.[5]

[3] 20 C.F.R. § 10.5(x); *R.S.*, 58 ECAB ____ (Docket No. 06-1346, issued February 16, 2007).

[4] *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008)*; Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

[5] *See Ronald C. Hand,* 49 ECAB 113 (1957); *Michael Stockert,* 39 ECAB 1186, 1187-88 (1988).

Under the Federal Employees' Compensation Act the term "disability" is defined as incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.[6] Disability is thus not synonymous with physical impairment which may or may not result in an incapacity to earn the wages. An employee who has a physical impairment causally related to a federal employment injury but who nonetheless has the capacity to earn wages he or she was receiving at the time of injury has no disability as that term is used in the Act[7] and whether a particular injury causes an employee disability for employment is a medical issue which must be resolved by competent medical evidence.[8] Whether a particular injury causes an employee to be disabled for work and the duration of that disability, are medical issues that must be proved by a preponderance of the reliable, probative and substantial medical evidence.[9]

The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.[10] Furthermore, it is well established that medical conclusions unsupported by rationale are of diminished probative value.[11]

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[12] Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[13] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[14]

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

[7] *Cheryl L. Decavitch*, 50 ECAB 397 (1999); *Maxine J. Sanders*, 46 ECAB 835 (1995).

[8] *Donald E. Ewals*, 51 ECAB 428 (2000).

[9] *Tammy L. Medley*, 55 ECAB 182 (2003); *see Donald E. Ewals, id.*

[10] *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

[11] *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

[12] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[13] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[14] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

ANALYSIS

The Board finds that appellant has not established that his claimed disability for the periods November 17 to December 30, 2005, January 1 to April 30 and July 1 to September 30, 2006 was caused by the accepted right wrist conditions. Appellant stopped work on November 17, 2007 and filed a recurrence claim in August 2006, alleging that his work stoppage was caused by withdrawal of a limited-duty assignment. At the time he stopped work in November 2005, he was not working a limited-duty position, but rather as an SPBS clerk, a regular position for which he had successfully bid. Therefore, to establish a recurrence of disability due to an accepted employment-related injury, appellant had the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which he claimed compensation was causally related to the accepted injuries.[15] The issue of whether a claimant's disability is related to an accepted condition is a medical question which must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to employment factors and supports that conclusion with sound medical reasoning.[16]

Appellant's attending orthopedic surgeon, Dr. Fuhs, submitted a January 5, 2005 report in which he advised that appellant's right upper extremity had "dramatically improved" and he could continuously lift 35 to 40 pounds and intermittently lift 70 pounds, with no other restrictions and on January 13, 2005 advised that he could return to full duty. On a February 14, 2005 duty status report for a position as parcel post distributor machine operator, the only restriction Dr. Fuhs provided was that continuous lifting be restricted to 45 pounds and intermittent lifting to 70 pounds. By report dated October 19, 2005, he noted that appellant had a ganglion cyst on his left wrist that was not part of his workers' compensation claim and advised that he could tolerate his new job. In a duty status report, Dr. Fuhs provided the same lifting restrictions and advised that appellant was to minimize repeated grasping and releasing, was to rotate tasks and was not to case with the right upper extremity. Intermittent keyboarding was permitted. On December 12, 2005 Dr. Fuhs advised that appellant was not tolerating a new position and advised that he could not case mail and should not perform repetitive motion of the thumb or wrist or simple continuous grasping. Lifting was restricted to 20 pounds continuously and 35 pounds intermittently.

The employing establishment advised that appellant was fully aware of the physical requirements of the bid position and that the "casing" he was asked to perform was to remove small bundles of mail that weighed from 8 ounces to 10 pounds, well within the lifting restrictions provided by Dr. Fuhs. Mr. Rosser described additional duties appellant performed in the bid position of SPBS clerk, including that the operators were to rotate every one to two hours from keying to sweeping, moving and replacing the hampers for dispatch and when not working on SPBS machine, would be assigned to the news belt operation where small bundles of newspapers that weighed from several ounces up to eight pounds would be picked up from a conveyor belt and sorted into sacks ready for dispatch. No twisting of the wrist was required. While appellant initially stated that he stopped work because he was asked to work outside his

[15] *I.J., supra* note 4.

[16] *Sandra D. Pruitt*, 57 ECAB 126 (2005).

physical restrictions and filed a grievance for failure to accommodate these restrictions, at the hearing he testified that he was not asked to work outside his restrictions. Rather, he stated that the employing establishment improperly withdrew the bid position.

In this case, the physical requirements of appellant's bid job of SPBS clerk conformed with the restrictions provided by Dr. Fuhs. None of these duties were outside the restrictions provided by Dr. Fuhs in any of his medical reports. The medical evidence of record therefore does not establish that appellant was totally disabled for the periods claimed. Appellant therefore did not meet his burden of proof to establish that he was totally disabled due to his accepted right wrist condition. As he did not submit medical evidence sufficient to establish his claim, he did not meet his burden of proof to establish that he sustained a recurrence disability and the Office properly denied his claim.[17]

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he was totally disabled for the periods November 17 to December 30, 2005, January 1 to April 30 and July 1 to September 30, 2006.

[17] *Tammy L. Medley*, 55 ECAB 182 (2003). The Board notes that appellant submitted evidence subsequent to the October 1, 2007 Office decision. The Board cannot consider this evidence, however, as its review of the case is limited to the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2c.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 1, 2007 is affirmed.

Issued: June 1, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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