United States Department of Labor
Employees' Compensation Appeals Board

D.V., Appellant	)	
and	)	**Docket No. 08-1810**
	)	**Issued: February 20, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Rahway, 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:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 10, 2008 appellant timely appealed the May 22, 2008 merit decision of the Office of Workers' Compensation Programs, which denied her claim for recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of her claim.

ISSUE

The issue is whether appellant sustained a recurrence of disability on June 5, 2000, causally related to her August 18, 1997 employment injury.

FACTUAL HISTORY

This case was previously before the Board. Appellant, a 53-year-old former letter carrier, has an accepted claim for cervical and lumbosacral sprains she sustained in an August 18, 1997 motor vehicle accident.[1] Dr. Kevin E. Lukenda, a Board-certified family practitioner, released

[1] Appellant also has an accepted claim for an October 22, 1996 right ankle injury (xxxxxx781). This prior claim was accepted for fracture of the right (distal) fibula. Appellant later developed right Achilles tendinitis.

appellant to perform limited-duty work effective October 20, 1997.[2] Appellant returned to work on October 20, 1997 but the exact nature of her limited-duty assignment at the time remains unclear.[3]

On June 27, 2000 appellant filed a claim for recurrence of disability beginning June 5, 2000, causally related to her August 18, 1997 employment injury. She indicated that she had been on light duty since her injury and that she was restricted from walking, bending, lifting and twisting. Appellant also stated that she had stress-induced muscle spasms and constant pain in her neck and shoulders. She claimed that her light-duty work aggravated her injury. Appellant explained that if she stood or sat in one place her neck pain would worsen. The employing establishment noted that "work [had been] provided to keep [appellant] well within her limitations."

Less than two weeks prior to the June 5, 2000 work stoppage, Dr. Lukenda advised that appellant could only lift 10 pounds. He also stated that she could not push a "skid/nutting truck of 1,000 pounds" and she could not do "continuous bending, lifting, twisting, walking, etc." In this May 25, 2000 report, Dr. Lukenda stated that he was treating appellant for vascular insufficiency and chronic tendinitis and that she was unable to carry out her job duties.

In an August 7, 2000 statement, appellant indicated that her duties included casing and pulling down mail for three different routes and then handing the mail off to another carrier for delivery. This took approximately two and a half hours to complete. Appellant also stated that she performed interstation deliveries among the Rahway, Clark and Colonia Post Offices. This reportedly involved loading tubs of mail in a truck and delivering it to the appropriate facility. Appellant stated that she also unloaded blue collection boxes at various postal facilities and another 26 blue boxes on the street. She reportedly drove to the various blue boxes, opened them, removed tubs of mail from within and replaced the full tubs with empty ones, then returned to the Rahway postal facility and unloaded the mail. Appellant estimated that the collection work took two to two and a half hours. Additional duties included writing "accountable mail" and "CFSS."

Edward H. Honchen, customer service supervisor at the Rahway postal facility, stated that "at no time did [appellant] ever exceed her doctor's limitations." Citing Dr. Lukenda's October 13, 1997 duty status report (Form CA-17), Mr. Honchen indicated that appellant could lift/carry 10 pounds and walk for three hours per day. He also stated that appellant never left the building to do carrier functions. Mr. Honchen indicated that over time appellant's restrictions had progressively worsened to the point that she was unable to perform any carrier duties. He further noted that appellant occasionally transported box mail to the branches, but she primarily

[2] Appellant was restricted to three hours standing, three hours walking, two hours climbing and no kneeling, bending/stooping, twisting or pushing/pulling. Dr. Lukenda also indicated that appellant could lift/carry 10 pounds, sit for eight hours, perform eight hours of fine manipulation, two hours simple grasping, three hours reaching above shoulder, two hours driving and two hours operating machinery.

[3] The employing establishment appears not to have provided appellant a written, limited-duty job offer outlining the specific duties she was expected to perform on or after October 20, 1997. A December 2, 1997 Form CA-3 (Report of Termination of Disability and/or Payment) confirming appellant's return to work merely noted that "limited duty [was] provided."

performed office duties. Additionally, Mr. Honchen stated that, up until the time appellant completely stopped reporting to work, she was "limited to only sit down office work."

Dr. Paul Blank, a chiropractor, began treating appellant on June 5, 2000. He noted that she was involved in a motor vehicle accident in August 1997. Dr. Blank diagnosed cervical disc degeneration and cervicocranial syndrome and found appellant totally disabled from June 5 to August 28, 2000. He also noted that the nature of appellant's job could cause exacerbations. Dr. Blank advised against prolonged sitting or standing and prolonged flexion or extension of the head. He also imposed a five-pound lifting restriction.

On June 21, 2000 Dr. Lukenda indicated that appellant was to remain off work indefinitely due to cervical pain. He continued the same work restriction when he saw appellant on August 1, 2000. Dr. Lukenda's August 29, 2000 treatment notes indicated that appellant was unable to work due to chronic neck and right ankle pain. In an August 30, 2000 report, he diagnosed cervical sprain and explained that appellant's neck pain was aggravated with work.

Dr. Douglas Ashendorf, III, a Board-certified physiatrist, saw appellant on September 11 and October 9, 2000. He noted that appellant sustained a fracture of the right lateral malleolus in October 1996 and later developed chronic Achilles tendinitis. Dr. Ashendorf also indicated that appellant was involved in an August 1997 motor vehicle accident where she was rear-ended. According to him, appellant developed "some sort of chronic pain syndrome in the cervical region and ... right lower extremity." Dr. Ashendorf's ultimate diagnosis was "chronic idiopathic pain syndrome."

In a March 22, 2001 report, Dr. Lukenda diagnosed severe cervical sprain due to the August 18, 1997 employment-related motor vehicle accident. He noted that appellant continued to complain of severe pain in the neck and shoulders. Given the duration of these complaints, Dr. Lukenda characterized appellant's cervical injury as "permanent." He also stated that appellant's condition affected her capacity to do any significant and meaningful occupational and work-related projects, as well as recreational activities. Dr. Lukenda further noted that appellant experienced pain with work and she was unable to deal with the smallest amount of demands to her neck.

The Office denied appellant's recurrence claim by decision dated May 23, 2001.[4] Pursuant to a November 11, 2001 request for reconsideration, the Office reviewed the merits of appellant's recurrence claim and denied modification by decision dated February 13, 2006.[5]

Appellant filed another request for reconsideration on February 6, 2007. She described her blue box collection duties and the process of setting up and pulling down a route. With respect to the latter, appellant indicated that individual bundles of mail on a route generally exceeded 10 pounds and the entire route weighed at least 500 pounds. Regarding her interstation collections, she explained that she used a skid that weighed approximately 75 pounds. Appellant would load and unload the skid with mail and push the skid around the postal facility. She indicated that her various duties involved a lot of lifting, bending, standing, walking and twisting. Appellant also provided statements from several coworkers attesting to her having performed the above-mentioned duties until June 5, 2000.

Additional medical evidence included an undated report from psychologist, Martha K. Blanc, Ph.D., who had been treating appellant since June 23, 2005 for depression. Dr. Blanc noted that appellant was a former postal worker who suffered work-related injuries in 1997. Appellant reportedly had been unable to return to work since her injury. According to Dr. Blanc, appellant described significant depression associated with her physical limitations and chronic pain from her injuries.

In a March 1, 2006 report, Dr. Erica N. David, a Board-certified physiatrist, noted that appellant was a passenger in a postal service truck that was rear ended by another vehicle on August 18, 1997. She also noted that appellant had stopped work in June 2000. Dr. David diagnosed chronic neck pain secondary to C4-5 and C5-6 disc bulges. She also diagnosed chronic cervical myofascial pain, left C6-7 radiculopathy, right lower cervical radiculitus and cervicogenic headaches. Dr. David stated that appellant's symptoms of neck pain, muscle spasm, headaches and paresthesias were directly related to the August 18, 1997 accident.[6]

In a February 2, 2007 report, Dr. Lukenda stated that appellant was permanently disabled by her October 22, 1996 and August 18, 1997 employment injuries. Her current diagnoses included chronic Achilles tendentious, chronic pain secondary to C4-5 and C5-6 disc bulges,

[4] Appellant also filed for a June 5, 2000 recurrence of disability under claim number xxxxxx781. This recurrence claim was similarly denied. On February 9, 2009 the Board issued a decision (Docket No. 08-1780) affirming the Office's latest denial of modification with respect to appellant's alleged June 5, 2000 recurrence of disability under claim number xxxxxx781.

[5] The Office considered, among other things, an undated report from Dr. Adriana Stolte, who examined appellant on June 29, 2001. Dr. Stolte reported moderate neck pain radiating into both shoulders and moderate ankle pain. She also noted that appellant had been out of work since June 5, 2000 because of her symptoms. According to Dr. Stolte, appellant's former job required a lot of driving and walking, which was why she felt unable to perform her job duties. She diagnosed left C6-7 cervical radiculopathy, right cervical radiculitis, right-sided C6 radiculopathy, right-sided C7 nerve root radiculopathy, and chronic Achilles tendinitis and pain syndrome. Dr. Stolte stated that appellant was not currently able to return to the workforce nor would she be able to in the distant future.

[6] Dr. David also diagnosed left carpal tunnel syndrome, which was unrelated to appellant's August 18, 1997 motor vehicle accident.

chronic cervical myofascial pain, left radiculopathy, right lower cervical radiculitus and cervicogenic headaches. Dr. Lukenda also stated that there was "spontaneity to [appellant's] previous injuries which caused her to leave work on June 5, 2000."

Dr. Lukenda also provided February 28, 2007 work restrictions due to appellant's August 18, 1997 "back/neck injury." The restrictions included no strenuous activity and no lifting greater than 10 pounds. Dr. Lukenda also indicated that appellant should alternate between sitting and standing. He further stated that appellant should not perform any bending, lifting, twisting or walking, no pulling or setting up, no casing mail and no reaching. Appellant was also advised to walk less than one hour and drive less than one hour. Dr. Lukenda noted that appellant had stopped work on June 5, 2000.

By decision dated April 30, 2007, the Office denied modification. The Board, however, set aside this decision by order dated May 20, 2008.[7] The record on appeal was incomplete, thus precluding the Board from conducting a full and fair adjudication of appellant's recurrence claim. The Board also expressed concern about the dearth of information regarding appellant's limited-duty assignment.[8]

After compiling the necessary documentation, the Office issued a May 22, 2008 decision denying modification.

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 resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[9] This term also means an inability to work when a light-duty assignment made specifically to accommodate an employee's physical limitations due to 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 the employee's established physical limitations.[10] Moreover, when the claimed recurrence of disability follows a return to light-duty work, the employee may satisfy her burden of proof by showing a change in the nature and

[7] Docket No. 08-139 (issued May 20, 2008). The Board's May 20, 2008 order is incorporated herein by reference.

[8] In February 2007, the Office sought clarification from the employing establishment regarding appellant's assigned duties at the time of her June 5, 2000 work stoppage. The effort was unsuccessful because Mr. Honchen had since retired and appellant's former Postmaster was deceased. As such, there were no employing establishment managers with first-hand knowledge of appellant's job duties available for comment. However, two former coworkers who wished to remain anonymous reportedly "never saw [appellant] exceed her restrictions."

[9] 20 C.F.R. § 10.5(x) (2008).

[10] *Id.*

extent of the injury-related condition such that she was no longer able to perform the light-duty assignment.[11]

Where an employee claims a recurrence of disability due to an accepted employment-related injury, she has the burden of establishing that the recurrence of disability is causally related to the original injury.[12] This burden includes the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history, that the condition is causally related to the employment injury.[13] The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.[14]

ANALYSIS

The first question is whether the physical requirements of appellant's limited-duty assignment were altered such that they exceeded appellant's established physical limitations. In its May 22, 2008 decision, the Office accepted as factual appellant's August 7, 2000 description of her limited-duty assignment. Although the employing establishment represented that it had provided work "well within [appellant's] limitations," the description of appellant's duties was vague. In his April 9, 2001 statement, Mr. Honchen indicated that appellant primarily performed office duties. Appellant reportedly never left the building to perform carrier functions, but occasionally transported box mail to the branches. Mr. Honchen also represented that at no time did appellant ever exceed her doctor's limitations. He further stated that up until the time appellant completely stopped reporting to work, "she was limited to only sit down office work." Statements from several of appellant's coworkers establish that she performed more than just "sit down office work" prior to her June 5, 2000 work stoppage. The record establishes that appellant's primary duties included casing and pulling down up to three mail routes, collecting mail from blue boxes and interstation collection and distribution. Appellant claims that these duties exceeded the restrictions imposed by her physician. However, her belief that her assigned duties exceeded her physical limitations is not by itself sufficient to establish a recurrence of disability.

The next question is what physical limitations were in effect on or about June 5, 2000 specific to appellant's accepted cervical and lumbosacral sprains. Dr. Lukenda's October 13, 1997 duty status report (Form CA-17) is the only clear representation of appellant's physical restrictions due to her August 18, 1997 accepted employment injury.[15] But these restrictions predate appellant's June 5, 2000 work stoppage by more than two and a half years. The record does not adequately reflect the extent to which these various restrictions remained in effect as of

[11] *Theresa L. Andrews*, 55 ECAB 719, 722 (2004).

[12] 20 C.F.R. § 10.104(b); *Helen K. Holt*, 50 ECAB 279, 382 (1999); *Carmen Gould*, 50 ECAB 504 (1999); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

[13] *See Helen K. Holt, supra* note 12.

[14] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

[15] *See supra* note 2.

June 5, 2000. Just prior to appellant's work stoppage, Dr. Lukenda imposed a 10-pound lifting restriction, which was consistent with the previous October 13, 1997 lifting restriction. He also indicated that appellant could not push a "skid/nutting truck of 1,000 pounds" and could not perform "continuous bending, lifting, twisting, walking, etc." The May 25, 2000 work restrictions, however, were reportedly due to appellant's vascular insufficiency and chronic tendinitis. Dr. Lukenda did not specifically attribute these latest restrictions to appellant's accepted cervical or lumbosacral sprains. Moreover, he offered no rationale for the limitations he imposed on May 25, 2000.

The Office accepted Dr. Lukenda's May 25, 2000 restrictions as an accurate representation of appellant's physical capabilities on or about June 5, 2000. However, it apparently overlooked the fact that he did not specifically ascribe these limitations to appellant's August 18, 1997 accepted injuries. The Office went on to conclude that appellant had not demonstrated that her various duties exceeded Dr. Lukenda's May 25, 2000 restrictions. Consequently, it denied modification.

While the Board concurs with the outcome of the May 22, 2008 decision, we reach this result based on a different analysis. It is abundantly clear that appellant had not performed her regular letter carrier duties for several years. The record does not, on the other hand, clearly establish what physical limitations remained in effect on or about June 5, 2000 that were directly related to appellant's accepted cervical and lumbosacral sprains. Without this particular information it is impossible to determine if appellant's assigned duties exceeded her specific injury-related physical restrictions. Under the circumstances, appellant has failed to establish a recurrence of disability based on a purported change in her light-duty assignment.

The only remaining avenue is to establish a change in the nature and extent of appellant's injury-related condition. There is evidence that appellant was totally disabled as of June 5, 2000. The first such evidence was provided by Dr. Blank, who diagnosed cervical disc degeneration and cervicocranial syndrome. Dr. Blank indicated that appellant was totally disabled from June 5 through August 28, 2000. The conditions Dr. Blank diagnosed have not been accepted by the Office. Furthermore, the reports prepared by Dr. Blank, a chiropractor, do not constitute credible medical evidence.[16]

Between June and August 2000, Dr. Lukenda kept appellant out of work due to cervical and right ankle pain. In an August 30, 200 report, he specifically diagnosed cervical sprain. However, Dr. Lukenda's reports and treatment notes during this timeframe do not adequately explain how appellant's cervical complaints were related to the August 18, 1997 employment injury.[17] On March 22, 2001 Dr. Lukenda reiterated his August 30, 2000 diagnosis of cervical

[16] Dr. Blank did not diagnose a subluxation of the spine based on x-ray evidence, and thus, his opinion is not probative. *See* 5 U.S.C. § 8101(2) (2006); *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

[17] Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

sprain. But in neither instance did he explain how an August 18, 1997 cervical sprain ostensibly persisted for some three to three and a half years after appellant's initial injury.

As previously noted, cervical and lumbosacral sprains are thus far the only accepted conditions arising from appellant's August 18, 1997 motor vehicle accident. Where an employee claims that a condition not accepted or approved by the Office was due to her employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury.[18] Drs. Stolte, Ashendorf, Blanc, David and Lukenda have diagnosed a litany of physiological and psychological conditions which the Office has not accepted as employment related. These diagnoses include depression, multilevel cervical disc bulges, chronic cervical myofascial pain, cervical radiculopathy, cervical radiculitus, cervicogenic headaches and chronic idiopathic pain syndrome. None of the above-referenced physicians provided a rationalized medical opinion linking appellant's current cervical and psychological conditions to her August 18, 1997 motor vehicle accident. In his latest report, Dr. Lukenda appears to have abandoned his diagnosis of cervical sprain in favor of adopting Dr. David's March 2006 diagnoses of chronic pain secondary to C4-5 and C5-6 disc bulges, chronic cervical myofascial pain, left radiculopathy, right lower cervical radiculitus and cervicogenic headaches. But other than stating that appellant's 1996 and 1997 employment injuries have left her permanently disabled, Dr. Lukenda did not adequately explain the relationship between appellant's current cervical condition and her August 18, 1997 employment injury. While appellant may very well be totally disabled, the medical evidence fails to establish that her claimed disability beginning June 5, 2000 was causally related to her accepted employment injury of August 18, 1997.

CONCLUSION

Appellant failed to establish that she sustained a recurrence of disability on June 5, 2000, causally related to her August 18, 1997 employment injury.

[18] *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

ORDER

IT IS HEREBY ORDERED THAT the May 22, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 20, 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