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J.G., Appellant	)	
	)	
and	)	Docket No. 09-737
	)	Issued: October 21, 2009
U.S. POSTAL SERVICE, DOMINICK V.	)	
DANIELS PROCESSING & DISTRIBUTION	)	
CENTER, Kearny, NJ, Employer	)	
	)	

Case Submitted on the Record

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

On January 22, 2009 appellant filed a timely appeal from the Office of Workers' Compensation Programs' March 3 and September 17, 2008 decisions denying a recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

The issue is whether appellant established that she sustained recurrences of disability commencing June 30, July 2 and November 21, 2007 causally related to an accepted right knee strain.

On appeal, appellant asserts that the medical evidence establishes that the accepted right knee strain worsened beginning on June 30, 2007, such that she could no longer perform her light-duty job. Appellant's attorney also asserts that the employing establishment withdrew her light-duty job effective November 13, 2007, constituting a recurrence of disability.

FACTUAL HISTORY

The Office accepted that on October 19, 2004 appellant, then a 45-year-old mail processor, sustained a right knee strain when she bent down to pick up mail. She was off work on October 29, 2004.

Appellant was followed by Dr. Clifford A. Botwin, an attending osteopathic physician Board-certified in orthopedic surgery, who first treated her for right knee problems in 2002, performing arthroscopic surgery on December 26, 2002 to address post-traumatic hypertrophic synovitis with impingement and chondromalacia.

Dr. Botwin held appellant off work from October 19 to November 15, 2004. He released her to light duty effective November 20, 2004, with no lifting over 10 pounds, climbing, bending or kneeling.¹ Dr Botwin submitted chart notes through April 2005 diagnosing a right knee sprain with synovitis. He recommended continued light duty.²

In a July 8, 2005 report, Dr. Aruna Patel, an attending internist, restricted appellant to four hours a day full duty and four hours a day light duty. In a June 12, 2007 report, Dr. Botwin restricted appellant to lifting less than 10 pounds and standing less than two hours.

On July 2, 2007 appellant claimed a recurrence of disability commencing that day due to standing while on light duty. She did not stop work. On December 27, 2007 appellant claimed a recurrence of disability commencing November 21, 2007 while on light duty. She asserted that sweeping mail on November 21, 2007 worsened her right knee pain. Appellant stopped work on November 24, 2007 and did not return.³

In December 7, 2007 and January 7, 2008 letters, the Office advised appellant of the evidence needed to establish her claims for recurrence of disability. It requested a rationalized report from her physician explaining how and why the accepted right knee strain would disable her for work during the claimed periods.

On February 13, 2008 appellant claimed a recurrence of disability (Form Ca-2a) from June 30 to November 3, 2007. She stated that, on June 30, 2007, the employing establishment reduced her schedule to four hours a day as there was not enough light-duty work available.

In a June 20, 2007 memorandum, the employing establishment advised appellant that her start time would change as of June 30, 2007 to accommodate her request for light duty. A December 27, 2007 timekeeping form shows that appellant claimed four hours of leave per workday from June 30 to November 2, 2007, asserting that she “was not allowed to work full time.” The employing establishment confirmed that appellant was on light duty.

¹ A January 12, 2005 magnetic resonance imaging (MRI) scan of the right knee showed a trace synovial effusion, with no frank mensical tear, significant ligamentous injury or fracture.

² Appellant submitted medical records and coworker statements relating to lumbar symptoms. There is no claim for a back condition on the present appeal.

³ Appellant filed claims for wage loss from January 5 to February 4, 2008.

In a March 3, 2008 report, Dr. Botwin found appellant able to work eight hours a day with permanent restrictions. He limited reaching to one hour, stalking and standing to two hours and lifting to four hours with a two-pound weight limit.

By decision dated March 3, 2008 and reissued on March 13, 2008, the Office denied appellant's claims for recurrences of disability beginning on June 30, July 2 and November 21, 2007. It found that appellant did not submit medical evidence establishing a change in the accepted knee injury such that she was disabled for work for the claimed periods. The Office further found that appellant did not establish a change in her light-duty job requirements such that she could no longer perform them.

In a March 17, 2008 letter, appellant, through her attorney, asserted that Dr. Botwin's reports established that the accepted right knee condition worsened such that she was disabled for work from June 30 and November 3, 2007.

In a March 28, 2008 letter, appellant requested an oral hearing, held on July 15, 2008. At the hearing, she asserted that the 2002 right knee injury and surgery were occupationally related but that she did not file a claim. Appellant stated that, from July 12 to mid-October 2006, she worked four hours a day full duty and four hours a day limited duty. She was then absent for four months due to nonoccupational vertigo. Appellant returned to full-time light duty. She asserted that, on June 20 and July 2, 2007, supervisors told her that she would only be assigned four hours of work a day as there was not enough light duty available. Beginning in July 2007, appellant worked four hours a day pitching mail. She was told she could work there full time if taken off light duty. A physician then released appellant to full duty. Appellant worked eight hours a day in the automation section until November 13, 2007 when she was told she "couldn't work there any longer because it wasn't [her] section." She was directed to return to her old section. Appellant was assigned to work mail processing machines, which caused the onset of right knee pain. On November 22, 2007 her right knee buckled and she could no longer bear weight on it. Following the hearing, appellant submitted additional evidence.⁴

Appellant submitted reports from Dr. Botwin from July 2002 to March 2003 regarding the 2002 right knee injury and surgery. In reports from October 13 to March 16, 2007, Dr. Botwin recommended continued light duty due to severe chondromalacia of the right knee. He limited walking and standing to two hours. In a September 7, 2007 report, Dr. Botwin noted minimal arthritic changes in the right knee by x-ray. He restricted appellant to permanent light duty.

In a December 7, 2007 report, Dr. Botwin stated that appellant presented with right shoulder, right knee and elbow injuries sustained at work while "working on machinery." Appellant had been off work since November 24, 2007. Dr. Botwin obtained x-rays showing sclerosis and narrowing of the right knee joint. He held appellant off work until January 2, 2008.

In a February 4, 2008 report, Dr. Botwin stated that appellant was unable to return to work as the employing establishment would not "accept the light-duty letter that we had given

⁴ Appellant filed claims for wage-loss compensation (Form CA-7) for intermittent periods from December 8, 2007 to June 20, 2008.

her, where she has to have a job where she does n[o]t stand more than two hours a day and no heavy lifting more than 10” pounds.

By decision dated and finalized September 17, 2008, an Office hearing representative affirmed the March 13, 2008 decision, finding that appellant did not establish the claimed recurrences of disability. The hearing representative found that the medical evidence did not establish that appellant was disabled from light-duty work on or after June 30, 2007. Also, appellant did not submit any evidence to corroborate that the employing establishment withdrew her light-duty job assignment.

LEGAL PRECEDENT

The Office’s implementing regulations define a recurrence of disability as “an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.”⁵ 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 establishes that the employee 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 to show that he or she cannot perform such light duty. 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 light-duty job requirements.⁶ An award of compensation may not be based on surmise, conjecture or speculation or on appellant’s unsupported belief of causal relation.⁷

ANALYSIS

The Office accepted that appellant sustained a right knee strain on October 19, 2004. Appellant remained on light duty following the injuries. In her July 2 and December 27, 2007 and February 13, 2008 claims for recurrences of disability, she asserted both that her accepted right knee injury worsened and that the employing establishment withdrew her light-duty assignment. Appellant has the burden of providing sufficient evidence, including rationalized medical evidence, to establish the causal relationship asserted.⁸

The Board finds, however, that intervening incidents at work establish that appellant did not sustain a spontaneous recurrence of her right knee strain as of July 2, 2007. In the July 2, 2007 claim form, appellant attributed the claimed recurrence of disability to continued standing at work while on light duty. In the December 27, 2007 claim form, she asserted that sweeping

⁵ 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b(a)(1) (May 1997). See also *Philip L. Barnes*, 55 ECAB 426 (2004).

⁶ *Carl C. Graci*, 50 ECAB 557 (1999); *Mary G. Allen*, 50 ECAB 103 (1998); see also *Terry R. Hedman*, 38 ECAB 222 (1986).

⁷ *Alfredo Rodriguez*, 47 ECAB 437 (1996).

⁸ *Ricky S. Storms*, 52 ECAB 349 (2001).

mail on November 21, 2007 caused severe right knee pain. Appellant has attributed her condition on and after July 2, 2007 to new work factors. The exposure to new work factors does not involve a spontaneous change in the accepted right knee injury.⁹ Therefore, the Office properly denied appellant's claims for recurrence of disability.

On appeal, and at the hearing, appellant contended that she sustained a recurrence of disability commencing November 13, 2007 as the employing establishment withdrew her light-duty assignment. She previously asserted that, on June 30, 2007, the employing establishment partially withdrew a light-duty assignment. The Act's regulations provide that withdrawal of a light-duty assignment made specifically to accommodate an employee's work-related physical limitations constitutes a recurrence of disability.¹⁰ However, appellant submitted no factual evidence to establish that her light-duty assignments were withdrawn. The employing establishment only confirmed that appellant was on light duty from June 30 to November 2, 2007. Although her start time changed effective June 30, 2007, there is no evidence in the record that the employing establishment reduced or eliminated any of her light-duty assignment. Therefore, appellant has not established a recurrence of disability in this regard.

Appellant's attorney also asserts that the medical evidence supports a worsening of the accepted right knee strain beginning on June 30, 2007 such that she could no longer perform her light-duty job. Appellant submitted reports from Dr. Botwin, an attending Board-certified orthopedic surgeon, addressing her condition after June 30, 2007; however, they do not mention June 30, 2007. While Dr. Botwin held appellant off work from December 7, 2007 to January 2, 2008, this was due to injuries sustained in November 2007 while "working on machinery." He did not diagnose a spontaneous recurrence of the accepted right knee sprain. Therefore, the medical evidence does not support a recurrence of disability commencing June 30, 2007 due to a worsening of the accepted injury.

CONCLUSION

The Board finds that appellant has not established that she sustained recurrences of disability commencing June 30, July 2 and November 21, 2007 causally related to the accepted right knee strain.

⁹ *Bryant F. Blackmon*, 56 ECAB 752 (2005). The Board's present decision does not preclude appellant's claim for benefits based on any new occupational incidents or exposures.

¹⁰ Title 20 C.F.R. § 10.5(x) provides: that a recurrence "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." See also *K.C.*, 60 ECAB __ (Docket No. 08-2222, issued July 23, 2009).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 17 and March 3, 2008 are affirmed.

Issued: October 21, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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