United States Department of Labor
Employees' Compensation Appeals Board

S.E., Appellant	)	
and	)	**Docket No. 05-1987**
	)	**Issued: October 10, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Dover, PA, Employer	)	

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
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 September 27, 2005 appellant filed a timely appeal of a September 23, 2005 decision of the Office of Workers' Compensation Programs regarding a recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established a recurrence of disability on May 21, 2001 or October 15, 2001.

FACTUAL HISTORY

The case was before the Board on a prior appeal.[1] The Board noted that there were two work stoppages in the case: appellant stopped working on or about May 21, 2001, returned to work in July 2001, and again stopped working in October 2001. Since the Office had failed to

[1] Docket No. 05-416 (issued July 13, 2005).

make adequate findings on the relevant issues, the case was remanded to the Office. The history of the case is contained in the Board's prior decision and is incorporated herein by reference.

By decision dated September 23, 2005, the Office determined that appellant had not established a recurrence of disability in May or October 2001. The Office found that the evidence was not sufficient to meet appellant's burden of proof.

LEGAL PRECEDENT

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish 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 supports that conclusion with sound medical reasoning.[2]

A recurrence of disability is defined under the Office's implementing federal regulations as the 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.[3]

It is well established that when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.[4]

ANALYSIS

In its prior decision, the Board noted that with respect to the work stoppage in May 2001 "it is not clear what job appellant was performing at that time." The Office did not request that the employing establishment provide any additional information, although it did note in its September 23, 2005 decision that an attending physician, Dr. Michael Sicuranza, had indicated that appellant could return to full-duty work. In an April 9, 2001 report, Dr. Sicuranza indicated that he would "let [appellant] go back to work unrestricted." This would suggest that appellant was performing her regular work duties. The employing establishment stated in a time analysis form dated June 17, 2001 that appellant was offered full-duty work but appellant refused. The actual work stoppage apparently occurred when Dr. Sicuranza indicated that appellant could not do label replacement and the employing establishment requested additional information.

In this case, however, the critical medical report is the May 16, 2001 report from the referee examiner, Dr. Thomas Ryscavage, who provided a reasoned medical report based on a complete background, his report is entitled to special weight and represents the weight of the

[2] *Lourdes Davila*, 45 ECAB 139, 142 (1993).

[3] 20 C.F.R. § 10.5(x).

[4] *Harrison Combs, Jr.*, 45 ECAB 716, 727 (1994).

medical evidence. Dr. Ryscavage clearly recommended that appellant work with accommodations outlined in his report, including assistance with replacing labels. If appellant's job at the time she stopped working on or about May 21, 2001 was not within those restrictions, then she would be entitled to compensation for wage loss until she returned to work in July 2001.[5] Even if label replacement were an occasional job duty, all the job duties must fall within the established work restrictions. The case will be remanded for the Office to make a proper determination as to whether the job performed in May 2001 was within the work restrictions reported by Dr. Ryscavage, and any finding that the job performed was within the referee's restrictions must be supported by relevant evidence.

With respect to the work stoppage in October 2001, the Office stated that appellant had returned to "her regular duties as a Rural Carrier" in July 2001, but then stated that "the work [appellant] was performing was within her restrictions as outlined by the [r]eferee examiner." As noted above, it is not established that the "regular duties" were within the work restrictions noted by Dr. Ryscavage. The work stoppage, however, was the result of an administrative action removing appellant from employment as of October 15, 2001. There is no medical evidence of record showing an employment-related condition that resulted in disability as of October 15, 2001. A form report (CA-20) dated November 1, 2001 from Dr. Sicuranza does not discuss a change in appellant's employment-related condition or establish disability as of October 15, 2001. The Board has held that, when a claimant stops work for reasons unrelated to the accepted employment injury, there is no disability within the meaning of the Federal Employees' Compensation Act.[6] The Board accordingly finds that appellant has not established a recurrence of disability on October 15, 2001.

CONCLUSION

Appellant has not established a recurrence of disability on October 15, 2001. With respect to May 21, 2001, the Office must make a proper finding as to whether the job appellant was performing was within the restrictions provided by the referee examiner, Dr. Ryscavage.

[5] Disability means the incapacity, because of injury in employment, to earn the wages which the employee was receiving at the time of injury. *Donald Johnson*, 44 ECAB 540, 548 (1993); 20 C.F.R. § 10.5(f).

[6] *See John I. Echols*, 53 ECAB 481 (2002).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 23, 2005 is affirmed with respect to a recurrence of disability commencing October 15, 2001; it is set aside and remanded for additional development with respect to disability commencing May 21, 2001.

Issued: October 10, 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