United States Department of Labor
Employees' Compensation Appeals Board

L.L., Appellant	)	
and	)	**Docket No. 10-2263**
	)	**Issued: July 7, 2011**
U.S. POSTAL SERVICE, FRANKLIN D. ROOSEVELT POST OFFICE, LENOX HILL STATION, New York, NY, Employer	)	

Appearances:
Thomas S. Harkins, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 8, 2010 appellant, through her attorney, filed a timely appeal of the August 19, 2010 merit decision of the Office of Workers' Compensation Programs denying her recurrence of disability claim. Pursuant to the Federal Employees' Compensation Act (FECA)[1] and 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 sustained a recurrence of total disability commencing May 14, 2010 causally related to her December 6, 2006 employment injuries.

On appeal, appellant's attorney contends that the employing establishment's reduction of appellant's limited-duty work hours effective May 14, 2010 establish a recurrence of disability under FECA.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

The Office accepted that on December 6, 2006 appellant, then a 44-year-old mail carrier, sustained other enthesopathy of the bilateral ankle and tarsus as a result of standing on hard floors, eight hours per day while working at the employing establishment.[2]

On May 21, 2010 appellant filed a claim alleging that she sustained a recurrence of disability commencing May 14, 2010. She stated that the employing establishment reduced her limited-duty work hours effective May 14, 2010.

By letter dated June 9, 2010, the Office requested that appellant submit factual and medical evidence in support of her claim. It noted that she had returned to full-duty work as of July 11, 2007 and its denial of her claim for a recurrence of disability commencing August 15, 2007.[3] The Office stated that it was unclear as to why appellant was performing light-duty work at the time of the claimed May 14, 2010 recurrence of disability. It requested that the employing establishment provide factual evidence regarding her light-duty work status within 30 days. The employing establishment did not respond.

In a June 20, 2010 letter, appellant, through her attorney, contended that the employing establishment's reduction of her limited-duty work hours on May 14, 2010 constituted a recurrence of disability. She submitted a copy of the employing establishment's May 13, 2010 job offer for a modified letter carrier position with work hours from 7:30 a.m. to 8:30 a.m. and weekends off effective May 14, 2010 which she signed and accepted on the offer date.

Medical reports dated May 26 and July 5, 2010 from Dr. Gutman advised that appellant had been able to work eight hours per day in her limited-duty position. Appellant was able to box up mail six hours provided that she could sit on a resting bar in the morning to take the pressure off her feet. She was able to deliver Express Mail or daily mail but, she needed to rest her feet for 15 minutes every 2 hours. Appellant could drive a postal vehicle but, she could not lift packages weighing over 12 pounds. Dr. Gutman noted that currently she had weekends off which allowed her to rest her feet. He concluded that there was no reason why appellant could not continue her current limited duties and eight-hour work shifts.

In an August 19, 2010 decision, the Office found that appellant did not sustain a recurrence of disability commencing May 14, 2010 due to her accepted December 6, 2006 employment injuries.[4]

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[2] In a prior appeal, the Board issued a decision on March 7, 2011 which affirmed the Office's November 6, 2009 nonmerit decision, denying appellant's request for reconsideration of the finding that she did not sustain a recurrence of disability commencing August 15, 2007 due to her accepted December 6, 2006 employment-related injuries. Docket No. 10-1419 (issued March 7, 2011).

[3] The record reveals that appellant was released to return to full-duty work by Dr. Aaron L. Gutman, an attending podiatrist. Appellant actually returned to full-duty work on August 6, 2007.

[4] Following the issuance of the Office's August 19, 2010 decision, the Office received additional evidence. The Board may not consider evidence for the first time on appeal which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c)(1).

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.[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]

When an employee who is disabled from the job she held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that she can perform the limited-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 she cannot perform such limited-duty work. 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 limited-duty job requirements.[7]

To show a change in the degree of the work-related injury or condition, the claimant must submit rationalized medical evidence documenting such change and explaining how and why the accepted injury or condition disabled the claimant for work on and after the date of the alleged recurrence of disability.[8]

ANALYSIS

The Board finds that the case is not in posture for decision. While the Office stated that appellant had returned to full-duty work at the employing establishment as of July 11, 2007, the evidence reflects that she was provided with limited-duty work for eight hours per day. The evidence further reflects that appellant was subsequently provided with one hour of limited-duty work effective May 14, 2010. Although the medical evidence reveals that she was found capable by Dr. Gutman of working in her limited-duty position eight hours per day, the employing establishment provided reduced hours of limited duty, as noted. The employing establishment was requested by the Office to provide evidence regarding appellant's limited-duty work status as it was unclear as to why she was performing light-duty work in light of her return to full-duty work. However, the employing establishment failed to submit the requested evidence prior to the issuance of the Office's August 19, 2010 decision. As the record does not contain a clear response from the employing establishment for review by the Board regarding appellant's

[5] 20 C.F.R. § 10.5(x).

[6] *Id.*

[7] *Albert C. Brown*, 52 ECAB 152, 154-55 (2000); *Barry C. Petterson*, 52 ECAB 120 (2000); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

[8] *James H. Botts*, 50 ECAB 265 (1999).

limited-duty work status, the case will be remanded to the Office for further development of her recurrence claim. On remand, the Office should determine whether appellant was performing limited-duty work and whether the employing establishment reduced her work hours in this position as of May 14, 2010. This information is important in determining her possible entitlement to compensation.[9] Following this and such other development as deemed necessary, the Office shall issue an appropriate merit decision on appellant's claim for a recurrence of disability commencing May 14, 2010.

CONCLUSION

The Board finds that the case is not in posture for decision on whether appellant has established a recurrence of total disability commencing May 14, 2010 causally related to her accepted December 6, 2006 employment injuries.

ORDER

IT IS HEREBY ORDERED THAT the August 19, 2010 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to the Office for further action consistent with this decision of the Board.

Issued: July 7, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

[9] *See* 20 C.F.R. § 10.505. *See also Terry Hedman*, *supra* note 7.