United States Department of Labor
Employees' Compensation Appeals Board

T.M., Appellant	)	
and	)	**Docket Nos. 10-574 and 10-2019**
	)	**Issued: January 14, 2011**
U.S. POSTAL SERVICE, CARMI POST OFFICE, Carmi, IL, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 28, 2009 appellant, through her attorney, filed timely appeals of the November 13, 2009 and June 29, 2010 merit decisions the Office of Workers' Compensation Programs denying her recurrence of disability claims. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of these cases.

ISSUES

The issues are: (1) whether appellant sustained a recurrence of total disability from January 3 to 30, 2009 causally related to her accepted employment injury; and (2) whether she sustained a recurrence of total disability from January 31 to March 13, 2009 causally related to her accepted injury.

FACTUAL HISTORY

On December 6, 2006 appellant, then a 43-year-old part-time flexible letter carrier, filed an occupational disease claim alleging that on November 17, 2006 she first became aware of a protruding disc on a nerve of her lumbar spine and realized that the condition was caused by her

federal employment. She walked up to 12 miles a day on steps and hills carrying a bag that weighed up to 35 pounds. Appellant lifted up to 70 pounds on other occasions. She stopped work on October 17, 2006. In an accompanying November 17, 2006 narrative statement, appellant related that she fell in the spring of 2006.[1] On October 2, 2006 she experienced back pain for which she sought medical treatment after loading packages onto a long life vehicle. By letter dated March 2, 2007, the Office accepted her claim for a protruding disc at L4-5.

On September 15, 2007 appellant accepted the employing establishment's September 13, 2007 job offer as a modified part-time flexible carrier effective September 20, 2007 based on the physical restrictions set forth by Dr. James O. Alexander, an attending Board-certified family practitioner. On August 20, 2008 she accepted the employing establishment's August 15, 2008 job offer for a modified part-time flexible carrier position effective August 11, 2008 based on Dr. Alexander's new work restrictions.[2]

On August 21, 2008 appellant filed a claim (Form CA-2) alleging that she sustained a recurrence of disability on August 12, 2008 causally related to her accepted injury. She stopped work on August 21, 2008.

By decision dated December 3, 2008, the Office denied appellant's claim for a recurrence of disability commencing August 12, 2008.

On December 5, 2008 appellant filed a claim for wage-loss compensation (Form CA-7) for the period November 8 to December 5, 2008. She submitted Dr. Alexander's December 15, 2008 report which found that she had generalized low back pain as a result of the March 2006 incident. Dr. Alexander advised that appellant was unable to perform her regular work duties.

By letter dated January 20, 2009, the Office referred appellant to Dr. Lori M. Guyton, a Board-certified neurologist, for a second opinion medical examination.

On February 8, 2009 appellant filed a Form CA-7 for the period January 3 to 30, 2009. In a January 12, 2009 medical report, Dr. Alexander obtained a history of the March 2006 incident. He advised that appellant had generalized lower back pain due to the March 2006 incident. Dr. Alexander stated that her other disabling condition was fibromyalgia.

In a February 26, 2009 report, Dr. Guyton listed a history of the March 8 and October 2, 2006 incidents and appellant's medical treatment and social and family background. She described a full physical and neurological examination which included essentially normal findings related to the upper and lower extremities and right and left sides. Appellant found that she had generalized pain, fibromyalgia as diagnosed by an attending physician and disc

[1] In a November 17, 2006 narrative statement, the employing establishment related that appellant fell onto her buttocks on a wet porch while delivering mail on March 8, 2006. Appellant continued to work as usual from March 9 to 12, 2006. On March 13, 2006 she advised the employing establishment that she planned to seek medical treatment if her pain did not improve. Appellant did not provide any subsequent notification of her medical treatment or file a claim contending that she sustained a work-related injury.

[2] The record reflects that appellant returned to full-time work as a modified part-time flexible carrier on August 11, 2008.

herniation at L4-5. The disc herniation condition may have been aggravated but not caused by the March 8, 2006 incident. Dr. Guyton advised that appellant's generalized pain, which developed in September 2006, was not the result of the March 8, 2006 incident or herniated disc condition. The pain was too diffuse to represent an L4-5 disc problem, it did not fit a radicular pattern and its acute onset was too far removed from the date of injury. Dr. Guyton advised that appellant's fibromyalgia was unlikely related to the March 8, 2006 incident. She stated that the etiology of the condition was unknown. Dr. Guyton opined that her continuing disability was likely the result of her generalized diffuse pain and fibromyalgia and not due to the March 2006 incident. She concluded that any residual of the accepted condition of L4-5 disc herniation condition "is overshadowed by her diffuse pain from fibromyalgia (not related to her disc)." Dr. Guyton further concluded that appellant's symptoms "are not specific for radicular findings, which would be expected if her symptoms were related to her L4-5 disc herniation." She listed her work restrictions and advised that she had reached maximum medical improvement regarding the herniated disc condition. Appellant had not reached maximum medical improvement regarding her generalized pain condition.

On March 16, 2009 appellant filed a Form CA-7 for the period January 31 to March 13, 2009. In reports dated February 9 and March 16, 2009, Dr. Alexander reiterated his opinion that appellant's generalized lower back pain was caused by the March 2006 incident. He also reiterated his diagnosis of fibromyalgia.

By letter dated April 6, 2009, the Office requested that Dr. Guyton clarify her opinion as to whether appellant had any residuals or disability related to the accepted employment injury. It asked that she review a description of the August 15, 2008 job offer, determine whether appellant could perform the duties of the position and to complete an accompanying work restriction evaluation (Form OWCP-5c).

In a May 1, 2009 decision, the Office denied appellant's claim for wage-loss compensation from January 3 to 30, 2009. It found that the medical evidence was insufficient to establish that she was totally disabled during the claimed period due to the accepted employment-related injury.

By letter dated May 6, 2009, appellant, through counsel, requested a telephonic hearing with an Office hearing representative that was held on August 11, 2009.

In an April 30, 2009 Form OWCP-5c received by the Office on May 14, 2009, Dr. Guyton advised that appellant could not perform her usual work duties as she had significant generalized pain. Appellant could work six to eight hours a day with restrictions and frequent breaks. Dr. Guyton found that appellant had reached maximum medical improvement.

By decision dated October 16, 2009, the Office denied appellant's claim for wage-loss compensation for the period January 31 to March 13, 2009. It found that the medical evidence was insufficient to establish that she was totally disabled due to her accepted employment-related injury.[3]

[3] The record reflects that appellant retired from the employing establishment on disability effective June 1, 2009.

On October 21, 2009 appellant, through counsel, requested a telephonic hearing regarding the Office's October 16, 2009 decision denying wage-loss compensation for the period January 31 to March 13, 2009. The hearing was scheduled for February 18, 2010. As appellant did not appear at the scheduled hearing due to surgery that she underwent on February 16, 2010, an Office hearing representative conducted a review of the written record.[4]

In a November 13, 2009 decision, an Office hearing representative affirmed the May 1, 2009 decision, finding that appellant did not sustain a recurrence of disability from January 3 to 30, 2009 due to the accepted employment injury. She found that the weight of the medical evidence rested with Dr. Guyton's February 26, 2009 well-reasoned medical opinion.

In a June 29, 2010 decision, a second Office hearing representative affirmed the October 16, 2009 decision. The medical evidence was insufficient to establish that appellant sustained a recurrence of disability from January 31 to March 13, 2009 causally related to the accepted employment-related injury.

LEGAL PRECEDENT -- ISSUES 1 & 2

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.[5]

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.[6]

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

[4] On April 7, 2010 an Office hearing representative denied appellant's request to postpone and reschedule the February 18, 2010 hearing due to her February 16, 2010 surgery as the accompanying medical records were illegible and she failed to submit new legible medical records.

[5] *J.F.*, 58 ECAB 124 (2006); *Elaine Sneed*, 56 ECAB 373, 379 (2005); 20 C.F.R. § 10.5(x).

[6] *Albert C. Brown*, 52 ECAB 152, 154-55 (2000); *Terry R. Hedman*, 38 ECAB 222, 227 (1986); 20 C.F.R. § 10.5(x) quoted in body of text.

accepted injury or condition disabled the claimant for work on and after the date of the alleged recurrence of disability.[7]

ANALYSIS -- ISSUES 1 & 2

The Office accepted that appellant sustained a protruding disc at L4-5 causally related to her established work-related duties as a part-time flexible letter carrier. Following this injury, appellant returned to modified light-duty work. She sought compensation for wage loss, contending that she was totally disabled from January 3 to 30, 2009 and again from January 31 to March 13, 2009. Appellant must demonstrate either that her condition has changed such that she could not perform the activities required by her modified job or that the requirements of the limited light-duty job changed. The Board finds that the record contains no evidence that the limited light-duty job requirements were changed or withdrawn or that her employment-related condition has changed such that it precluded her from performing limited light-duty work.

The Office relied on the medical opinion of Dr. Guyton, an Office referral physician, in denying appellant's recurrence of disability claims. In a February 26, 2009 report, Dr. Guyton found that appellant's continuing disability was causally related to her generalized pain and fibromyalgia conditions and not to the accepted condition. She provided her essentially normal findings regarding the upper and lower extremities and right and left sides on physical and neurological examination. Dr. Guyton stated that appellant's pain was too diffuse to represent an L4-5 disc problem. She further stated that appellant's pain did not fit a radicular pattern and its acute onset was too far removed from the date of injury. Dr. Guyton advised that any residuals of the accepted disc herniation at L4-5 were overshadowed by appellant's diffuse pain from fibromyalgia. She also advised that appellant's symptoms were not specific for radicular findings which would be expected if the symptoms were related to her L4-5 disc herniation. Dr. Guyton's April 30, 2009 Form OWCP-5c found that, while appellant could not perform her usual work duties due to her significant generalized pain, she could work six to eight hours a day with restrictions and frequent breaks.

The Board finds that the Office properly relied on Dr. Guyton's referral opinion in its November 13, 2009 and June 29, 2010 decisions denying appellant compensation based on a recurrence of her work-related protruding disc at L4-5. The weight of the medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.[8] Dr. Guyton's report is sufficiently probative, rationalized and based upon a proper factual background. She fully discussed the history of injury, provided her findings on examination and opined that appellant's continuing disability was caused by her generalized pain and fibromyalgia conditions, not the employment-related protruding disc at L4-5 and, thus, did not constitute a recurrence of disability.[9] Dr. Guyton further opined that although appellant could

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

[8] *See Ann C. Leanza*, 48 ECAB 115 (1996).

[9] *Donald T. Pippin*, 54 ECAB 631 (2003).

not perform her usual work duties, she could work six to eight hours a day with restrictions. The Board finds that her opinion constituted sufficient medical rationale to support the Office's November 13, 2009 and June 29, 2010 decisions denying compensation based on a recurrence of appellant's work-related protruding disc at L4-5.

Dr. Alexander, an attending physician, submitted several reports in which he found that appellant had generalized lower back pain causally related to the March 8, 2006 incident involving her fall from a porch while delivering mail. He also found that she had fibromyalgia. Neither the diagnosed conditions nor the March 8, 2006 incident has been accepted by the Office as work related.[10] Moreover, Dr. Alexander did not address the issue of appellant's disability for work from January 3 to March 13, 2009 or how any disability was causally related to the accepted employment-related protruding disc at L4-5 injury. The Board finds that his reports do not establish a worsening of appellant's condition and, therefore, do not constitute probative, rationalized opinion evidence demonstrating that a change occurred in the nature and extent of the injury-related condition.[11]

Appellant has not met her burden of proof in establishing that there was a change in the nature or extent of the injury-related condition or a change in the nature and extent of the limited light-duty requirements which would prohibit her from performing the limited light-duty position she assumed after she returned to work.

CONCLUSION

The Board finds that appellant has not established that she sustained a recurrence of total disability from January 3 to March 13, 2009 causally related to her accepted employment injury.

[10] For conditions not accepted by the Office as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not the Office's burden to disprove such relationship. *Alice J. Tysinger*, 51 ECAB 638 (2000).

[11] *William C. Thomas*, 45 ECAB 591 (1994).

ORDER

IT IS HEREBY ORDERED THAT the June 29, 2010 and November 13, 2009 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 14, 2011
Washington, DC

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

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

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