United States Department of Labor
Employees' Compensation Appeals Board

C.G., Appellant	)	
and	)	**Docket No. 09-52**
	)	**Issued: August 21, 2009**
U.S. POSTAL SERVICE, GENERAL MAIL FACILITY, Cleveland, OH, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 6, 2008 appellant, through her representative, filed a timely appeal from a January 25, 2008 merit decision of the Office of Workers' Compensation Programs and an August 22, 2008 merit decision of an Office hearing representative denying her claim for a recurrence of disability. Pursuant to 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 established a recurrence of disability commencing on or after September 2007 causally related to her June 23, 1987 and September 7, 1996 employment injuries.

FACTUAL HISTORY

On June 24, 1987 appellant, then a 27-year-old letter sorting machine (LSM) clerk, filed a traumatic injury claim (Form CA-1) alleging that on June 23, 1987 she picked up a plastic tray and injured her left wrist. The Office accepted the claim for acute left wrist strain, left wrist tendinitis. Appellant experienced several recurrences of her left wrist condition. On January 11, 1993 she underwent an authorized right ulnar nerve transposition, medial epicondylectomy and

right ulnar nerve release and subsequently returned to light duty on August 9, 1993. On September 13, 1996 appellant filed another traumatic injury claim (Form CA-1) alleging that on September 7, 1996 a forklift hit two bulk mail center containers (BMCs) which struck the entire left side of her body.[1] The Office accepted this claim for musculoskeletal strains and contusions of the left side.[2] Appellant returned to light duty with additional physical work restrictions.

In 2001 appellant was offered another light-duty position with the employing establishment which changed her work hours to night shift. She rejected this offer claiming that the change in hours was outside her medical restrictions and applied for compensation. By decision dated November 28, 2001, the Office denied appellant's claim for a recurrence of disability finding that the medical evidence did not establish that her accepted conditions precluded her from working night hours. Appellant returned to light duty.[3]

In a December 6, 2007 letter, the employing establishment stated that, due to changes at the facility, many daylight shift positions were eliminated. On September 13, 2007 appellant was offered a light-duty position as a manual distribution clerk with work hours from 5:00 p.m. to 1:50 a.m. She rejected the position, stating that it was outside of her medical restrictions. The employing establishment maintained that the position was within her physical limitations and that appellant refused the position based on the change in work hours.

On December 11, 2007 appellant filed a claim for compensation (Form CA-7) for leave without pay for the period November 24 through December 7, 2007.

In Form CA-17s dated October 23, 2006 through March 31, 2008, Dr. Laurence H. Bilfield, a Board-certified orthopedic surgeon, diagnosed carpal tunnel syndrome and disc herniation. He indicated that appellant sustained this condition in September 1996 when she was hit by a forklift. Dr. Bilfield provided physical work restrictions and indicated that appellant required the consistency of day work.

By letter dated December 14, 2007, the Office notified appellant of the deficiency in her claim and requested she clarify the reason for her work stoppage.

In notes dated February 5 and 19, 2008, Dr. Diane Eden, a Board-certified psychiatrist, stated that appellant's schedule should be limited to six-hour days and that a change to the dayshift would improve appellant's chance of working full days.

By decision dated January 25, 2008, the Office denied the recurrence claim on the grounds that the light-duty offer only changed appellant's shift, which was an administrative function and was insufficient to support a claim for a recurrence of disability. Further, the medical evidence did not establish that appellant experienced a worsening of her condition.

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[1] This claim was originally filed under Office file number xxxxxx861. The Office combined the two claims on September 16, 2003.

[2] On December 4, 1996 appellant received a schedule award for 19 percent impairment to the upper left extremity.

[3] It is not clear whether appellant worked the night shift at this time and if so, when she was returned to day time work.

On September 17, 2007 Dr. Bilfield stated that appellant sustained a new, right wrist injury on February 16, 2007 after she fell getting out of her car in the parking lot. Physical examination revealed tenderness in the wrist and positive Tinel's sign at the wrist and ulnar nerve distribution.

On February 5, 2008 appellant, through her representative, filed a request for a hearing before an Office hearing representative.

At a June 10, 2008 oral hearing, appellant testified that the employing establishment's light-duty offer proposed to change her duty hours from 7:30 a.m. to 4:00 p.m. to 5:00 p.m. to 1:30 a.m., but, that she would be performing the same duties. Appellant's representative argued that the change in shift hours constituted a withdrawal of a light-duty offer entitling appellant to disability compensation. Further, appellant contended that she experienced anxiety related to her employment both prior and subsequent to the light-duty offer rendering her unable to work since October 23, 2007.[4]

By decision dated August 22, 2008, the Office hearing representative modified the January 25, 2008 decision finding that appellant did not sustain a recurrence of disability on or after September 2007. She determined that the change in shift hours did not constitute a change in the nature or extent of the light-duty job requirements because there was no change in the actual job duties and there was no rationalized evidence that appellant could not work night shift due to her accepted work injuries. The Office hearing representative noted that there was some medical evidence to suggest that night shift was not preferred due to a psychological condition. The claim was not accepted for a psychological condition and appellant did not allege that she suffered a psychiatric condition due to her employment injuries. Further, she found that there was insufficient medical evidence to show that appellant experienced a worsening of her accepted conditions.

LEGAL PRECEDENT

A 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 has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness."[5] A person 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 an employee 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.[6] Where no such rationale is present, medical evidence is of diminished probative value.[7]

[4] Appellant accepted a light-duty position on February 8, 2008.

[5] *R.S.*, 58 ECAB ___ (Docket No. 06-1346, issued February 16, 2007); 20 C.F.R. § 10.5(x).

[6] *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

[7] *See Ronald C. Hand*, 49 ECAB 113 (1957); *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

The Office's regulations defines the term recurrence of disability as follows:

> "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 or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations."[8]

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 of record establishes that he or 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 he or she cannot perform such light duty. 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.[9] To establish a change in the nature and extent of the injury-related condition, there must be probative medical evidence of record. The evidence must include a medical opinion, based on a complete and accurate factual and medical history, and supported by sound medical reasoning, that the disabling condition is causally related to employment factors.[10]

ANALYSIS

The Office accepted that appellant sustained acute left wrist strain and left wrist tendinitis on June 23, 1987 while picking up a plastic tray. It also accepted that she sustained musculoskeletal strains and contusions of the left side on September 7, 1996 when she was hit by

[8] *J.F.*, 58 ECAB ___ (Docket No. 06-186, issued October 17, 2006); *Elaine Sneed*, 56 ECAB 373, 379 (2005); 20 C.F.R. § 10.5(x).

[9] *Albert C. Brown*, 52 ECAB 152, 154-55 (2000); *Terry R. Hedman*, 38 ECAB 222, 227 (1986); 20 C.F.R. § 10.5(x) provides:

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

[10] *Mary A. Ceglia*, 55 ECAB 626, 629 (2004); *Maurissa Mack* 50 ECAB 498, 503 (1999).

two BMCs. The issue is whether appellant established that she experienced a recurrence of disability on or after September 2007 causally related to these injuries.[11]

On September 13, 2007 the employing establishment offered appellant a light-duty position working from 5:00 p.m. to 1:50 a.m. with the same physical tasks as her current light-duty position. Appellant rejected the offer, alleging that it was outside her medical restrictions. She testified at a June 10, 2008 oral hearing that she stopped working on October 23, 2007 due to anxiety caused by the night shift position. Her representative contended that the shift change to night work constituted a withdrawal of a light-duty offer entitling appellant to disability compensation. The Board has held that a change in an employee's duty shift may, under certain circumstances, be a factor of employment to be considered in determining if an injury has been sustained in the performance of duty.[12]

The Board finds that appellant did not establish a change in the nature and extent of her work requirements or a change in her condition that would preclude her from working the night shift. Both appellant and the employing establishment agree that the new light-duty position did not change the physical requirements of appellant's position but only changed the hours of her work. Moreover, the medical evidence of record does not establish that appellant was unable to work night hours due to her accepted conditions.

In this regard, CA-17 forms dated October 23, 2006 through March 31, 2008, Dr. Bilfield stated that appellant required the consistency of day work due to her carpal tunnel syndrome and disc herniation sustained in September 1996 when she was hit by a forklift. Neither carpal tunnel syndrome nor disc herniation are accepted conditions. Dr. Bilfield did not explain how these conditions were related to the June 23, 1987 or September 7, 1996 work injuries. Further, he did not provide a rationalized medical opinion explaining how the accepted work injuries would preclude her from working the night shift. Thus, these forms do not establish that appellant could not work evening hours due to her work injuries.[13]

Additionally, in a September 17, 2007 medical report, Dr. Bilfield stated that appellant sustained a new wrist injury on February 16, 2007 when she fell in the parking lot, for which appellant did not file a claim. He did not address appellant's accepted work injuries or conclude that the new injury was in anyway related to the accepted conditions.[14] Thus, this report is of diminished probative value.[15]

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[11] The Board notes that appellant only filed a recurrence claim for the period November 24 through December 7, 2007. However, at her oral hearing, appellant alleged that the employing establishment made the light-duty offer in September 2007 and she stopped work around October 2007. The Office hearing representative issued a decision regarding an alleged recurrence starting on or after September 2007.

[12] *See, e.g., L.S.*, 58 ECAB ___ (Docket No. 06-1808, issued December 29, 2006); *Charles J. Jenkins*, 40 ECAB 362, 366 (1988).

[13] *Mary A. Ceglia*, *supra* note 10.

[14] With respect to consequential injuries, the Board has held that, where an injury is sustained as a consequence of an impairment residual to an employment injury, the new or second injury, even though nonemployment related, is deemed, because of the chain of causation to arise out of and in the course of employment and is compensable. *Debra L. Dillworth*, 57 ECAB 516 (2006).

[15] *See S.S.*, 59 ECAB ___ (Docket No. 07-579, issued January 14, 2008).

Finally, appellant submitted notes dated February 5 and 19, 2008 from Dr. Eden stating that appellant should be switched to the day shift to improve her changes of working full days. Dr. Eden did not indicate the reason for this restriction or whether it was related to appellant's accepted work injuries.

The Board finds that appellant did not establish that the September 13, 2007 light-duty offer constituted a change in the nature and extent of her light-duty position or that her work injuries precluded her from working the night shift. Thus, she did not meet her burden in establishing that she sustained a recurrence of disability.

CONCLUSION

The Board finds that appellant did not establish that she sustained a recurrence of disability commencing on or after September 2007 causally related to her June 23, 1987 or September 7, 1996 employment injuries.

ORDER

IT IS HEREBY ORDERED THAT the August 22 and January 25, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 21, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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