

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

B.M., Appellant)
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)
and) **Docket No. 07-2400**
) **Issued: April 22, 2008**
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U.S. POSTAL SERVICE, POST OFFICE,)
Oakland, CA, Employer)
)
)

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 24, 2007 appellant filed a timely appeal from the August 20, 2007 merit decision of the Office of Workers' Compensation Programs that denied modification of a previous Office decision denying her claim for recurrence of disability.¹ Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant met her burden of proof in establishing that she sustained a recurrence of temporary total disability beginning on October 20, 2006 and continuing, causally related to her accepted October 3, 2002 work injury.

¹ The Board notes that the record also contains a June 8, 2007 decision finding an overpayment of compensation and a June 21, 2007 decision granting appellant a schedule award for 23 percent permanent impairment of the right lower extremity. However, on appeal, appellant has only requested the Board's review of the August 20, 2007 Office decision.

FACTUAL HISTORY

On December 10, 2002 appellant, then a 48-year-old mail carrier, filed a traumatic injury claim stating that she struck her knee on a console table on October 3, 2002. She initially performed modified duty and missed intermittent work, but stopped work on June 16, 2003. The Office accepted appellant's claim for right knee internal derangement and paid appropriate compensation. She underwent a right knee arthroscopy on October 3, 2003.

On August 18, 2004 Dr. Richard A. Nolan, a Board-certified orthopedic surgeon, released appellant to return to modified work for four hours per day. Appellant returned to part-time limited-duty work, four hours per day, effective September 7, 2004. However, on October 18, 2004 Dr. Nolan found that appellant was temporarily totally disabled until October 21, 2004. In a December 1, 2004 report, he stated that appellant's disability would continue until January 7, 2005. Appellant returned to work on June 4, 2005 for six hours per day.

On March 1, 2005 the Office referred appellant to Dr. John Randall Chu, a Board-certified orthopedic surgeon, for a second opinion to determine her current work capacity and whether she had continuing residuals from her accepted employment injury. On March 23, 2005 Dr. Chu examined appellant and concluded that she had permanently aggravated a chronic and preexisting degenerative condition but could work eight hours per day with restrictions. In a September 7, 2005 report, Dr. Nolan disagreed with Dr. Chu's assessment of appellant's work-related condition and current work capability. On November 23, 2005 the Office found a conflict in medical opinion between Dr. Chu, who opined that appellant had no objective residuals of her work injury and could work eight hours daily with restrictions, and Dr. Nolan, who opined that appellant had residuals of her work injury and could only work six hours per day with restrictions.

On February 1, 2006 the Office referred appellant to Dr. Roger D. Dainer, an osteopath and orthopedic surgeon, for an impartial medical examination to resolve the conflict in opinion between Dr. Nolan and Dr. Chu. In a March 6, 2006 report and accompanying work capacity evaluation, Dr. Dainer diagnosed right knee chondromalacia of the patellofemoral component and the lateral tibial plateau and patellofemoral pain syndrome. He determined that appellant had preexisting but asymptomatic chondromalacia. Therefore, appellant's current residual symptoms were directly related to the October 3, 2002 work injury. Dr. Dainer concluded that, although appellant had objective evidence of residual disability, she could work for eight hours per day with restrictions.

Appellant increased her workload to eight hours per day, with restrictions, effective April 3, 2006. In an April 12, 2006 report, Dr. Nolan advised that appellant had new left knee symptoms on February 8, 2006. He attributed her left knee symptoms to overuse and "guarding" related to her accepted right knee condition. On May 1, 2006 Dr. Nolan indicated that appellant had experienced "acute flare of symptoms" and was unable to work on April 14, 18, 19, 25 and 27, 2006. However, he noted that appellant could continue to work with her current restrictions. On June 5 and July 10, 2006 Dr. Nolan again recommended that appellant continue working under her current modifications. In his July 10, 2006 duty status report, he set forth appellant's work restrictions. In an August 2, 2006 report, Dr. Nolan explained that appellant's

symptoms included aching, stabbing and throbbing sensations that were aggravated by prolonged positioning, bending and stooping, extensive walking and sudden changes in direction when ambulating. He noted that appellant could continue working with her present modifications. Dr. Nolan reiterated his conclusions on August 9, 2006. However, on August 16 and 23, 2006 he recommended that appellant maintain a “low level of activity” for 24 hours. In an October 4, 2006 report, Dr. Nolan noted that appellant had “some acute flare of symptoms, which prevented performance of job tasks” on September 26, 2006, but recommended that she “continue commonsense precautions in all activities.”

On October 6, 2006 appellant accepted a full-time limited-duty job offer as a city carrier, “pending until doctor review.” The assignment noted physical requirements including standing and walking for 1 hour, lifting and carrying 15 pounds, sitting for 4 hours, alternating sitting and standing every 30 minutes, pushing and pulling for 3 hours, driving for 4 hours, grasping for 30 minutes and performing fine manipulation tasks for 2 hours. The employing establishment noted that appellant would not be required to climb, bend, stoop, twist or reach above shoulder level. The modified-duty assignment took effect on October 6, 2006.

On October 25, 2006 appellant filed a claim for compensation beginning October 20, 2006, the date she stopped work. On November 1, 2006 the Office advised her that it would adjudicate her claim as a recurrence of disability. On November 3, 2006 appellant filed another claim for compensation through February 1, 2007.

In an October 25, 2006 report, Dr. Nolan stated that appellant had an “acute aggravation ... to the right knee by entering and exiting a vehicle” while making collections. He advised that appellant was unable to work since October 20, 2006 and would be temporarily totally disabled until November 1, 2006. In a November 1, 2006 report, Dr. Nolan extended appellant’s disability until February 1, 2007. He explained that appellant had experienced “an escalation and acute flare of symptoms” on September 26, 2006. Dr. Nolan noted that her modified-duty job required her to enter and exit her vehicle “numerous times” during the day. He also noted that appellant’s condition was aggravated by factors including sitting, standing, bending and stooping, kneeling, walking for extended periods, and “sudden changes of direction while ambulating.” On November 13, 2006 Dr. Nolan clarified that appellant’s “acute aggravation of symptoms” began on September 26, 2006 and extended to October 20, 2006, when she stopped work completely. In a November 29, 2006 report, he stated that appellant had progressively increasing right knee pain and would remain temporarily totally disabled until at least January 5, 2007.

By decision dated December 5, 2006, the Office denied appellant’s claim for a recurrence of total disability beginning on October 20, 2006.

In a December 20, 2006 report, Dr. Nolan explained that appellant had continuing right knee pain, which was aggravated by prolonged weight bearing. He advised that she continue her modified-duty assignment. Appellant also provided a December 15, 2006 magnetic resonance imaging (MRI) scan from Dr. Joy Foster, a radiologist, who diagnosed contrast filled popliteal cyst, patellofemoral degenerative type changes and mild tendinopathy but finding no evidence of meniscal or ligamentous injury. Dr. Foster also conducted an arthrogram on the same day and found “routine successful right knee arthrogram.”

On May 16, 2007 appellant requested reconsideration of the Office's December 5, 2006 decision. She provided a June 20, 2007 report from Dr. Nolan, who noted her continuing knee symptoms, including "aching, stabbing, burning pain, almost constant, disturbing nocturnal rest on an average of two times per night." Dr. Nolan explained that appellant's symptoms often subsided, but not entirely, with the day's activities, but were aggravated by prolonged standing, bending and stooping, kneeling and walking. He recommended that appellant continue working with her current restrictions.

Appellant also provided an undated statement description of her limited-duty assignment. She stated that her limited-duty job included driving to 37 different mailboxes, climbing down from her vehicle, lifting letter flats and carrying them in and out of her truck, bending, stooping and twisting, pushing a "dolly," and grasping and carrying items. Appellant stated that she exceeded her limitations of standing and walking for one hour, driving for four hours, lifting and carrying no more than 15 pounds, and refraining from bending, stooping, twisting and climbing. She did not indicate that her light-duty assignment had changed in any way.

In a July 11, 2007 report, Dr. Nolan noted appellant's continuing complaints of moderate aching and burning sensations with intermittent sharp pains over the anterior aspect of the right knee. He noted that certain activities, including walking, driving, or placing the knee under load, walking stairs and inclines, stooping and squatting, aggravated appellant's knee pain. Dr. Nolan recommended patellofemoral resurfacing and noted that appellant could continue modified work.

By decision dated August 20, 2007, the Office denied modification of its December 5, 2006 decision. It found that appellant had not established a change or worsening in her medical condition such that she could not perform the requirements of her light-duty job.

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.²

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

² *Terry R. Hedman*, 38 ECAB 222 (1986).

physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.³

ANALYSIS

The Office accepted appellant's claim for right knee internal derangement. Appellant returned to a part-time light-duty position, for six hours per day, effective June 4, 2005. She increased her workload to full time, eight hours per day, effective April 3, 2006 and subsequently stopped work on October 20, 2006. The Board finds that appellant did not meet her burden of proof in establishing that she sustained a recurrence of temporary total disability.

Appellant submitted several reports from Dr. Nolan. On October 25, 2006 Dr. Nolan reported that appellant experienced an "acute aggravation" to her right knee while entering and exiting her vehicle and, in his November 1, 2006 report, he stated that she was totally disabled, beginning on September 26, 2006, due to entering and exiting her vehicle numerous times during the workday. In November 1 and 13, 2006 reports, he explained that appellant's job required her to enter and exit her vehicle several times each day and noted that her condition was aggravated by factors including sitting, standing, bending and stooping, kneeling, walking for extended periods and "sudden changes of direction while ambulating." However, the Board notes that Dr. Nolan did not specifically relate appellant's aggravation of symptoms to the October 3, 2002 work injury but rather related it to a new employment exposure, entering and exiting her vehicle. The Board notes that rather than a spontaneous change in appellant's accepted condition, Dr. Nolan's October 25, 2006 report supports an intervening injury caused by entering and exiting the vehicle. As noted, a recurrence of disability is a worsening of the accepted condition without an intervening injury or new exposure to the work environment that caused the illness.⁴ Moreover, Dr. Nolan did not provide a reasoned opinion on causal relationship between the disability beginning October 20, 2006 and the original 2002 work injury. In subsequent reports, he noted appellant's status and duties but did not provide any further reasoning or rationale regarding how appellant's disability beginning October 20, 2006 was causally related to the 2002 accepted injury.⁵ Consequently, the medical evidence does not show a change in the nature and extent of appellant's injury-related condition.

The Board also finds that appellant has not established a change in the nature and extent of her light-duty job requirements. Appellant has not established that her light-duty job requirements exceeded her physical restrictions or that appropriate light-duty work was not made available. She accepted a limited-duty job offer from the employing establishment on October 6, 2006. The job required appellant to stand and walk for 1 hour, sit for 4 hours while alternating sitting and standing every 30 minutes, drive for 4 hours, push and pull for 3 hours, and perform 2 hours of fine manipulation tasks with no twisting, climbing, reaching above shoulder level, bending or stooping. None of Dr. Nolan's reports specifically address the

³ 20 C.F.R. § 10.5(x).

⁴ *See id.* If appellant feels that she sustained a new injury, this decision does not preclude her from pursuing a claim for a new injury before the Office.

⁵ *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

suitability of the job requirements, but his July 10, 2006 duty status report noting appellant's restrictions appears consistent with the requirements of position made available by the employing establishment. In an undated statement, appellant described her limited-duty assignment and asserted that she exceeded her limitations of standing and walking for one hour, driving for four hours, lifting and carrying no more than 15 pounds, and refraining from bending, stooping, twisting and climbing. However, there is no other evidence supporting that appellant's duties exceeded her work restrictions. Appellant did not assert that her light-duty assignment was withdrawn; she essentially asserted that it was beyond her capabilities. Instead, the record indicates that the employing establishment made light duty available that was within the restrictions set forth in the medical evidence. As noted, the medical evidence does not show a change in the nature and extent of the injury-related condition.

Therefore, the Board finds that appellant has not established 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 sufficient to show a recurrence of total disability.

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that on October 20, 2006 she sustained a recurrence of total disability causally related to her October 3, 2002 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the August 20, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 22, 2008
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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