United States Department of Labor
Employees' Compensation Appeals Board

C.B., Appellant	)	
and	)	**Docket No. 07-1514**
	)	**Issued: June 18, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Rockford, IL, 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
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On May 14, 2007 appellant filed a timely appeal from a February 5, 2007 merit decision denying her claim for recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this appeal.

ISSUE

The issue is whether appellant met her burden of proof in establishing that she sustained a recurrence of disability on October 24, 2006 that was causally related to her accepted injury.

FACTUAL HISTORY

On October 29, 2001 appellant, a 37-year-old automation clerk, sustained a head injury when she bumped the left side of her temple on a stationary cart. The Office accepted her claim for a contusion to the head and she was placed on the periodic rolls.

On June 18, 2004 appellant's treating physician, Dr. Tracy Brito, a Board-certified internist, released her to return to part-time duty, four hours per day, in a quiet environment to minimize headaches. She returned to work six hours per day, without restrictions, on July 8,

2006, after being awarded a position as a mail processing clerk through normal bidding procedures.[1] The record reflects that appellant continued treatment for her chronic headaches and filed periodic claims for compensation.

On November 8, 2006 appellant filed a claim for compensation (CA-7) for the period October 24 through November 1, 2006. In an October 23, 2006 work slip, Dr. Brito stated that appellant had severe headaches and should not work "for medical reasons." On November 1, 2006 she indicated that appellant could return to work on November 2, 2006, but that she needed to be placed in a quiet, nonhostile environment to minimize headaches.

On November 21, 2006 the Office informed appellant that the information and evidence submitted was insufficient to establish her claim. It advised appellant to submit, within 30 days, a physician's report containing an opinion as to how her alleged disability was causally related to her accepted injury. Noting that her claim could be considered a recurrence, the Office asked appellant whether her duties had changed, or her condition had worsened to the degree that she was unable to work.

In a letter dated November 29, 2006, Dr. Brito stated:

> "[Appellant's] condition is a continuation of the original injury date of October 29, 2001. Her condition is permanent in nature and will more than likely, remain that way. This is not a new injury. There will be days from time to time that she will have severe headaches and will be unable to report to work due to the severity of her headaches. This situation is indefinite and will occur no matter what job she is assigned to do."

In a letter dated December 12, 2006, appellant stated that she was "not cured from the injury of October 29, 2001." She alleged that, since July 25, 2006, she had missed a substantial amount of work due to the severity of her headaches, which qualified under the accepted condition. Appellant alleged that the medical documentation submitted to support absences in the past was no different from that submitted in support of her latest period of absence from October 24 through November 1, 2006.

Appellant submitted February 21, 2006 notes of Val Kohn, a registered nurse. The February 21, 2006 physicians' notes, bearing an illegible signature, reflected that appellant was treated on that date for a headache. On December 22, 2006 Dr. Brito stated that appellant's condition had not improved and that her chronic headaches had impacted her life and work ability.[2]

[1] The Board notes that the Office stated in its February 5, 2007 decision that appellant returned to work in a limited-duty position. However, the record reflects that, although Dr. Brito recommended that appellant be placed in a quiet environment, her bid position was not a limited-duty job.

[2] Dr. Brito indicated that she was enclosing a copy of a letter dated December 4, 2006 from a Dr. Robbins regarding the seriousness of appellant's condition. The Board notes that the record does not contain a copy of the December 4, 2006 letter.

By decision dated February 5, 2007, the Office denied appellant's claim on the grounds that the evidence was insufficient to establish that she was unable to perform the duties of her job beginning October 24, 2006.

LEGAL PRECEDENT

Section 10.5(x) of the Office's regulations defines "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 had resulted from a previous injury or illness, without an intervening injury or new exposure to the work environment that caused the illness.[3] 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.[4]

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 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 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.[5]

For each period of disability claimed, appellant has the burden of proving by the preponderance of the reliable, probative and substantial evidence that she is disabled for work as a result of her employment injury.[6] Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues, which must be proved by a preponderance of the reliable, probative and substantial medical evidence.[7] The Board will not require the Office to pay compensation in the absence of medical evidence directly addressing the particular period of disability for which compensation is sought. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.[8]

Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work. Appellant's burden of proving she was disabled on particular dates requires that she furnish medical evidence from a physician who, on the basis of a

[3] 20 C.F.R. § 10.5(x) (2002). *See Carlos A. Marrero*, 50 ECAB 117 (1998).

[4] *Id.*

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

[6] *Fereidoon Kharabi*, 52 ECAB 291 (2001); *see also David H. Goss*, 32 ECAB 24 (1980).

[7] *Fereidoon Kharabi*, *supra* note 6; *see also Edward H. Horton*, 41 ECAB 301 (1989).

[8] *Fereidoon Kharabi*, *supra* note 6.

complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with medical reasoning.[9] Where no such rationale is present, the medical evidence is of diminished probative value.[10]

ANALYSIS

Appellant has not met her burden of proof to establish that she sustained a recurrence of disability beginning October 24, 2006. In 2001 the Office accepted appellant's claim for contusion to the head. After participating in a formal bidding process, appellant was awarded a position as a mail processing clerk and returned to work without restrictions on July 8, 2006. On November 8, 2006 she filed a claim for compensation for the period October 24 through November 1, 2006, contending that she was unable to work during that period due to severe headaches. However, appellant has failed to produce any rationalized medical opinion evidence establishing that she was disabled on or after October 24, 2004 as a result of the accepted October 29, 2001 injury.

Medical evidence submitted in support of appellant's claim included reports and work slips from Dr. Brito. In her October 23, 2006 work slip, Dr. Brito stated that appellant had severe headaches and should not work "for medical reasons." In her November 1, 2006 work slip, she authorized appellant's return to work on November 2, 2006, but stated that she needed to be placed in a quiet, nonhostile environment to minimize headaches. In neither instance did she opine that appellant's disability was causally related to the October 29, 2001 injury, rather than to an intervening event or unrelated condition, nor did she provide any objective findings to support her conclusions. Therefore, these reports are of limited probative value, and are insufficient to require the Office to pay compensation for the claimed period of disability.[11]

On November 29, 2006 Dr. Brito stated that appellant's condition was a continuation of the original injury, that her condition was permanent in nature and was not a new injury, that there would be days from time to time that she would have severe headaches and would be unable to report to work due to the severity of her headaches, and that the situation was indefinite and would occur no matter what job she was assigned to do. On December 22, 2006 she stated that appellant's condition had not improved and that her chronic headaches had impacted her life and work ability. As these reports do not directly address appellant's disability from work from October 24 through November 1, 2006, they do not support appellant's claim for compensation during that period of time.[12] None of Dr. Brito's reports contain a definitive opinion, supported by medical reasoning, that appellant was disabled from work during the period in question as a result of her accepted October 29, 2001 injury. Therefore, they are of diminished probative value and are insufficient to establish appellant's claim.

[9] *Ronald A. Eldridge*, 53 ECAB 218 (2001).

[10] *Mary A. Ceglia*, 55 ECAB 626 (2004).

[11] *Michael E. Smith*, 50 ECAB 313 (1999).

[12] *Fereidoon Kharabi, supra* note 6.

The remaining medical evidence of record does not support appellant's claim for disability. February 21, 2006 notes signed by a registered nurse are of no probative value, as a nurse is not a physician as defined by the Act.[13] February 21, 2006 physicians' notes bearing an illegible signature, cannot be considered probative medical evidence, as they lack proper identification.[14]

Appellant has provided absolutely no rationalized opinion evidence establishing that she sustained a recurrence of disability as of October 24, 2006 due to her accepted employment injury. Thus, she has not met her burden of proof.[15]

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a recurrence of disability that was causally related to her accepted injury as of October 24, 2006.

[13] *See* 5 U.S.C. § 8101(2) which provides: physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by state law; *see also Roy L. Humphrey*, 57 ECAB 238 (2005).

[14] *Merton J. Sills*, 39 ECAB 572 (1988).

[15] To the extent that appellant's return to work six hours per day may be considered a return to a light-duty assignment made to accommodate her accepted condition, the Board notes that the evidence does not indicate that the employing establishment withdrew or modified appellant's assignment prior to her work stoppage. *See Terry R. Hedman*, 38 ECAB 222, 227 (1986); 20 C.F.R. § 10.5(x). Nor has appellant established a worsening of her condition to the degree she was unable to work.

ORDER

IT IS HEREBY ORDERED THAT the February 5, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 18, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board