United States Department of Labor
Employees' Compensation Appeals Board

R.T., Appellant	)	
and	)	**Docket No. 09-1960**
	)	**Issued: August 25, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Philadelphia, PA, Employer	)	

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 27, 2009 appellant, through counsel, filed a timely appeal from a July 16, 2009 decision of the Office of Workers' Compensation Programs denying his recurrence claim. 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 sustained a recurrence of disability beginning January 20, 2006 causally related to his accepted January 15, 1999 employment injury.

FACTUAL HISTORY

On January 15, 1999 appellant, then a 61-year-old mechanic, filed a traumatic injury claim alleging that on that date he injured his back while lifting a machine part in the performance of duty. The Office accepted the claim for a lumbar strain which was subsequently expanded to include L4-5 lumbar herniated disc. Appellant returned to light duty on February 22, 1999 and stopped work on April 26, 1999. The Office accepted his claim for a recurrence of disability beginning April 26, 1999. Appellant returned to light-duty work for four hours a day on February 22, 2000.

In letters dated January 12 and 18, 2001, the employing establishment advised the Office that appellant stopped working his light-duty job on October 29, 2000 due to a heart attack he sustained at home. On March 2, 2001 appellant filed a claim for a recurrence of total disability beginning November 3, 2000 due to his accepted 1999 employment injury and his October 30, 2000 heart attack

By decision dated April 16, 2001, the Office denied appellant's recurrence claim for total disability. It explained that there was no rationalized medical evidence establishing that his heart attack was employment related. The record contains evidence that the Office continued to pay appellant for four hours of partial disability.

In letters dated May 14 and September 20, 2001, appellant's counsel requested an oral hearing before an Office hearing representative. On December 18, 2001 the Office denied his hearing request as being untimely.

On February 15, 2006 appellant filed a recurrence of total disability beginning January 20, 2006.

In a February 1, 2006 duty status report (Form CA-17), Dr. Harry A. Frankel, a treating Board-certified family practitioner, diagnosed neck and back pain and cervical and lumbar disc disease. He indicated that appellant was capable of working three hours a day with restrictions.

Dr. Frankel, in a February 17, 2006 disability note, diagnosed lumbar and cervical disc disease and released appellant to work for three hours a day beginning February 21, 2006.

On February 23, 2006 appellant accepted a modified job offer working three hours a day.

In a letter dated May 15, 2006, the Office noted receipt of appellant's recurrence claim and advised him as to the medical and factual evidence required to support his claim.

On June 12, 2006 Dr. Frankel opined that appellant was disabled and the disability will not improve. He noted that he has treated appellant since 1998 for his lower back and neck conditions. Diagnoses include lumbar and cervical disc disease, lumbar sprain with spasm and cervical sprain with spasm. Dr. Frankel noted that appellant has had consistent cervical and lumbar back pain complaints and that "he is unable to freely move his neck in either direction without discomfort." Appellant is also unable to bend or lift without discomfort. Dr. Frankel stated that it was his opinion that, within a reasonable degree of medical certainty, appellant is disabled at this point and that his disability, ongoing for many years, will not improve.

On June 20, 2006 the Office received a June 7, 2006 work capacity evaluation form with an illegible physician's signature, who diagnosed cervical back pain and stiffness. Dr. Frankel indicated that appellant was unable to work an eight-hour day and provided restrictions which included two hours of sitting, one hour of walking, no standing, no twisting, no repetitive movements, no pushing or pulling, no lifting, no squatting, no climbing and no reaching or reaching above the shoulder.

In a January 16, 2007 Form CA-17, Dr. Frankel diagnosed neck and lower back pain. He checked that appellant was not capable of working an eight-hour day and provided work

restrictions. The restrictions included no sitting more than two hours, no standing more than one hour and up to three hours of fine manipulation and simple grasping.

In a letter dated June 7, 2007, the employing establishment informed the Office that appellant retired effective December 31, 2006.

By decision dated January 31, 2008, the Office denied appellant's recurrence claim beginning January 20, 2006.

On February 6, 2008 appellant's counsel requested a review of the written record by an Office hearing representative.

In a March 5, 2008 letter, appellant's counsel stated that appellant's recurrence claim was based on his inability to work four hours a day and that he was currently totally disabled due to his employment injury

By decision dated March 15, 2008, the Office hearing representative affirmed the denial of appellant's recurrence claim.

On January 15, 2009 the Board issued an order remanding the case to the Office.[1] The Board noted that, although the record did not contain an actual loss of wage-earning capacity determination, there were references made to it by the Office throughout the case record.[2] Thus, the Board found that appellant's claim for a recurrence of disability in January 2006 raised the issue of modification of the wage-earning capacity decision.

By decision dated July 16, 2009, the Office denied appellant's recurrence claim. It conducted a review of the record and noted that it did not locate a January 2000 loss of wage-earning capacity decision. As the Office found no loss of wage-earning capacity decision in the record, the Office adjudicated the claim as a claim for a recurrence of disability.

LEGAL PRECEDENT

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he 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 disability and to show that he cannot perform such light duty.[3] 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 requirements.[4]

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[1] Docket No. 08-1720 (issued January 15, 2009).

[2] The record contains a May 15, 2006 letter from the Office referencing a January 2000 loss of wage-earning capacity determination based on a wage-earning capacity of $363.76.

[3] *K.C.*, 60 ECAB ___ (Docket No. 08-2222, issued July 23, 2009); *Richard A. Neidert*, 57 ECAB 474 (March 10, 2006).

[4] *C.S.*, 60 ECAB ___ (Docket No. 08-2218, issued August 7, 2009); *Joseph D. Duncan*, 54 ECAB 471 (2003); *Roberta L. Kaaumoana*, 54 ECAB 150 (2002); *Terry R. Hedman*, 38 ECAB 222 (1986).

A recurrence of disability is defined as the 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] The Board has held that whether a particular injury causes an employee to be disabled for work is a medical question that must be resolved by competent and probative medical evidence.[6] The weight of medical opinion is determined on the report of a physician, who provides a complete and accurate factual and medical history, explains how the claimed disability is related to the employee's work and supports that conclusion with sound medical reasoning.[7]

ANALYSIS

The Office accepted the claim for lumbar strain which was subsequently expanded to include L4-5 lumbar herniated disc. Appellant returned to a light-duty job position on February 22, 2000 working four hours a day. On January 20, 2006 he claimed that his condition had worsened such that he was no longer able to work four hours a day and filed a recurrence claim. In support of appellant's claim that his condition had worsened, he submitted reports from Dr. Frankel indicating that appellant's condition had deteriorated such that he was unable to work four hours a day and an accepted February 23, 2006 modified job offer from the employing establishment working three hours a day. Appellant retired from the employing establishment effective December 31, 2006.

The Board finds that the evidence of record insufficient to establish that appellant's recurrence was causally related to his accepted employment injury. In a February 1, 2006 duty status report, Dr. Frankel, a treating Board-certified family practitioner, diagnosed neck and back pain and cervical and lumbar disc disease and indicated that appellant was capable of working three hours a day with restrictions. On June 12, 2006 he stated that appellant was totally disabled as a result of his consistent cervical and lumbar pains. Dr. Frankel noted that appellant had difficulty with moving his neck and was unable to bend or lift without discomfort. He, in a January 16, 2007 CA-17 form, diagnosed neck and lower back pain. Dr. Frankel checked that appellant was not capable of working an eight-hour day and provided work restrictions for a three-hour day. He indicated that appellant was only capable of up to two hours of sitting, up to one hour of standing and up to three hours of simple grasping and fine manipulation. Although Dr. Frankel stated that appellant was only capable of working three hours a day instead of four hours, he did not explain how any residuals of the January 15, 1999 injury prevented him from performing four hours of light-duty work activities or caused a worsening of her back condition as of January 20, 2006. A medical opinion unsupported by rationale explaining how appellant's recurrence of disability beginning January 20, 2006 was causally related to his accepted January 15, 1999 employment injury is entitled to little probative value.[8]

[5] 20 C.F.R. § 10.5(x). *See S.F.*, 59 ECAB ___ (Docket No. 07-2287, issued May 16, 2008).

[6] *See R.C.*, 59 ECAB ___ (Docket No. 07-2042, issued June 3, 2008); *Carol A. Lyles*, 57 ECAB 265 (2005); *Donald E. Ewals*, 51 ECAB 428 (2000).

[7] *See C.S.*, *supra* note 4; *Sandra D. Pruitt*, 57 ECAB 126 (2005).

[8] *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

On appeal, appellant contends that the Office ignored evidence that he suffered a consequential injury in denying his recurrence claim. The record contains evidence that he requested the acceptance of an emotional condition as a consequential injury. The Office, though, has not issued a final decision adjudicating this issue. As it has not issued a final decision addressing the acceptance of denial of a consequential injury, the Board lacks jurisdiction to address this issue on appeal.[9]

CONCLUSION

The Board finds that appellant has not established that he sustained a recurrence of disability on January 20, 2006 causally related to his January 15, 1999 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the July 16, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 25, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[9] 20 C.F.R. § 501.2(c); *see P.C.*, 59 ECAB ___ (Docket No. 07-1691, issued June 20, 2008).