United States Department of Labor
Employees' Compensation Appeals Board

P.H., Appellant	)	
and	)	**Docket No. 13-955**
	)	**Issued: November 25, 2013**
U.S. POSTAL SERVICE, POST OFFICE, Rochester, NY, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

OnMarch 12, 2013appellant filed a timely appeal from a February 25, 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 is whether appellant met her burden of proof to establish a recurrence of disability beginning December 11, 2012 causally related to her November 22, 2011employment injury.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On December 5, 2011 appellant, then a 53-year-old window clerk,filed a traumatic injury claimalleging that on November 22,2011 she sustained an injury when a container door fell on her back at work. Appellant did not stop work.

In a November 23, 2011 report, Dr. George Anstadt, a treating physician Board-certified in preventive medicine, noted appellant's history of injury, which included that while she was closing the top of a metal gate, after she slammed the door shut, she bent down and pulled out the bottom shelf and the top shelf popped loose and slammed down across her upper back. He diagnosed cervical strain and contusion of the thorax, chest wall strain. Dr. Anstadt placed restrictions on lifting,pushing, pulling over five pounds and reaching over the shoulder. In a December 2, 2011 duty status report, he recommended limited-duty restrictions to deliver express mail. In a report dated December 13, 2011, Dr. Anstadt diagnosed chest wall strain and contusion of the thoraxand continued appellant's work restrictions. Chest and rib x-rays were negative. On December 27, 2011 appellant was released to full duty by Dr. Anstadt,who noted that her problems had resolved, recommended continued home exercise and released her from his care.

In a December 14, 2012 report, Dr. Samuel Balderman, a Board-certified surgeon and associate of Dr. Anstadt, noted a November 22, 2011 injury date and advised that appellant returned for a recheck. He advised that she was working within her duty restrictions and was having difficulty with the selected job functions. Dr. Balderman diagnosed lumbar strain. He noted that lumbar spine x-rays were negative. In a duty status report also dated December 14, 2012, Dr. Balderman provided restrictions.

On December 18, 2012appellant filed a notice of recurrence (Form CA-2a) alleging that on December 11, 2012 she had a recurrence of her November 22, 2011 work injury.She stopped work on December 18, 2012. Appellant noted that it "happened after a busy day at work and into the evening."She explained that she had similar symptoms from her original injury and the right side ailments were the same. The employing establishment advised that appellant returned to full-time, full duty after her November 22, 2011 injury.

In a duty status report dated December 28, 2012, Dr. Aharon Wolf, Board-certified in preventive medicine and an associate of Dr. Anstadt, noted that appellant presented with complaints about her back which was injured on November 22, 2011. Appellant reported the history of her injury and complained of thoracic pain and midline lumbosacral pain. Dr. Wolf noted that she had been working with restrictions and was having difficulty with selected job functions. Heattached December 18, 2012 work restrictions. In a January 4, 2013 report, Dr. Wolf diagnosed thoracic strain and cervical pain. He opined that "within a degree of medical probability, I conclude that the aforementioned diagnosis(es) is/are causally and proximally related to the work-related injury.The mechanism of injury and the description of the incident are consistent. It is more likely than not that the diagnosis(es) are the result of the work[-]related injury." Dr. Wolf indicated that maximum medical improvement might be achieved in three weeks. In a January 4, 2013 duty status report, he continued the restrictions.

By letter dated January 11, 2013, OWCP noted that appellant's claim initially had appeared to be a minor injury resulting in minimal or no lost time from work and her claim was administratively approved to allow payment of a limited amount of medical expenses. However, appellant's claim was now being reopened because she had filed a claim of recurrence. By letter of January 11, 2013,OWCP informed herof the type of evidence needed to support her original traumatic claim and requested that she submit such evidence within 30 days. On January 18, 2013 it advised appellant of the type of medical evidence needed to establish a claim for a recurrence of disability from the original claim. OWCP advised her that, if she had a new injury or exposure, she should file a new notice of injury.

A January 15, 2013 magnetic resonance imaging (MRI) scan of the cervical spine, revealed a C6-7 broad-based central disc protrusion with very slight superior migration of disc material to lower C5 that was abutting the cord but not altering its signal. There was a tiny focal central disc protrusion at C3-4 not abutting nor distorting the cord with a minor uncinate spurring at several levels and facet degenerative changed to the left at C4-5 and C5-6.

In a January 30, 2013 statement, appellant described her recurrence. She noted that she was processing packages during the Christmas holiday. Appellant indicated that she handled all of the packages that were approximately 5 to 30 pounds and she worked alone. Shestated that, at the time of the recurrence, she was not on light duty and she was working her full eight hours on a busy customer service window. Appellant explained that she believed that her recurrence was a result of her original injury, due to the fact that the pain had reappeared at the same place on her neck and back and the right side of her head with the same symptoms. She indicated that the symptoms would come and go and they worsened if she continued to have a busy day handling varied weight packages. Appellant denied any other injuries and explained that the flair up of the right side of her back and neck was her only recurring pain.

In a February 6, 2013 treatment note, Dr. Wolf noted appellant's history of injury and treatment and that she was released to full duty on December 27, 2011. He advised that, on December 14, 2012, she returned with increased symptoms of pain since being back to work full duty. Dr. Wolf indicated that appellant had a mild decrease of range of motion in all planes due to pain. He opined that it was "assumed that these symptoms are most probably not from a new injury since they are the same symptoms as prior and there was no new injury event since last event." Dr. Wolf explained that since physical therapy previously helped appellant to return to full duty, it was decided to continue another round of therapy. Hediagnosed thoracic strain and cervical pain and prescribed physical therapy. OWCP also received physical therapy reports.

On February 15, 2013 OWCP accepted the claim for cervical sprain, thoracic sprain, lumbar sprain and contusion of trunk.

By decision dated February 25, 2013, OWCP denied appellant's claim for a recurrence of disability. It found that she had not established that she was disabled due to a worsening of her accepted conditions.

LEGAL PRECEDENT

Section 10.5(x) of OWCP's regulations provide that 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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[2]

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and who supports that conclusion with sound medical reasoning.[3]

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.[4]

ANALYSIS

OWCP accepted that appellant sustained claim for cervical sprain, thoracic sprain, lumbar sprain and contusion of trunk in the performance of duty onNovember 22, 2011.Appellant returned to full duty on December 27, 2011. She filed a notice of recurrence of disability onDecember 18, 2012 alleging disability beginning that date due to her accepted injuries.Appellant, however, did not submit sufficient reasoned medical evidence to establish that herpresent condition was causally related to her accepted injury.

Appellant alleged that she was processing packages for the Christmas holiday at the employing establishment, which weighed between 5 and 30 pounds. She confirmed that, at the time of the recurrence on December 11, 2012, she was not on a light duty status and was working her full eight hours as a customer service representative.[5]

In support of her claim for a recurrence on December 11, 2012 appellant submitted several reports from Dr. Wolf. In his January 4, 2013 report, Dr. Wolfdiagnosed thoracic strain and cervical pain. He opined that "within a degree of medical probability, I conclude that the aforementioned diagnosis(es) is/are causally and proximally related to the work-related injury. The mechanism of injury and the description of the incident are consistent. It is more likely than

[2] 20 C.F.R. § 10.5(x); *seeTheresa L. Andrews*, 55 ECAB 719 (2004).

[3] *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.104.

[4] *Walter D. Morehead*, 31 ECAB 188 (1986).

[5] The Board notes that if appellant is alleging that her current conditions are related to a new work incident rather than a spontaneous change in her work-related conditions, she may wish to file a traumatic injury claim. *See Cecelia M. Corely*, 56 ECAB 662 (2005).

not that the diagnosis(es) are the result of the work[-]related injury."However, Dr. Wolfdid not provide any explanation to support his conclusion that appellant had an exacerbation of her underlying symptoms attributable to the originally accepted injury. He also did not appear to have a complete history as she has not offered an explanation as to how she sustained her recurrence other than to say that she was processing packages weighing between 5 and 30 pounds. The Board has held that medical opinions based upon an incomplete history have little probative value.[6]

Likewise, in a February 6, 2013 treatment note, Dr. Wolf advised that on December 14, 2012 appellant returned with increased symptoms of pain since being back to work full dutywithrestrictions. He indicated that she had a mild decrease of range of motion in all planes due to pain. Dr. Wolf opined that it was "assumed that these symptoms are most probably not from a new injury since they are the same symptoms as prior and there was no new injury event since last event."He diagnosed thoracic strain and cervical pain and prescribed physical therapy. The Board finds that this report is lacking as there is no medical rationale to support a recurrence of disability on December 18, 2012. Dr. Wolf did not explain how appellant had a spontaneous change in her accepted conditions that caused or contributed to her disability. The need for medical reasoning is particularly important where Dr. Anstadt previously opined that her condition had resolved by December 27, 2011 and that she could work without restriction.

Other reports from Dr. Wolf, such as work restriction and duty status reports, are insufficient to establish the claimas they do not provide any clear opinion regarding why appellant could not work due to her accepted conditions. To establish that a claimed recurrence was caused by the accepted injury, medical evidence of bridging symptoms between the present condition and the accepted injury must support the physician's conclusion of a causal relationship.[7] Dr. Wolf did not specifically address the cause of the diagnosed conditions or relate the conditions to appellant's November 22, 2011 employment injury and thus his reports are of little probative value.[8] Furthermore, Dr. Balderman's December 14, 2012 report, while noting her November 22, 2011 injury date and that she had difficulty with the selected job functions, did not specifically address how she had a spontaneous change in her accepted conditions that caused disability. Thus, this report is insufficient to establish the claim.

Other medical reports, including diagnostic reports, are insufficient to establish appellant's claim for a recurrence of disability as they do not specifically address how any condition on or after December 11, 2012is causally related to the original employment injury.[9]

[6] *See Vaheh Mokhtarians*, 51 ECAB 190 (1999).

[7] *Ricky S. Storms*, 52 ECAB 349 (2001).

[8] *Linda I. Sprague*, 48 ECAB 386 (1997) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

[9] *Jaja K. Asaramo*, 55 ECAB 200 (2004) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

OWCP also received several physical therapy reports. However, the reports of therapists have no probative value on medical questions because a therapist is not a physician as defined by 5 U.S.C. § 8101(2) and, therefore, is not competent to render a medical opinion.[10]

Consequently, appellant has not met his burden of proof in establishing her claim for a recurrence of disability beginning December 11, 2012 causally related to the work injury of November 22, 2011.

CONCLUSION

The Board finds that appellant did not meet herburden of proof to establish a recurrence of disability beginning December 11, 2012 causally related to her November 22, 2011 employment injury.

ORDER

IT IS HEREBY ORDERED THATthe February 25, 2013 decision of the Office of Workers' Compensation Programsis affirmed.

Issued: November 25, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

[10]*See Barbara J. Williams*, 40 ECAB 649, 657 (1988) **(**physical therapist); 5 U.S.C. § 8101(2) (the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by state law).