United States Department of Labor
Employees' Compensation Appeals Board

L.B., Appellant	)	
and	)	**Docket No. 14-538**
	)	**Issued: June 13, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Wilmington, DE, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Acting Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 9, 2014 appellant filed a timely appeal from the December 11, 2013 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 on appeal is whether appellant met her burden of proof to establish a recurrence of disability causally related to her accepted employment injury.

FACTUAL HISTORY

This case has previously been on appeal before the Board.[2] In a decision dated February 18, 2010, the Board found that appellant had no more than five percent permanent

[1] 5 U.S.C. § 8101 *et seq.*

[2] Docket No. 09-1336 (issued February 18, 2010).

impairment of her right upper extremity, for which she received a schedule award. The facts and history contained in the prior appeal are incorporated by reference. The relevant facts include that OWCP accepted the claim for sprain of the right shoulder and upper arm, specified disorder of bursae and brachial neuritis or radiculitis on the right.[3]

On October 3, 2013 appellant filed a Form CA-2a, notice of recurrence, alleging wage loss from work due to a change or worsening of her March 1, 2006 accepted work-related conditions. She indicated that she stopped work on September 10, 2013 and that the recurrence occurred over a period of time. Appellant indicated that she continued to receive medical treatment and that her conditions were permanent. She explained that she was assigned to a position that was within her present restrictions over a period of time but subsequently, she was assigned to another position that had caused the original injury. Appellant indicated that she tried to fulfill the assignment under her current restrictions but it was not possible. She also indicated that she was reprimanded for not completing her work assignment. Furthermore, appellant suffered from the original injury from time to time while performing her modified duties.

In a September 18, 2013 report, Dr. Damon D. Cary, an osteopath, specializing in pain medicine, noted that appellant was seen for complaints of severe flare-up of right shoulder pain. He advised that she related that her "flare-up started with the right shoulder at work because she was doing some of the same job duties that caused her to have an injury in the first place." Dr. Cary indicated that appellant was not able to work since September 10, 2013. He examined her and provided findings to include; restricted range of motion of the right shoulder with tenderness over the right shoulder. Dr. Cary diagnosed acute flare-up of chronic residuals of subscapularis tendinitis of the right shoulder. He completed disability certificates and a duty status report on that date indicating that appellant's condition was work related and that she was totally disabled effective September 10 to October 9, 2013. Dr. Cary continued to submit certificates placing her off work.

OWCP also received Form CA-7 reports for disability for leave without pay for the period September 7 to November 29, 2013.

In an October 9, 2013 letter, OWCP advised appellant of the additional factual and medical information needed to establish her claim. It noted that, following the original injury, appellant returned to limited-duty work on February 11, 2012.

In a report dated October 9, 2013, Dr. Cary noted that appellant presented for a follow-up appointment with complaints of ongoing right shoulder pain at rest and difficulty with various activities of daily living. He examined her and provided findings which included restricted range of motion of the right shoulder noticeable in all planes and tenderness over the right shoulder. Dr. Cary diagnosed chronic residuals of subscapularis tendinitis of the right shoulder. He recommended continued use of pain medicine and opined that appellant was totally disabled.

[3] Appellant did not immediately stop work upon filing her April 24, 2006 occupational disease claim. However, she claimed wage-loss and received disability compensation for claimed periods from June 12, 2006 to August 1, 2008. Thereafter, she received wage-loss compensation for claimed intermittent hours from January 11, 2012 to September 6, 2013.

Dr. Cary provided a disability certificate of the same date and indicated that the period of disability was from October 9 to December 4, 2013.

In an October 21, 2013 report, Dr. Cary noted first treating appellant on April 17, 2006 for injuries sustained during an industrial accident on April 14, 2006. He noted her historical symptoms and indicated that she had multiple treatments over the years to the right arm that included extensive physical therapy and a right shoulder surgery. Dr. Cary opined that appellant was "quite symptomatic from this right upper extremity injury." He diagnosed "chronic residuals of subscapularis tendinitis of the right shoulder with a right C5 radiculopathy." Dr. Cary noted that appellant had complaints of ongoing right shoulder pain at rest and difficulty with simple activities of daily living. He provided examination findings that included restricted range of motion of the right shoulder with tenderness over the right shoulder. Dr. Cary opined that appellant was "totally disabled and restricted from even part-time sedentary-duty work including lifting, carrying, pushing and pulling over five pounds, overhead reaching and performing other various activities. This is due to the ongoing subjective complaints that match up with the objective findings that I have found on physical examination." He indicated that she used pain medicine to control her symptoms as well as some home medical supplies and performed some home exercises to control her symptoms.

Appellant submitted a completed OWCP questionnaire and indicated that the recurrence happened because the modified assignment she accepted was withdrawn in December 2012 and she was ordered to report to a manual casing position that caused her original injury. She explained that she was ordered to perform repetitive duties that caused pain in her right shoulder and upper arm while casing mail. Appellant also noted a nonwork injury to her right ankle on August 5, 2011. She denied any other illnesses or activities that could have affected her accepted work-related conditions.

In a November 13, 2012 treatment note, Dr. Conrad K. King, Jr., a specialist in pain medicine, advised that appellant was partially incapacitated from November 14 to January 8, 2013. He provided restrictions to include no use of the right upper extremity. Dr. King also indicated that appellant required a chair with an arm rest.

By decision dated December 11, 2013, OWCP denied appellant's claim for a recurrence of disability on the grounds that the medical evidence failed to establish that her alleged recurrence of disability was due to a material change or worsening of her accepted 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 resulting from a previous injury or illness without an intervening cause or a new exposure to the work environment that caused the illness. It can also mean 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.[4]

When an employee who is disabled from the job he or she held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that he or she can perform the limited-duty position, the employee has the burden of proof to establish, by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and an inability to 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.[5] To establish a change in the nature and extent of the injury-related condition, there must be a probative medical opinion, based on a complete and accurate factual and medical history as well as supported by sound medical reasoning, that the disabling condition is causally related to employment factors.[6]

ANALYSIS

In this case, OWCP accepted the claim for sprain of the right shoulder and upper arm, specified disorder of bursae and brachial neuritis or radiculitis on the right. Appellant claimed a recurrence of disability on October 3, 2013. She did not allege a specific date for her recurrence of disability but alleged that it occurred over a period of time.[7] Appellant stated that she was originally assigned to a position that was within her restrictions but this changed back to the position that caused her original injury. On October 9, 2013 OWCP advised her of the evidence needed to establish her claim. Appellant, however, did not submit sufficient reasoned medical evidence to establish that recurrence of disability is causally related to her accepted injury.

The Board notes that appellant indicated that her recurrence happened because her modified assignment was withdrawn in December 2012 and she was ordered to report to a manual casing position that required the same duties that cause her original injury. However, appellant did not provide any further information or evidence to support this assertion. The Board notes that there is insufficient evidence to show a change in the nature and extent of the light-duty job requirements.

Appellant submitted several reports from Dr. Cary. They included a September 18, 2013 report, in which he noted that she was seen for a flare-up of right shoulder pain. Dr. Cary advised that appellant related that her "flare-up started with the right shoulder at work because [appellant] was doing some of the same job duties that caused her to have an injury in the first place." He indicated that she was not able to work since September 10, 2013. Dr. Cary

[4] *J.F.*, 58 ECAB 124 (2006). A recurrence of disability does not apply when a light-duty assignment is withdrawn for reasons of misconduct, nonperformance of job duties or other downsizing. 20 C.F.R. § 10.5(x). *See also Richard A. Neidert*, 57 ECAB 474 (2006).

[5] *A.M.*, Docket No. 09-1895 (issued April 23, 2010); *Terry R. Hedman*, 38 ECAB 222 (1986).

[6] *Mary A. Ceglia*, 55 ECAB 626, 629 (2004).

[7] She received wage-loss compensation for claimed intermittent hours from January 11, 2012 to September 6, 2013. *Supra* note 3.

diagnosed acute flare-up of chronic residuals of subscapularis tendinitis of the right shoulder and opined that appellant was totally disabled. Although he completed a disability certificate in which she indicated that the condition was work related, he did not explain how this was related to her accepted injury. This does not sufficiently support that appellant's disability after September 6, 2013 was related to the accepted injury.

In his October 21, 2013 report, Dr. Cary noted treating appellant since April 17, 2006 for injuries sustained during an industrial accident. He noted her treatment and advised that she was "quite symptomatic from this right upper extremity injury." Dr. Cary diagnosed "chronic residuals of subscapularis tendinitis of the right shoulder with a right C5 radiculopathy." He opined that appellant was "totally disabled." Dr. Cary indicated that her disability was "due to the ongoing subjective complaints that match up with the objective findings that I have found on physical examination." However, he did not explain why appellant could no longer perform the duties of her light-duty position after September 6, 2013 or why any such disability or continuing condition would be due to the accepted condition. Other reports from Dr. Cary are insufficient as they did not explain why the claimed recurrent disability was due to a spontaneous change in the accepted conditions.

Dr. King, in his November 13, 2012 treatment note, advised that appellant was partially incapacitated from November 14 to January 8, 2013 and provided restrictions. This report is of limited probative value on the point at issue, however, as it does not contain an opinion on causal relationship.[8] Other medical evidence submitted by appellant also did not offer a specific opinion on causal relationship during the relevant time period.

In the instant case, none of the medical reports submitted by appellant contained a rationalized opinion to explain why she could no longer perform the duties of her light-duty position and why any such disability or continuing condition would be due to the accepted condition. As appellant has not submitted any medical evidence establishing that she sustained a recurrence of disability due to her accepted employment injury, she has not met her burden of proof.

On appeal, appellant indicates that she continues to experience pain as a result of her accepted condition. The Board notes that the issue in this case, is whether she met her burden of proof to establish that a recurrence of disability causally related to her accepted employment injury. As noted above, the medical evidence was insufficient to establish such a recurrence.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained a recurrence of disability causally related to her accepted employment injury.

[8] *See Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

ORDER

IT IS HEREBY ORDERED THAT the December 11, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 13, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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