

**United States Department of Labor
Employees' Compensation Appeals Board**

J.V., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Edison, NJ, Employer**

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**Docket No. 15-338
Issued: April 10, 2015**

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 3, 2014 appellant, through counsel, filed a timely appeal from the August 5, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 total disability on or after January 23, 2012 due to her accepted work injuries.

FACTUAL HISTORY

OWCP accepted that on February 22, 2008 appellant, then a 59-year-old customer service supervisor, sustained a neck sprain, aggravation of displacement of cervical intervertebral disc without myelopathy, aggravation of degeneration of lumbar intervertebral disc, aggravation of

¹ 5 U.S.C. §§ 8101-8193.

brachial neuritis, and aggravation of lumbosacral neuritis/radiculitis due to a vehicular accident at work. Her vehicle was struck from behind by another vehicle while she was stopping at a red light. Appellant did not stop work at the time of the accident.²

Appellant received medical care for her February 22, 2008 injury from Dr. Nasser Ani, a Board-certified orthopedic surgeon. In an April 8, 2010 report, Dr. Ani opined that the February 22, 2008 injury aggravated her preexisting cervical herniation and radiculopathy and caused a new disc bulge at C3-4. Appellant's preexisting lumbar radiculopathy at L4-5 was also aggravated by the accident and caused new disc bulges at L2-3 and L3-4. She stopped work on August 10, 2010 and Dr. Ani later released her to work for four hours per day. Appellant returned to work for four hours per day on December 13, 2010. Beginning August 10, 2010 she received partial disability compensation on the daily rolls.

In a November 9, 2011 report, Dr. Jerome D. Rosman, a Board-certified orthopedic surgeon serving as an OWCP referral physician, discussed appellant's medical history and reported findings of his October 26, 2011 examination. He stated that her work-related conditions had healed sufficiently for her to return to work on a full-time basis with limitations on lifting. Dr. Rosman noted that there were no acute signs of appellant's injuries. He indicated that the work-related aggravation of her neck and back conditions was permanent, but that it had stabilized and reached maximum benefit from treatment.

Appellant stopped work on January 23, 2012. The record contains a January 23, 2012 report indicating that Dr. Darren Freeman, an attending osteopath, administered left L4 and bilateral L5-S1 transforaminal epidural steroid injections on that date. Dr. Freeman stated, "[Appellant] tolerated the procedure well and was discharged to the recovery room in stable medical condition where [she] will recover from the intravenous conscious sedation and from the procedure itself. [She] will be discharged home without any complications to follow up in my office in 10 days."

In a note dated January 23, 2012, Dr. Freeman indicated that appellant could remain out of work until February 1, 2012. No explanation was given for this disability opinion. In a January 30, 2012 report, Dr. Freeman stated that appellant had undergone the epidural injections on January 23, 2012, but he did not indicate any disability from work. He examined her on February 1, 2012 and indicated that she was unable to work from February 1 to 29, 2012. Dr. Freeman did not mention any connection to the epidural injections or any other potential cause for appellant's disability.

On March 2, 2012 Dr. Freeman performed another epidural injection. He stated that appellant tolerated the procedure well and that she was discharged home without complications. A note signed by Dr. Freeman stated that she should remain out of work until March 31, 2012. Dr. Ani examined appellant on March 12, 2012 and indicated that epidural injections should be

² OWCP previously accepted that on October 21, 1998 appellant sustained a cervical sprain, postconcussion syndrome, and left shoulder impingement due to a work-related vehicular accident on that date. The accident occurred when the driver of another vehicle cut off her vehicle. The claim was initially developed under a different claim file (xxxxxx096) but that file was later doubled into the file for appellant's February 22, 2008 injury. The medical records from the claim do not show that she received medical care for this injury after mid-2007.

tried before surgery was considered. He stated that the prior injections helped and opined that she should remain off work until April 12, 2012.

By decision dated March 20, 2012, OWCP terminated appellant's wage-loss compensation based on the November 9, 2011 report of Dr. Rosman. It did not terminate her medical benefits.³

On March 20, 2012 appellant filed a claim (Form CA-2a) alleging that she sustained a recurrence of total disability on January 23, 2012 due to residuals of her work injuries.

On April 4, 2012 Dr. Ani indicated that appellant was unable to work. On May 18, 2012 he recommended another epidural injection which Dr. Freeman performed on May 21, 2012. On May 31, 2012 Dr. Freeman reported that appellant had improved approximately 50 percent due to the epidural injection. On June 13, 2012 Dr. Ani stated that she had improved 60 percent since the epidural injection and released her to modified duty.

A hearing was held on July 12, 2012 with an OWCP hearing representative in connection with the March 20, 2012 termination decision. Appellant testified that she stopped work on January 23, 2012 because she sustained pain and loss of sensation when she was on her way to an OWCP-directed examination with Dr. Rosman in October 2011. She stated that she stopped her vehicle and took a stretch and that she then "lost all sensation and my left collapsed and I just went down." Appellant indicated that she managed to continue working until early 2012, noting that she did not feel well after receiving steroid injections on January 23, 2012 from Dr. Freeman.

In a September 27, 2012 decision, the hearing representative remanded the case to OWCP for further development, including the production of an updated statement of accepted facts which contained the details of appellant's October 21, 1998 work injury. The records from that injury were to be doubled into the record for the February 22, 2008 injury. OWCP was directed to provide these documents to Dr. Rosman and to obtain a supplemental report regarding work-related disability.

After carrying out these instructions, OWCP referred the case to Dr. Rosman for a supplemental report. In a January 27, 2013 report, Dr. Rosman stated that appellant "is able to and already has returned to work full time" with restrictions on lifting and carrying. He noted that further treatment would be palliative and that epidural steroid injections and surgery were not indicated or medically necessary. Dr. Rosman indicated that appellant's complaints were not inconsistent with the diagnostic testing, but that they were not supported by objective findings on examination. He posited that the type of injury sustained by her in February 2008 typically resolves in 12 to 16 weeks.

By decision dated February 7, 2013, OWCP denied appellant's claim for recurrence of total disability beginning January 23, 2012. It discussed Dr. Rosman's supplemental report and noted that she had not submitted medical evidence to support her claim. In an August 9, 2013 decision, an OWCP hearing representative instructed OWCP to request another supplemental

³ The record reflects that appellant received disability compensation on the daily rolls through December 6, 2011.

report from Dr. Rosman which specifically addressed whether appellant sustained a work-related recurrence of total disability on or after January 23, 2012.

Dr. Rosman responded in a September 2, 2013 report, noting that he had reviewed the relevant medical records and a statement of accepted facts. He commented that appellant did not sustain a recurrence of total disability on or after January 23, 2012 and noted that her condition, based on objective findings, had been stable and unchanged for years. Dr. Rosman stated:

“[Appellant] did not become disabled due to the epidural steroid injections she received on January 23, March 2, and May 21, 2012. During epidural steroid injection treatment physical activity is not significantly affected. If [appellant] is active and capable of working, as I believe [that she] was, this activity would continue throughout the epidural steroid injection treatment period.”

By decision dated December 3, 2013, OWCP found that appellant did not meet her burden of proof to establish a recurrence of total disability on or after January 23, 2012 due to her accepted work injuries.

Appellant requested a video hearing with an OWCP hearing representative. During the May 20, 2014 hearing, appellant’s counsel asserted that her recurrence began on January 23, 2012 due to adverse effects of the first epidural steroid injections administered by Dr. Freeman.

Appellant submitted a January 20, 2014 report in which Dr. Ani stated that her accidents in 1998 and 2008 were “both cause[s] of current condition.” Dr. Ani indicated that appellant had herniated discs at C5-6 which required surgery and that “the need for surgery is related to the workman’s comp[ensation] condition.” He stated:

“[Appellant’s] lower back condition is related to the workman’s comp[ensation]. [She] had epidural injection for the radiculopathy and disc herniation at L4 and L5 which had helped. If the symptoms reoccur, [appellant] will need surgical intervention. [She] has not reached [maximum medical improvement]. [Appellant] is unable to work or drive long distances.”

By decision dated August 5, 2014, the hearing representative affirmed OWCP’s December 3, 2013 decision denying appellant’s claim that she sustained a work-related recurrence of total disability beginning January 23, 2012.

LEGAL PRECEDENT

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 of record establishes that he or she 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 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.⁴

ANALYSIS

OWCP accepted that on October 21, 1998 appellant sustained a cervical sprain, postconcussion syndrome, and left shoulder impingement due to a work-related vehicular accident on that date. It also accepted that on February 22, 2008 she sustained a neck sprain, aggravation of displacement of cervical intervertebral disc without myelopathy, aggravation of degeneration of lumbar intervertebral disc, aggravation of brachial neuritis, and aggravation of lumbosacral neuritis/radiculitis due to another vehicular accident at work.

Appellant stopped work on August 10, 2010 and then returned to part-time modified work on December 13, 2010. She continued in the position until January 23, 2012. On March 20, 2012 appellant filed a claim alleging that she sustained a recurrence of total disability on January 23, 2012 due to residuals of her work injuries. She claimed alternately that she stopped work due to experiencing a loss of sensation when she was driving to an OWCP-required medical appointment on October 26, 2011 with Dr. Rosman, and due to the effects of an epidural injection on January 23, 2012.

The Board notes that no physician has indicated that the reported loss of sensation on October 26, 2011 was a cause of total disability beginning in January 2012. Appellant's physicians did not find appellant disabled as a result of the epidural injections, but rather indicated that she did well after they were administered and had no complications. Dr. Freeman, an attending osteopath, and Dr. Ani, an attending Board-certified orthopedic surgeon, indicated that she should stay off work for periods after January 23, 2012, but they did not provide a rationalized medical opinion supporting that the work stoppages were necessitated by effects of her October 21, 1998 or February 22, 2008 work injury. Most of their disability opinions consisted of brief comments delineating periods of disability without explanation for the opinions. Dr. Freeman and Dr. Ani did not provide any clear explanation for finding that appellant was not able, for any period after January 23, 2012, to perform the restricted duties she had been performing for more than a year. Therefore, appellant did not show a change in the nature and extent of her injury-related condition such that she could no longer perform this restricted work, nor did she argue or show a change in the nature and extent of her light-duty job requirements.⁵

⁴ *S.F.*, 59 ECAB 525 (2008); *Terry R. Hedman*, 38 ECAB 222 (1986). 20 C.F.R. § 10.5(x) provides, "*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 (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."

⁵ *See id.*

In a January 20, 2014 report, Dr. Ani stated that appellant's accidents in 1998 and 2008 were "both cause[s] of current condition." He indicated that she had herniated discs at C5-6, which required surgery and that "the need for surgery is related to the workman's comp[ensation] condition." Dr. Ani stated that appellant's "lower back condition is related to the workman's comp[ensation]." He noted that she had epidural injection for the radiculopathy and disc herniation at L4 and L5 "which had helped" and stated that she "is unable to work or drive long distances." Although Dr. Ani suggested that appellant had disability in January 2014 due to the October 21, 1998 and February 23, 2012 work injuries, he did not provide any explanation for this opinion. He did not describe the October 21, 1998 or February 23, 2012 work injury in any detail or explain how either injury could have caused total disability on or after January 23, 2012. With respect to the epidural steroid injections, Dr. Ani actually indicated that they provided comfort, rather than caused disability.

Moreover, Dr. Rosman noted in a September 2, 2013 report that appellant did not sustain a recurrence of total disability on or after January 23, 2012 and indicated that her condition, based on objective findings, had been stable and unchanged for years. He specifically stated that she did not become disabled due to the epidural steroid injections she received on January 23, March 2, and May 21, 2012.

For these reasons, appellant did not establish a work-related recurrence of total disability on or after January 23, 2012.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish a recurrence of total disability on or after January 23, 2012 due to her accepted work injuries.

ORDER

IT IS HEREBY ORDERED THAT the August 5, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 10, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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