United States Department of Labor
Employees' Compensation Appeals Board

B.E., Appellant	)	
and	)	**Docket No. 13-593**
	)	**Issued: July 8, 2013**
U.S. POSTAL SERVICE, POST OFFICE, New York, NY, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 18, 2013 appellant, through her attorney, filed a timely appeal from an August 1, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) 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 has established a recurrence of disability commencing June 30, 2010.

FACTUAL HISTORY

On March 15, 2004 appellant, then a 61-year-old mail carrier, filed a traumatic injury claim (Form CA-1), alleging that on March 1, 2004 she sustained a knee injury in the performance of duty. She indicated that her knee buckled while descending stairs. OWCP

[1] 5 U.S.C. § 8101 *et seq.*

accepted the claim for aggravation of left knee internal derangement. Appellant returned to a light-duty position and continued to work light duty.

In a report dated June 29, 2010, Dr. Mitchell Goldstein, a Board-certified orthopedic surgeon, noted that appellant had complaints with respect to the right foot.[2] The record indicates that appellant retired from federal employment on June 30, 2010.

In a report dated July 27, 2010, Dr. Goldstein provided a history and results on examination for the left knee. He indicated that appellant did not report any new complaints with respect to the left knee. The diagnoses included internal derangement, osteoarthritis of the knee, anterior cruciate ligament tear and a torn meniscus.

Appellant completed a notice of recurrence of disability (Form CA-2a) on September 28, 2010, indicating June 30, 2010 as the date of recurrence. She stated that she worked light duty until the employing establishment would no longer provide light duty.

With respect to medical evidence, appellant submitted reports dated October 5, November 2 and 30, 2010 and February 15, 2011 from Dr. Goldstein regarding continuing treatment for the left knee. Dr. Goldstein provided results on examination and indicated that appellant "denies any new orthopedic conditions/problems." He indicated that she continued to have work restrictions. In a letter dated May 16, 2011, appellant's representative argued that appellant retired because no light duty was available. He also argued that "no seat" was provided for light-duty work.

In a memorandum of telephone call dated April 12, 2011, OWCP indicated that the employing establishment reported that appellant's retirement code was for a regular retirement. An employing establishment form indicated that appellant retired June 30, 2010.

By decision dated July 5, 2011, OWCP denied the claim for a recurrence of disability. It found that the evidence was insufficient to establish the claim.

On July 6, 2011 OWCP received a June 29, 2011 letter from the employing establishment indicating that appellant had been offered another light-duty position on April 6, 2009, but had refused the offer. According to the employing establishment, there was a work status meeting scheduled for July 1, 2010, but appellant had retired on June 30, 2010. It stated that, before the National Reassessment Program (NRP) could begin, an employee must be working. The letter stated that appellant had retired of her own volition.

In a letter dated May 1, 2012, counsel requested reconsideration. Appellant argued that the medical evidence showed that she had additional employment-related injuries. The medical evidence submitted included a September 6, 2006 report from Dr. Goldstein, who provided a history and results on examination. Dr. Goldstein noted both a September 1996 foot injury and

[2] The record indicates that appellant has another claim for injury with respect to the ankle, which is not before the Board on this appeal. There is a June 15, 2010 report regarding the left knee, with no physician's signature or any indication as to who prepared the report.

the March 1, 2004 left knee injury. He found that appellant had a 65 percent left knee impairment.

By decision dated August 1, 2012, OWCP reviewed the merits of the claim and denied modification. It found that the evidence was insufficient to establish a recurrence of disability as of June 30, 2010.

LEGAL PRECEDENT

OWCP's regulations define the term recurrence of disability as follows:

> "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. 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 or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations."[3]

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 of record establishes that he or she 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 show that he or she cannot perform such light duty. As part of this 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.[4] To establish a change in the nature and extent of the injury-related condition, there must be probative medical evidence of record. The evidence must include a medical opinion, based on a complete and accurate factual and medical history, and supported by sound medical reasoning, that the disabling condition is causally related to employment factors.[5]

ANALYSIS

The record indicates that appellant was working a light-duty position, retired on June 30, 2010 and subsequently filed a claim for a recurrence of disability as of June 30, 2010. As the above standard indicates, a claimant can establish a recurrence of disability by showing 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.

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[3] 20 C.F.R. § 10.5(x).

[4] *Albert C. Brown*, 52 ECAB 152 (2000); *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222 (1986).

[5] *Maurissa Mack*, 50 ECAB 498 (1999).

With respect to a change in the employment-related condition, the medical evidence of record is not sufficient to establish a recurrence of disability. The reports from Dr. Goldstein concerning the left knee did not discuss a change in the nature of an employment-related condition as of June 30, 2010. Dr. Goldstein continued to treat appellant for left knee symptoms but he did not discuss any change in an employment-related condition on or about June 30, 2010. His reports continued to state that appellant reported no new orthopedic problems. Appellant argued that the employing establishment did not provide a "seat" for light-duty work, without additional explanation. To the extent she is arguing that there was a change in an employment-related condition requiring a specific type of seat, there was no probative medical evidence submitted on this issue.

On reconsideration, appellant argued that there were additional employment-related conditions and submitted a September 6, 2006 report from Dr. Goldstein as to a permanent impairment. This report is of little probative value with respect to her condition as of June 30, 2010. The Board notes that, while Dr. Goldstein provided a number of left knee diagnoses, including an anterior cruciate ligament tear and a torn meniscus, he does not discuss causal relationship with employment. Moreover, even if additional conditions were established as related to the Mach 1, 2004 injury, the evidence would still have to establish a change in an employment-related condition causing disability for the light-duty job on or after June 30, 2010.

Appellant also argued that the employing establishment withdrew the light-duty job. As noted above, if a light-duty job is withdrawn this may support a recurrence of disability. In this case, however, the evidence of record did not establish that the light-duty job was withdrawn as of June 30, 2010. The employing establishment indicated that, while an NRP action was contemplated,[6] the process had not actually begun as of June 30, 2010. There was a work status meeting scheduled, but appellant retired prior to the meeting. Appellant voluntarily retired as of June 30, 2010 and the record did not establish that the light-duty position had been withdrawn.

On appeal, counsel stated that the retirement on June 30, 2010 was based on statements that no further work would be provided in the light-duty position. As noted above, the evidence of record does not establish that the light-duty position was withdrawn by the employing establishment on June 30, 2010. The Board finds that appellant has not established 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. Appellant may submit new evidence or argument with a written application for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established a recurrence of disability commencing June 30, 2010.

[6] FECA Bulletin 09-05 (issued August 18, 2009) discusses claims for compensation when a position has been withdrawn pursuant to NRP.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 1, 2012 is affirmed.

Issued: July 8, 2013
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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