United States Department of Labor
Employees' Compensation Appeals Board

K.L., Appellant	)	
and	)	**Docket No. 09-822**
	)	**Issued: December 18, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Wrightstown, NJ, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
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 February 6, 2009 appellant filed a timely appeal of an October 2, 2008 decision of the Office of Workers' Compensation Programs, which denied modification of the denial of 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 on appeal is whether appellant met her burden of proof to establish a recurrence of disability on April 22, 2006 causally related to her employment injury.

FACTUAL HISTORY

This case was previously on appeal before the Board.[1] In a decision dated June 24, 2008, the Board found that appellant did not meet her burden of proof to establish that she sustained a

[1] Docket No. 07-2313 (issued June 24, 2008).

recurrence of disability on or after April 22, 2006 due to her accepted employment injuries. The facts of the case, as set forth in the prior decision, are incorporated by reference.

Previously, the Board noted that statements from appellant's postmaster, Mark R. Davidson, addressed appellant's restricted duties and indicated that he did not require her to work beyond her restrictions, that she was not precluded from working out of an all-purpose container and that she was instructed to ask for assistance for lifting any parcel over 10 pounds. The postmaster denied asking her to work beyond her restrictions. Additionally, he indicated that accountable mail was comprised of approximately 5 to 10 pieces a day

Appellant's representative requested reconsideration on August 28, 2008 and submitted additional evidence. He submitted witness statements and alleged that they were sufficient to show that there was a change in the nature and extent of appellant's job requirements. Appellant's representative also submitted additional medical evidence.

The witness statements included a May 27, 2006 statement from Sue Kocyon, a coworker, who noted that appellant cased box mail from one to three hours a day. She noted that appellant would chat with other employees while working and often stated, "that her hands and arms were numb and tingling." Ms. Kocyon also indicated that appellant asked her supervisor for other jobs; however, she noted that he replied that he did not have time to place her in other jobs but would get her training. She also alleged that her supervisor had indicated that he did not want appellant to return.

In a separate statement also dated May 27, 2006, H. Minhas, a coworker, indicated that she saw appellant work more than one hour on the box mail. She alleged that, when appellant initially worked, her supervisor indicated that she could sit and relax; however, during her second-week, he screamed, "I can[no]t have you sitting here doing nothing I have no work for you here go find some place else to work."

The additional medical evidence included several reports from Dr. Scott M. Fried, an osteopath and treating physician. They included a June 14, 2007 report in which he summarized the contents of a functional capacity evaluation (FCE) of the same date and concluded that appellant could not perform her regular duties as a postal clerk. In reports dated February 14 and April 15, 2008, Dr. Fried noted that he had reviewed the results of appellant's February 14, 2008 FCE. He related that she reported increased symptoms with lifting and carrying related to her underlying injuries. Dr. Fried advised that appellant was a candidate for possible surgical intervention but that nonoperative intervention was also an alternative for appellant. He indicated that she had permanent restrictions and he did not foresee her returning to her previous level of activity. Dr. Fried recommended vocational rehabilitation. He continued to treat appellant and submit reports.

In reports dated July 30 and October 9, 2007 and May 6, 2008, Dr. Fried advised that appellant presented for assistance with pain management and medical self-hypnosis.

The Office also received several notes from a pain control center dating from March to August 2008 from Dr. Sofia Lam, a Board-certified anesthesiologist with a specialty in pain medicine, who treated appellant and provided cervical facet injections. It also received

diagnostic reports dated August 7, 2007 and several notes dating from September 2007 to July 3, 2009 from a physician's assistant.

By decision dated October 2, 2008, the Office denied modification of the prior decision.

LEGAL PRECEDENT

Section 10.5(x) of the Office's regulations provide that 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. 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 is withdrawn or when the physical requirements of such an assignment are altered so that they exceed the employee's physical limitations.[2]

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 he or she can perform the light-duty position, the employee has the burden of establishing 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 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.[3]

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship, generally, is rationalized medical evidence.[4] This consists of a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.[5] The physician's opinion must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[6]

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.[7]

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[2] 20 C.F.R. § 10.5(x); *see Theresa L. Andrews*, 55 ECAB 719 (2004).

[3] *S.F.*, 59 ECAB ___ (Docket No. 07-2287, issued May 16, 2008); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

[4] *Elizabeth Stanislav*, 49 ECAB 540, 541 (1998).

[5] *Duane B. Harris*, 49 ECAB 170, 173 (1997).

[6] *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

[7] *Walter D. Morehead*, 31 ECAB 188 (1986).

ANALYSIS

Appellant's claim was accepted for bilateral carpal tunnel syndrome, left ulnar nerve entrapment and bilateral carpal tunnel syndrome release. She subsequently alleged a recurrence on April 22, 2006, for which she stopped work on April 25, 2006.

Appellant has not submitted any medical reports which contained a rationalized opinion from a physician who, on the basis of a complete and accurate factual and medical history, concluded that she had a recurrence of disability causally related to the employment injury and supported that conclusion with sound medical reasoning.[8] The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.

The Office received several reports from Dr. Fried, an osteopath and treating physician. In a June 14, 2007 report, Dr. Fried discussed the results of an FCE dated June 14, 2007. In reports dated July 30 and October 9, 2007 and May 6, 2008, he advised that appellant presented for assistance with pain management and medical self-hypnosis. In reports dated February 14 and April 15, 2008, Dr. Fried discussed the results of her February 14, 2008 FCE. He recommended permanent restrictions and continued treatment. Additionally, the Office received several reports dating from March to August 2008 from Dr. Lam.

These reports, though, do not address whether appellant's condition worsened such that she was no longer able to perform her limited-duty work on or after April 22, 2006. For example, the physicians did not offer any opinion explaining how her accepted condition worsened beginning on April 22, 2006, such that she was no longer able to perform her limited-duty work.[9] Likewise, reports of other physicians such as reports of diagnostic testing are insufficient because they did not specifically address whether appellant's claimed recurrence of disability commencing on April 22, 2006 is causally related to her accepted condition.

Appellant submitted several reports from a physician's assistant; however, healthcare providers such as physicians' assistants are not physicians under the Federal Employees' Compensation Act. Thus, their opinions on causal relationship do not constitute rationalized medical opinions and have no weight or probative value.[10]

The Board also notes that appellant has not shown a change in the nature and extent of the light-duty job requirements.

Appellant's representative alleged that appellant worked outside her restrictions until she stopped work on April 22, 2006. He submitted a May 27, 2006 statement from Ms. Kocyon who indicated that appellant cased box mail from one to three hours a day, chatted with others while

[8] *See Helen K. Holt*, 50 ECAB 279 (1999).

[9] *See Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[10] *Jane A. White*, 34 ECAB 515, 518 (1983).

working and often stated that her "hands and arms were numb and tingling." Ms. Kocyon also alleged that appellant asked her supervisor for other jobs but he indicated that he did not have time to put her in them but would get her training. He also provided a separate statement also dated May 27, 2006 in which Ms. Minhas indicated that she saw appellant work more than one hour on the box mail.

These statements are in contrast to the postmaster's previous response in which he indicated that appellant was not required to work outside her restrictions. The record also reflects that appellant was to ask for assistance when lifting any parcels over 10 pounds. Additionally, the postmaster had previously indicated that accountable mail was comprised of approximately 5 to 10 pieces a day and not the volume asserted by appellant. He also indicated that she was not required to do anything outside her restrictions. These coworkers' statements indicate that appellant performed certain activities while at work but they do not relate the precise time and place in which she was observed. While the statements generally note verbal exchanges between her and Mr. Davidson, they do not show that he ordered or required her to perform any duties outside of her restrictions at particular times and on particular dates. These statements are insufficient to show that there was a change in the nature and extent of her light-duty job requirements.

In the instant case, none of the medical reports submitted by appellant contained a rationalized opinion to explain why she could no longer perform the duties of her light-duty position and why any such disability or continuing condition would be due to the accepted condition. Furthermore, she has not shown a change in the nature of her light-duty requirements. As appellant has not submitted any medical evidence establishing that she sustained a recurrence of disability due to her accepted employment injury, she has not met her burden of proof.

On appeal, appellant's representative alleges that the statements support a change in the nature of and extent of appellant's light-duty requirements. However, as noted above, the Board has determined that these statements are insufficient to establish such a change.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish a recurrence of disability beginning April 22, 2006 causally related to her employment injury.

ORDER

IT IS HEREBY ORDERED THAT the October 2, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 18, 2009
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