United States Department of Labor
Employees' Compensation Appeals Board

R.B., Appellant	)	
and	)	**Docket No. 09-717**
	)	**Issued: December 11, 2009**
DEPARTMENT OF VETERANS AFFAIRS, REGIONAL OFFICE PHILADELPHIA, Philadelphia, 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
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 22, 2009 appellant filed a timely appeal from the August 27 and November 17, 2008 decisions of the Office of Workers' Compensation Programs denying her recurrence claim. Pursuant to 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant established a recurrence of total disability commencing July 3, 2008 causally related to her May 25, 2006 employment injuries.

FACTUAL HISTORY

On May 25, 2006 appellant, then a 46-year-old claims examiner, pinned her left leg between her motorized wheelchair and a bathroom stall divider wall. She accidentally propelled her motorized wheelchair into the stall wall of the bathroom while attempting to turn around. The Office accepted left-side open wound of the knee, leg and ankle without complications; closed transcervical fracture neck of femur right side; nonunion of fracture, right side; malignant

neoplasm of connective and soft tissue, lower limb including hip, right side; nonhealing surgical wound, right side. It authorized an amputation of the right leg below the hip, which appellant underwent on September 27, 2006. Appellant returned to work part time in a light-duty capacity on May 24, 2007 and resumed full-time full-duty work on July 23, 2007. She stopped work on July 3, 2008. On September 27, 2007 the Office issued a schedule award for 100 percent impairment of the right leg. The period of the award ran from July 21, 2007 to January 25, 2013.

Appellant inquired about receiving disability compensation. On July 23, 2008 the Office sent her a Form CA-2a (notice of recurrence of disability) and a CA-7 (claim for compensation) to claim compensation for total disability rather than the schedule award benefits she was currently receiving. The instructions on the Form CA-2a advised that a detailed medical report was needed to establish a causal relationship between the claim of recurrence and the original injury.

On August 22, 2008 the Office received completed CA-2a and CA-7 forms. Appellant alleged a recurrence of total disability as of July 3, 2008 due to recurrent cellulitis. The employing establishment noted that appellant's job duties remained the same after her work injury except that her workstation was modified to accommodate her wheelchair. Appellant submitted a request for maintenance on her wheelchair and a discharge summary from Holy Redeemer Hospital and Medical Center, which noted that she was hospitalized July 2 through 15, 2008.

In a July 31, 2008 duty status report (Form CA-17), Dr. Benjamin Z. Bennov, a Board-certified internist, reviewed the history of injury. He opined that appellant's cellulitis was due to the accepted injury and that she was totally disabled. Dr. Bennov diagnosed left leg cellulitis, abdominal wall, gastrointestinal bleed, proctitis and rheumatoid arthritis. He advised that appellant was totally disabled as of July 1, 2008. Dr. Bennov indicated with a checkmark "yes" that he believed appellant's condition was caused or aggravated by employment activity.[1] However, in another copy of the form report received by the Office, Dr. Bennov indicated with a checkmark "no" that he did not believe that her condition was caused or aggravated by employment activity.

On August 24, 2008 an Office medical adviser reviewed the evidence of record. The Office medical adviser reviewed the history of injury and noted that appellant was treated for a Ewing's tumor of the right femur in 1996 and underwent an amputation of the right leg below the hip on September 27, 2006. The Office medical adviser also noted that appellant was being treated with methotrexate chemotherapy for the malignancy and was receiving weekly injections of Enbrel for severe rheumatoid arthritis. The Office medical adviser opined that appellant's cellulitis of the left leg was not related to the accepted conditions or to the amputation of the right lower extremity. He found there was no evidence that any work-related condition caused appellant's admission to the hospital or caused cellulitis of her left leg. The primary reason for appellant's admission to the hospital was severe anemia from blood loss and renal failure as a result of chemotherapy treatment for the malignancy.

[1] This report appears to have been altered.

By decision dated August 27, 2008, the Office denied appellant's claim for recurrence of disability.

In a September 3, 2008 letter, appellant disagreed with the Office's August 27, 2008 decision and requested reconsideration. She listed discrepancies in the Office medical adviser's memorandum dealing with the reasons she was being treated with methotrexate, her age, and whether or not her treatment in the hospital included chemotherapy.

In a September 4, 2008 report, Dr. Lawrence Brent, a Board-certified internist specializing in rheumatology, advised that appellant had been under his care for a number of years. Appellant was recently hospitalized for cellulitis and treated with antibiotics with doses of methotrexate and etanercept held.[2] Dr. Brent advised that appellant was diagnosed with colonic ulcers and bleeding. He opined that it was unlikely that these conditions were due to methotrexate or etanercept as the medications usually did not cause that sort of complication.

In a September 17, 2008 report, Dr. Carmen A. Angles, a Board-certified physiatrist, noted that appellant was admitted to MossRehab Hospital from August 6 to 27, 2008. Appellant had a complicated past medical history which included diabetes, asthma and rheumatoid arthritis, which were treated with methotrexate prior to her most recent hospitalization. She was also treated for recurrent cellulitis of the left lower extremity. Appellant noted that the methotrexate was discontinued at her most recent hospitalization at Abington Memorial Hospital and that she had an associated general intenstine ulcer. With regard to her recurrent cellulitis, Dr. Angles advised that appellant had a pathologic fracture of the right femur which necessitated a right hip disarticulation and that there was a small .05 centimeter wound defect that had persistent drainage. The recurrent cellultis in the left lower extremity, for which appellant was hospitalized, became very deconditioned and "may be related to her original work injury where she required the hip disarticulation." Dr. Angles advised that the draining open wound was "thought to be the portal of the recurrent wound infections which also is superimposed on the patient's venous stasis ulcers."

By decision dated November 17, 2008, the Office denied modification of its previous decision.

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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[3] 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

[2] Dr. Brent indicated that those medications had been used for many years for the treatment of appellant's psoriatic arthritis and psoriasis.

[3] 20 C.F.R. § 10.5(x); *R.S.*, 58 ECAB ___ (Docket No. 06-1346, issued February 16, 2007).

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.[4] Where no such rationale is present, medical evidence is of diminished probative value.[5]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that she sustained a recurrence of disability commencing July 3, 2008 causally related to her May 25, 2006 employment injuries.

In a July 31, 2008 duty status report (Form CA-17), Dr. Bennov noted the history of injury. He opined that appellant's cellulitis was due to the injury and that she was totally disabled. However, Dr. Bennov did not explain how appellant's previous work injury caused or contributed to her cellulitis condition.[6] As it is unsupported by adequate rationale, his opinion is of diminished probative value. In a July 31, 2008 attending physician's report (Form CA-20), Dr. Bennov diagnosed numerous conditions and advised that appellant was totally disabled from July 1, 2008 onwards. In the copy of the report received from Dr. Bennov's office, he indicated that he did not believe that the condition was caused or aggravated by employment activity. This does not support appellant's claim that her current condition and disability were caused by the accepted work-related incident.[7]

In a September 4, 2008 report, Dr. Brent noted that appellant was hospitalized for cellulitis and was diagnosed with colonic ulcers and bleeding. He opined that it was unlikely that the medications used to treat her psoriatic arthritis and psoriasis would cause that type of complication. Dr. Brent, however, failed to offer any opinion of whether appellant's recurrence may have been related to the May 25, 2006 work injury.[8] Thus, his opinion is of limited probative value on the issue of causal relationship.

In a September 17, 2008 report, Dr. Angles noted appellant's past medical history as well as treatment for recurrent cellulitis of the left lower extremity. She opined that the recurrent cellulitis of the left lower extremity may be related to her original work injury where she

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

[5] *See Ronald C. Hand*, 49 ECAB 113 (1997); *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

[6] *See T.M.*, 60 ECAB ___ (Docket No. 08-975, issued February 6, 2009) (for condition not accepted or approved by the Office as being employment related, the claimant bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence).

[7] As Dr. Bennov's July 31, 2008 attending physician's report received by the Office on August 12, 2008 appears to have been altered, it cannot be considered as probative evidence in support of a claim. *See Richard Williams*, 55 ECAB 343 (2004) (medical reports lacking proper identification cannot be considered as probative evidence in support of a claim).

[8] *K.W.*, 59 ECAB ___ (Docket No. 07-1669, issued December 13, 2007); *Michael E. Smith*, 50 ECAB 313 (1999).

required hip disarticulation. Dr. Angles' opinion is of limited probative value as it is equivocal in nature and unsupported by rationale.[9]

The remaining medical evidence of record does not provide any opinion as to the cause of appellant's diagnosed conditions and/or disability. It is insufficient to establish appellant's claim for a recurrence of disability beginning July 3, 2008. Furthermore, on August 24, 2008 an Office medical adviser found no basis on which to attribute disability to the work injury.

On appeal, appellant contends that Office medical adviser's memorandum which the Office relied on in denying appellant's recurrence claim was unrationalized. Counsel noted discrepancies in the Office medical adviser's memorandum pertaining to appellant's cancer, the use of methotrexate, and complications from the peripherally inserted central catheter line. However, as noted the medical evidence of record fails to establish how the claimed July 3, 2008 recurrence was causally related to the May 25, 2006 injury.

Appellant has failed to establish by the weight of the reliable, probative and substantial evidence, a change in the nature and extent of the injury-related condition resulting in her inability to perform the duties of her employment, or provide rationalized medical opinion evidence establishing that she was physically disabled as of July 3, 2008 due to her accepted May 25, 2006 employment injuries. Accordingly, she has not met her burden of proof.

CONCLUSION

The Board finds that appellant failed to establish that she had any disability on or after July 3, 2008 causally related to her May 25, 2006 employment injury.

[9] *D.D.*, 57 ECAB 734 (2006); *Cecelia M. Corley*, 56 ECAB 662 (2005).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decisions dated November 17 and August 27, 2008 are affirmed.

Issued: December 11, 2009
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