

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

P.O., Appellant)

and)

**U.S. POSTAL SERVICE, POST OFFICE,
Chicago, IL, Employer**)

**Docket No. 06-1860
Issued: December 12, 2006**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 9, 2006 appellant filed a timely appeal from a June 9, 2006 Office of Workers' Compensation Programs' decision finding that she had not established a recurrence of her accepted lower back condition on May 23, 2005. Under 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 due to her accepted lower back condition as of May 23, 2005.

FACTUAL HISTORY

Appellant, a 49-year-old mail carrier, sustained injuries to her lower back and left arm on January 30, 2001 when she slipped on a patch of ice and fell to the ground. She filed a claim for benefits on February 6, 2001, which the Office accepted the claim for lower back sprain and left forearm contusion.

On June 15, 2005 appellant filed a Form CA-2a claim for a recurrence of disability for the period May 23 through June 13, 2005.

In a March 22, 2006 form report, Dr. Alicia Poleszak, a family practitioner, related that appellant was being treated for diabetes, hypertension, osteoarthritis and chronic lower back pain. She stated that appellant's chronic low back condition had commenced in 2001. Dr. Poleszak advised that appellant was incapacitated due to this condition for approximately three to four days per week, for which she required physical therapy for a six- to eight-week period. She indicated that she had outlined restrictions for appellant in a March 15, 2006 Form CA-17 duty status report. In her March 15, 2006 Form CA-17 report, Dr. Poleszak indicated that appellant could resume work as of March 16, 2006 for eight hours per day, 40 hours per week, with limitations on lifting, sitting, standing, walking, twisting, pulling and pushing.¹

By letter dated April 11, 2006, the Office requested additional information from appellant in support of her recurrence claim. The Office requested a statement from appellant explaining that her light-duty assignment had changed and indicating that it no longer met the restriction set by her physician. The Office also requested a medical opinion from appellant's treating physician supporting her claim that a worsening in her work-related condition had occurred. The Office allowed appellant 30 days to submit this additional evidence.

Appellant submitted a letter to the Office dated May 5, 2006² in which she informed the Office that she had included the physician's report requested by the Office. However, the Office did not receive any additional medical evidence from appellant.

By decision dated June 9, 2006, the Office denied appellant compensation for a recurrence of her accepted lower back condition. The Office stated that it had advised appellant of the type of evidence required to support her recurrence claim; however, appellant had failed to submit such evidence.

LEGAL PRECEDENT

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability. As part of this burden, the employee must show either 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.³

¹ Appellant submitted other CA-17 forms from Dr. Poleszak, containing identical restrictions, dated October 30, 2003, January 27, July 12 and February 11, 2004, April 5, August 11, October 6, December 11 and 26, 2005.

² The letter is dated May 5, 2005 but was received by the Office on May 10, 2006 and appears to be in response to the Office's April 11, 2006 developmental letter.

³ *Terry Hedman*, 38 ECAB 222 (1986).

ANALYSIS

In the instant case, the record does not contain any medical opinion showing a change in the nature and extent of appellant's injury-related condition. Indeed, appellant has failed to submit any medical opinion containing a rationalized, probative report which relates her condition or disability as of May 23, 2005 to her employment injury. For this reason, she has not discharged her burden of proof to establish her claim that she sustained a recurrence of disability as a result of her accepted employment injury.

The only medical evidence which appellant submitted consisted of Dr. Poleszak's March 22, 2006 form report and Form CA-17 duty status reports from October 2003 to March 2006. Dr. Poleszak's reports provided a history of injury and a diagnosis of her condition as of March 2006; they indicated that appellant had experienced chronic low back pain since 2001, a condition which periodically incapacitated her. Dr. Poleszak prescribed physical therapy for this condition and indicated in her various Form CA-17 reports that appellant was capable of working a 40-hour workweek with certain restrictions. However, Dr. Poleszak did not provide any rationalized, probative medical opinion sufficient to establish that appellant's claimed disability as of May 23, 2005 was causally related to her accepted January 30, 2001 employment injury.

Dr. Poleszak's reports do not constitute sufficient medical evidence demonstrating a causal connection between appellant's employment injury and her alleged recurrence of disability. Causal relationship must be established by rationalized medical opinion evidence. The reports submitted by appellant failed to provide an explanation in support of her claim that she was totally disabled as of May 23, 2005. The 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.⁴

In addition, the Board finds that the evidence fails to establish that there was a change in the nature and extent of appellant's limited-duty assignment such that she no longer was physically able to perform the requirements of her light-duty job. Accordingly, as appellant has not submitted any factual or medical evidence supporting her claim that she was totally disabled from performing her light-duty assignment on May 23, 2005 as a result of her accepted lower back condition, appellant failed to meet her burden of proof. The Office properly found in its June 9, 2006 decision that appellant was not entitled to compensation based on a recurrence of her employment-related disability.

CONCLUSION

The Board finds that appellant has not met her burden to establish that she was entitled to compensation for a recurrence of disability as of May 23, 2005 causally related to her accepted lower back condition.

⁴ *William C. Thomas*, 45 ECAB 591 (1994).

ORDER

IT IS HEREBY ORDERED THAT the June 9, 2006 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: December 12, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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