United States Department of Labor
Employees' Compensation Appeals Board

T.C., Appellant	)	
and	)	**Docket No. 06-94**
	)	**Issued: September 5, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Oklahoma City, OK, Employer	)	

Appearances:
T.C., 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 17, 2005 appellant filed a timely appeal from a November 4, 2004 decision of the Office of Workers' Compensation Programs denying her claim for a recurrence of disability.[1] Pursuant to 20 C.F.R. §§ 501.2(c) and 501(d)(3), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant established that she sustained a recurrence of disability commencing on or about April 20, 2004.

[1] Appellant also appealed a September 16, 2005 Office decision denying waiver of an overpayment. This decision, however, is null and void as the Board and the Office may not simultaneously have jurisdiction over the same issue. The Director of the Office had timely filed a petition for reconsideration of the Board's June 20, 2005 decision on the underlying overpayment issue in Docket No. 2005-249. On July 24, 2006 the Board granted the petition and reaffirmed its June 20, 2005 decision. As the Board still retained jurisdiction over the overpayment issue, the Office may not issue a decision regarding the same issue on appeal before the Board. *See Terry L. Smith,* 51 ECAB 182 (1999); *Arlonia B. Taylor*, 44 ECAB 591 (1993); *Russell E. Lerman,* 43 ECAB 770 (1992); *Douglas E. Billings,* 41 ECAB 880 (1990).

FACTUAL HISTORY

On October 3, 2002 appellant, then a 34-year-old modified letter carrier, filed an occupational disease claim for injuries to her feet sustained as a result of her federal employment. The Office accepted her claim for aggravation of bilateral tarsal tunnel syndrome and paid appropriate benefits.

On January 28, 2003 appellant's treating physician, Dr. Steven B. Smith, a podiatrist, released her to permanent light-duty status with restrictions on no weight-bearing or walking more than 15 minutes every hour. He approved appellant's permanent light-duty position at the employing establishment on January 9, 2002 and it was accepted by appellant on January 14, 2002. The employing establishment indicated that appellant returned to her permanent light-duty position working three days a week on March 6, 2003 and had not delivered mail since the first part of 1999. The permanent light-duty position of modified distribution clerk consisted of reviewing nixie mail for errors, answer telephone inquiries, stock/restock customer mailing supplies and other duties as assigned within her restrictions. The position consisted mainly of sedentary work requiring little physical exertion with intermittent sitting, walking and standing and minimal squatting. Walking and standing and minimal squatting was noted not to exceed 15 minutes per hour. No lifting was required other than incidental items such as a pen, telephone receiver, etc. Lifting, pushing and pulling was noted not to exceed five pounds. Some intermittent repetitive wrist/hand movements were required but were noted not to exceed four hours per day.

In a March 25, 2003 letter, Dr. Smith provided restrictions on the amount of driving if appellant was working five days a week. He stated that no restrictions on the amount of driving were necessary if appellant was working three days a week. In a November 4, 2003 letter, Dr. Smith clarified that appellant was able to work full-time hours with restrictions. He stated that he was not suggesting that appellant was only able to work three days a week, but that, after working more than three days a week with constant driving, her symptoms could be exacerbated.

On April 20, 2003 appellant filed a Form CA-7 claim for intermittent compensation for the period November 29, 2003 through March 8, 2004.

In an April 30, 2004 letter, the Office advised appellant of the evidence needed to establish a recurrence claim due to her employment-related condition. It was to address whether her light-duty assignment had changed and a report from her attending physician describing objective findings of a worsening in her employment-related condition and which also explained how she could no longer perform her duties when she stopped work.

On May 26, 2004 appellant stated that she was not claiming a recurrence on the time period of November 29, 2003 through March 8, 2004. Rather, she was claiming partial disability compensation as her physician had not released her to work more than three days a week.

In a May 18, 2004 medical report, Dr. Smith stated that appellant was released to go back to full-time permanent light-duty status in January 2003. Appellant was placed on a light-duty status with maintaining restrictions in her weight-bearing or walking no more than 15 minutes every hour. Dr. Smith stated that appellant should be able to work five days a week, eight hours

a day in this sedentary position. He opined that, if she continued in a sedentary position, any remaining activity-related foot complaints would be unwarranted. Dr. Smith noted that there may have been some confusion due to his previous note which had referenced a three-day work week.

By decision dated November 4, 2004, the Office denied appellant's claim for recurrence of disability on the grounds that the factual and medical evidence of record failed to establish that her claimed disability resulted from the accepted work injury. The Office found that appellant failed to provide a factual statement as to the reason for her claimed recurrence and the medical record failed to establish any worsening of her accepted condition. The Office also denied appellant's claim for intermittent compensation for the period commencing November 29, 2003.

LEGAL PRECEDENT

The Office's implementing regulations define a recurrence of disability as 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.[2] If the disability results from new exposure to work factors, the legal chain of causation from the accepted injury is broken, and an appropriate new claim should be filed.[3]

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 establishes that the employee 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 to 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] This includes the necessity of 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 employment factors and supports that conclusion with sound medical reasoning.[5] An award of compensation may not be made on the basis of surmise, conjecture, speculation or on appellant's unsupported belief of causal relation.[6]

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[2] 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b(a)(1) (May 1997). *See also Philip L. Barnes*, 55 ECAB ___ (Docket No, 02-1441, issued March 31, 2004).

[3] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3 (May 1997), *Donald T. Pippin*, 54 ECAB 631 (2003).

[4] *Albert C. Brown*, 52 ECAB 152 (2000); *see also Terry R. Hedman*, 38 ECAB 222 (1986).

[5] *Ronald A. Eldridge*, 53 ECAB 218 (2001); *see Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

[6] *Patricia J. Glenn*, 53 ECAB 159 (2001).

While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such an opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and that such a relationship must be supported with affirmative evidence, explained by medical rationale and be based on a complete and accurate medical and factual background of the claimant.[7] Medical conclusions unsupported by medical rationale are of diminished probative value and are insufficient to establish causal relation.[8]

ANALYSIS

On January 28, 2003 Dr. Smith, appellant's treating physician, released her to a full-time light-duty position as a modified distribution clerk which consisted mainly of sedentary work. He imposed limitations of no weight bearing or walking more than 15 minutes every hour. Although Dr. Smith subsequently issued restrictions on the amount of driving she could perform, the record reflects that appellant has not carried or delivered mail since the first part of 1999. His restrictions pertaining to the amount of driving do not establish that she was partially disabled for work during the claimed period.

Appellant has not contended that there was a change in the nature and extent of her permanent light-duty position. She has asserted that her physician had not released her to work more than three days a week. This appears based upon Dr. Smith's driving restrictions. However, he clarified his reports, noting that appellant could perform full-time light-duty work which involved no driving duties.

The Board notes the lack of rationalized medical evidence supporting causal relationship between appellant's foot condition and work factors during the period November 29, 2003 through March 8, 2004. The record is devoid of any medial reports which address a worsening of the accepted condition or find appellant totally disabled for work during the claimed period of November 29, 2003 through March 8, 2004. Appellant has submitted insufficient medical evidence to establish the claimed recurrence of disability commencing November 29, 2003.

The Board notes that the medical record demonstrates that appellant was able to work full-time hours in her permanent limited-duty position with restrictions as of January 2003. On May 18, 2004 Dr. Smith advised that appellant was released in January 2003 to return to light-duty work with restrictions in her weight-bearing or walking no more than 15 minutes every hour. He opined that appellant was able to perform sedentary duty for five days a week, eight hours a day. The Board finds that the record is devoid of any evidence which supports that appellant is unable to work five days a week, eight hours a day in her permanent limited-duty position.

[7] *Conard Hightower*, 54 ECAB 796 (2003).

[8] *Albert C. Brown, supra* note 4.

Appellant was advised by an April 30, 2004 letter of the medical and factual evidence to establish her claim for recurrence of disability. However, she did not submit such evidence. The Office properly found that appellant submitted insufficient evidence to meet her burden of proof in establishing the claimed recurrence of disability for the intermittent period commencing November 29, 2003. The Board finds that the Office properly denied her claim for compensation for wage loss as she had no period of disability due to the accepted employment injury.

CONCLUSION

The Board finds that appellant has not established that she sustained a recurrence of disability for the intermittent period November 29, 2003 through March 8, 2004 and the Office properly denied her claim for compensation for wage loss during the claimed period.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 4, 2004 is affirmed.

Issued: September 5, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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