

On appeal, counsel contends that the employing establishment insisted that appellant carry a mailbag which constituted a change in her limited-duty job requirements and caused a recurrence of disability.

FACTUAL HISTORY

OWCP accepted that appellant, then a 40-year-old letter carrier, sustained a lumbosacral sprain as a result of bending to pick up a letter in the performance of duty on August 7, 2000.³ It previously accepted her claim for cervical, thoracic and lumbar spine injuries sustained on April 23, 1999.⁴ Appellant returned to work in a sedentary position for five and a half years and then to work as a modified letter carrier based on the October 6, 2004 report from Dr. Carmine A. Mazzella, a Board-certified family practitioner, who released appellant to work a route for eight hours a day with no additional assignments.

On November 8, 2010 appellant, through her attorney, filed a notice of recurrence. In a November 1, 2010 report, Dr. Mazzella diagnosed degenerative disc disease in the neck and low back. He indicated that appellant had been doing well with her previous mail delivery routine and opined that she was unable to carry mail in a mailbag due to her medical condition.

In a December 6, 2010 letter, OWCP requested additional evidence in support of appellant's recurrence claim and afforded her 30 days for submission. Appellant did not respond.

By decision dated January 14, 2011, OWCP denied the claim finding that the medical evidence submitted was insufficient to establish that appellant sustained a recurrence of her accepted lumbosacral sprain commencing November 1, 2010 causally related to the employment injury.

On February 3, 2011 appellant, through her attorney, requested an oral hearing before an OWCP hearing representative, that was held on April 26, 2011. At the hearing she provided testimony and the hearing representative held the case open for 30 days for the submission of additional evidence.

On December 10, 2010 Dr. Mazzella indicated that appellant had chronic changes in her spine and had been relatively stable with the way she had been delivering mail for the past five to six years. He stated that using a mailbag would create an imbalance in her posture which could increase pain. Dr. Mazzella released appellant to continue work with the only restrictions being to avoid the mailbag or lifting greater than 20 pounds.

By decision dated June 28, 2011, the hearing representative affirmed the January 14, 2011 decision finding that the medical evidence was insufficient to establish that appellant's condition in November 2010 was causally related to the 1999 or 2000 employment injuries.

³ On August 8, 2000 appellant, through her attorney, filed a recurrence claim (Form CA-2a), which OWCP accepted as a new claim for a traumatic injury.

⁴ OWCP File No. xxxxxx361.

On July 18, 2011 appellant, through her attorney, requested reconsideration. She submitted a July 6, 2011 report from Dr. Ottavio Nepa, a chiropractor, who diagnosed a spinal subluxation. After reviewing her job description, Dr. Nepa opined that appellant was not capable of performing her duties as it required far too much weight to be placed on her shoulders and would aggravate her degenerative spinal condition.

On April 14, 2011 Dr. Arthur Becan, an orthopedic surgeon, reviewed appellant's medical history and conducted a physical examination. He found that she was unable to walk for prolonged periods of time, lift, bend, carry more than five pounds, squat, stoop or climb due to her spinal condition and concluded that she was permanently and totally disabled from her occupation as a letter carrier.

By decision dated October 13, 2011, OWCP denied modification of the June 28, 2011 decision.

On October 26, 2011 appellant, through her attorney, requested reconsideration. In reports dated June 29, 1999 to October 8, 2002, Dr. Mazzella advised that appellant was permanently disabled due to her 1999 and 2000 employment injuries and should be placed on light duty.

In a routing slip dated November 13, 2010, Officer-in-charge (OIC) Emad Attaalla noted that appellant had requested light duty and could not carry mail in her satchel or push mail in a pushcart. He stated that the employing establishment did not have limited duty available within her medical restrictions and, after her time casing, she needed to complete a Form 3971 request for notification of absence for the remainder of her workday.

By decision dated September 19, 2012, OWCP denied modification of the October 13, 2011 decision.

On September 28, 2012 appellant, through her attorney, requested reconsideration. She submitted a September 27, 2012 statement noting that she was working successfully in her modified position without using a mailbag until OIC Attaalla followed her on her route and insisted that she use a mailbag, changing her light-duty requirements to exceed her medical restrictions.

By decision dated December 19, 2012, OWCP denied modification of the September 19, 2012 decision.

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 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 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

⁵ 20 C.F.R. § 10.5(x). See *T.S.*, Docket No. 09-1256 (issued April 15, 2010).

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.⁶

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 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 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.⁷

ANALYSIS

OWCP accepted that appellant sustained cervical, thoracic and lumbar spine injuries⁸ on April 23, 1999 and a lumbosacral sprain on August 7, 2000. Appellant returned to work in a sedentary position for five and a half years and then returned to work in a limited-duty capacity as a modified letter carrier. On November 8, 2010 she filed a notice of recurrence and submitted a November 1, 2010 report from her attending physician, Dr. Mazzella, who opined that she was unable to carry mail in a mailbag due to her medical condition and described the deleterious effects on her condition and her ability to work. Dr. Mazzella concluded that appellant was capable of working with the restrictions that she not carry a mailbag and lift over 20 pounds. On April 11, 2011 Dr. Becan noted that carrying heavy bundles of mail disabled her from work. On appeal, counsel contends that the employing establishment insisted that appellant carry a mailbag which constituted a change in her limited-duty job requirements and, thus, caused a recurrence of disability.

The Board finds that this case is not in posture for decision. The record contains evidence indicating that the employing establishment changed appellant's limited-duty job requirements. In her recurrence claim, appellant alleged that she worked successfully in her modified position until OIC Attaalla insisted that she use a mailbag on her route. In a November 13, 2010 routing slip, OIC Attaalla noted that she had requested light duty and could not carry mail in her satchel or push mail in a pushcart. He advised that the employing establishment did not have limited duty for street time available within her medical restrictions. The routing slip is unclear as to whether the physical requirements of appellant's limited-duty assignment were changed such that they exceeded her medical restrictions. The case will be remanded for OWCP to properly adjudicate the issue of whether there was a change in her

⁶ *Id.*

⁷ *See A.M.*, Docket No. 09-1895 (issued April 23, 2010). *See also Joseph D. Duncan*, 54 ECAB 471, 472 (2003); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁸ OWCP File No. xxxxxx361.

light-duty assignment that caused her to have a recurrence of total disability commencing November 1, 2010.⁹

Additionally, OWCP relied upon evidence under OWCP File No. xxxxxx361 in reaching its September 19, 2012 decision. The current case record, however, does not contain this evidence. The absence of this evidence precludes the Board from properly reviewing OWCP's recurrence decision as it relied upon evidence from another file number in reaching its conclusions. Consequently, the case will be remanded for OWCP to combine the current case record with File No. xxxxxx361 and properly adjudicate the issue of appellant's recurrence claim.¹⁰

Following this and such other development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision.

⁹ In *Terry R. Hedman*, *supra* note 7 at 222, the Board stated that 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." See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrence*, Chapter 2.1500.2 (March 2011). See also 20 C.F.R. §§ 10.104, 10.121.

¹⁰ *File Maintenance and Management*, Chapter 2.400.8 (February 2000) *id.* Under 2.400.8(c), cases should be doubled when correct adjudication of the issues depends on frequent cross-reference between files, including: (1) a new injury case is reported for an employee who previously filed an injury claim for a similar condition or the same part of the body. For instance, a claimant with an existing case for a back strain submits a new claim for a herniated lumbar disc; (2) two or more separate injuries (not recurrences) have occurred on the same date; and (3) adjudication or other processing will require frequent reference to a case which does not involve a similar condition or the same part of the body. For instance, an employee with an existing claim for carpal tunnel syndrome files a new claim for a mental condition which has overlapping periods of disability.

ORDER

IT IS HEREBY ORDERED THAT the December 19 and September 19, 2012 decisions of the Office of Workers' Compensation Programs are set aside. The case is remanded for further action consistent with this order of the Board.

Issued: July 16, 2013
Washington, DC

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

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

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