United States Department of Labor
Employees' Compensation Appeals Board

L.P., Appellant	)	
and	)	**Docket No. 09-1924**
	)	**Issued: July 7, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Detroit, MI, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 22, 2009 appellant filed a timely appeal from the June 25, 2009 decision of the Office of Workers' Compensation Programs denying her claim for wage-loss compensation. 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 met her burden of proof to establish intermittent disability commencing November 14 through 26, 2008.

FACTUAL HISTORY

On June 10, 2008 appellant, then a 45-year-old clerk, filed an occupational disease claim alleging that she developed carpal tunnel syndrome as a result of her employment activities. Her claim was accepted for right forearm strain and right wrist tendinitis. The Office paid compensation for total disability until appellant returned to work six hours a day with no restrictions on September 19, 2008. It paid wage-loss compensation for two hours a day beginning September 19, 2008.

On October 21, 2008 appellant's treating physician, Dr. A. Diane Obayan, diagnosed right wrist tendinitis. She stated that appellant could work six hours a day; however, appellant was restricted from repetitive lifting above 15 pounds and was advised to limit repetitive wrist movements by 50 percent.

On November 5, 2008 a nurse at the employing establishment health unit stated that appellant was fit for limited duty until December 5, 2008. Restrictions included no pushing or pulling more than 10 pounds, limited use of the right arm and hand and reducing repetitive movement of the right arm and hand by 50 percent.

On November 5, 2008 Dr. Obayan noted that appellant had recently returned to work without restrictions. She stated that appellant had sustained a repetitive stress injury to the muscle groups in the right upper extremity as a result of performing most of her duties using only the right arm. Appellant's symptoms included recurrence of pain in the forearm and new pain complaints in the lateral aspect of the wrist with discomfort in her shoulder. Examination revealed tenderness at the lateral epicondyle. Resistive testing of the wrist extensor muscles together with passive stretch of the same muscle group reproduced symptoms of pain at the elbow with radiation into the forearm. Appellant had a positive Finkelstein's test confirming the presence of tendinitis in the abductor pollicis longus and extensor pollicis brevis tendons. She also had limited elevation of the right shoulder. Internal and external rotation movements were close to normal. Rotator cuff muscle strength was 4/5. Dr. Obayan diagnosed extensor tendinitis; right de Quervain's tenosynovitis; right lateral epicondylitis; and right shoulder rotator cuff tendinitis. She recommended that restrictions be reinstated to include limiting use of the right arm, reducing repetitive movements of the wrist and arm by 50 percent on the right side and lifting to no more than 10 to 15 pounds. Dr. Obayan also recommended that appellant be placed in a position where she could perform most of her job duties with the left arm.

Appellant stopped working on November 14, 2008. She filed a notice of recurrence of disability on December 2, 2008 alleging intermittent disability commencing November 13, 2008.

In a report dated November 19, 2008, Dr. Obayan stated that appellant developed significant neck, mid and low back pain due to sitting on a stool and casing mail after she returned to work in her formal position. The pain progressively worsened until November 13, 2008 when her back allegedly locked up on her. Appellant was sent to the employer's clinic and was taken off work. On examination, cervical flexion and left rotation movements were reduced and resulted in soft tissue neck pain. Spurling's maneuver was negative for return to class signs. Strength was 4/5 on the right side due to pain. Sensation was grossly intact. Reflexes were 2+, brisk but symmetrical. Examination of the right shoulder revealed limited elevation and rotation movements. Rotator cuff muscle strength was 4+/5. Examination of the back revealed forward flexion of 90, with increased pain in her lumbosacral spine. Side flexion movements were close to normal. Straight leg raise was negative. Motor strength was 5/5 in the legs. Sensation was grossly intact. Reflexes were brisk but symmetrical. There was palpable tightness of muscles in the cervical spine, interscapular area and lumbosacral spine. Dr. Obayan diagnosed cervical dorsal lumbar myofascial pain due to work-related activities; extensor tendinitis; right de Quervain's tenosynovitis; right lateral epicondylitis; and right shoulder rotator cuff tendinitis. She stated that appellant could continue to work with her previous restrictions and emphasized

that performance of repetitive activities put significant stress on appellant's musculoskeletal system.

The Office referred appellant to Dr. B.S. Bohra, an orthopedic surgeon, for a second opinion examination as to whether she had residuals of the accepted right forearm strain and wrist tendinitis. In a November 20, 2008 report, Dr. Bohra reviewed the medical record and history of injury. On examination, the cervical spine revealed no spasms or tenderness of the trapezius or tenderness and a full range of motion. Axial compression with the cervical spine in hyperextension and right rotation caused no radiculopathy to the right upper limb. Examination of the right shoulder showed no evidence of any atrophy of the scapular muscles or the deltoid and there was no tenderness of the acromioclavicular joint. Active abduction of the right shoulder was 120 degrees. The range of active movements of the right and the left shoulders were equal. Forward elevation was 120 degrees. Extension to the right and left was 30 degrees. Internal and external rotation was equal on both sides and without any pain. Impingement test was negative. Apprehension test was negative. Examination of the right elbow region showed no effusion and no swelling. Range of motion was 0 to 130 degrees. There was no evidence of any localized tenderness in the lateral epicondyle and medial epicondyle of the humerus or in the distal supracondylar ridge of the humerus on the lateral side or the medial side. Pronation and supination of the right elbow with elbow flexion of 90 degrees showed identical range of movements of the right and the left elbow. There was no evidence of any pain during resisted pronation or supination of the right forearm with the elbow in 90 degrees of flexion. There was no tenderness in the region of the superior radial ulnar joint or the head of the radius or of any tendinitis of the triceps or the biceps tendon. Examination of the right wrist showed no evidence of any tenderness or acute swelling in relation to the tendons in the extensor compartment of the wrist or the flexor carpi radialis or the flexor carpi ulnaris tendons. There was no evidence of tenosynovitis in any of the tendons of the wrist on the right side. Range of motion was normal. Watson test was negative. There was no evidence of any localized tenderness of the carpal bones. Tinel's sign was negative. On compression test for the median nerve at the wrist she complained of pain in the first web space and the right forearm and the arm region which indicated a negative compression test for the carpal tunnel. Dr. Bohra noted that an electromyogram of the right upper extremity was negative for any cervical radiculopathy or carpal tunnel syndrome. He found no evidence of any disease process that required work limitations. Dr. Bohra advised that appellant was capable of performing her date-of-injury position and that no further treatment was indicated. He did not address the issue of her disability for work during the period in question.

On December 10, 2008 Dr. Obayan recommended continuing work restrictions. She did not address appellant's ability to work during the period in question.

By decision dated January 9, 2009, the Office denied appellant's claim. It noted that it paid her two hours a day from November 14 to 26, 2008. The medical evidence was found insufficient to establish disability for the remaining time claimed.

Appellant submitted a work slip dated November 26, 2008 from Dr. Obayan. The form indicated that she was seen in her physician's office that date and should engage in "no activity after injection."[1]

On January 14, 2009 appellant requested a telephonic hearing. She submitted a January 7, 2009 slip from Dr. Obayan reflecting that she was disabled from January 2 through 7, 2009. On January 7, 2009 Dr. Obayan opined that appellant could return to work with restrictions.

In statements dated December 8 and 15, 2008, appellant advised that she worked until November 13, 2008, when she was sent home by the employing establishment medical unit. Her arm had become swollen and she had experienced pain in her shoulder and back. Appellant stated that her physician restricted her to six hours a day on November 19, 2008. She contended that she provided adequate documentation to support disability for the period claimed. The record contains a notification of absence dated November 13, 2008, which contains appellant's statement that she was sent home from work by "medical" on that date.

On January 27, 2009 the Office asked Dr. Obayan to provide a rationalized opinion explaining how the conditions diagnosed on November 19, 2008, including cervical dorsal lumbar myofascial pain due to work-related activities; extensor tendinitis; right de Quervain's tenosynovitis; right lateral epicondylitis; and right shoulder rotator cuff tendinitis, were causally related to appellant's accepted forearm strain and wrist tendinitis. Dr. Obayan was provided with a copy of Dr. Bohra's November 20, 2008 report for review and comment.

In a November 21, 2008 disability slip, Dr. Anthony F. Harris, a treating physician, noted that appellant was totally disabled from November 13 through 26, 2008. He stated that she would be physically able to return to work with restrictions. In a December 8, 2008 disability certificate, Dr. Harris reiterated his statement that appellant was disabled from November 13 through 26, 2008. He diagnosed tendinitis of the right wrist.[2]

At a May 11, 2009 telephonic hearing, appellant testified that while engaging in repetitive work activities on November 13, 2008, her right arm and shoulder began burning and tingling and she became unable to work. She sought treatment from Dr. Raymond Edison, a treating physician, who instructed her to stop work in order to avoid aggravating her shoulder condition. Appellant and her representative stated that they would provide a copy of Dr. Edison's report concerning the November 13 or 14, 2008 visit. The hearing representative

[1] The record contains additional reports from Dr. Obayan, which do not address the period in question.

[2] The Office found a conflict in medical opinion as to whether appellant had continuing residuals due to her accepted employment injury. Appellant was referred to Dr. Michael Kosinski, a Board-certified orthopedic surgeon, in order to resolve the conflict. In a report dated June 8, 2009, Dr. Kosinski stated that she had lateral epicondylitis, right elbow. He found no clinical evidence of carpal tunnel syndrome or cubital tunnel syndrome bilaterally. Dr. Kosinski noted that, by history, she also had extensor tenosynovitis of the wrist and possibly intersection syndrome. He did not address the issue of appellant's disability from November 14 through 26, 2008.

advised that the record would be held open for 30 days for the submission of additional evidence.[3]

By decision dated June 25, 2009, the hearing representative affirmed the January 9, 2009 decision on the grounds that the medical evidence of record was insufficient to establish that appellant was disabled for the hours not accepted as employment related.

LEGAL PRECEDENT

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 his employment injury.[4] 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.[5]

Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work. Appellant's burden of proving that she was disabled on particular dates requires that she 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 medical reasoning.[6] Where no such rationale is present, the medical evidence is of diminished probative value.[7]

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.[8] 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.[9] Where no such rationale is present, medical evidence is of diminished probative value.[10] To establish that a claimed recurrence of

[3] The Board notes that the record does not contain a report from Dr. Edison.

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

[5] *Fereidoon Kharabi*, *supra* note 4.

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

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

[8] 20 C.F.R. § 10.5(x).

[9] *Supra* note 7.

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

the condition was caused by the accepted injury, medical evidence of bridging symptoms between the present condition and the accepted injury must support the physician's conclusion of a causal relationship.[11]

ANALYSIS

Appellant claimed wage-loss compensation for disability from November 14 to 28, 2008 due to her accepted occupational injury. The Board finds, however, that she failed to submit sufficient medical evidence to establish her disability for this period other than the two hours a day accepted by the Office.

Dr. Obayan's reports do not establish that appellant was disabled during the claimed period. On November 5, 2008 she noted that appellant had recently returned to work without restrictions and that appellant had sustained a repetitive stress injury to most muscle groups in the right upper extremity as a result of her duties using only the right arm. Appellant's symptoms included recurrence of pain in the forearm, development of new pain problems in the lateral aspect of the wrist and more discomfort in her shoulder. Dr. Obayan diagnosed extensor tendinitis; right de Quervain's tenosynovitis, right lateral epicondylitis and right shoulder rotator cuff tendinitis. She did not, however, address appellant's disability for the period claimed or how it related to the conditions accepted by the Office. Rather, Dr. Obayan opined that appellant could work with restrictions, including limiting use of the right arm, reducing repetitive movements of the wrist and arm by 50 percent on the right side and lifting no more than 10 to 15 pounds. On November 19, 2008 she stated that appellant developed significant neck, mid and low back pain while sitting on a stool and casing mail. Dr. Obayan again opined that appellant could continue to work within her restrictions. While she emphasized that performance of repetitive activities put significant stress on appellant's musculoskeletal system, she did not specifically address whether appellant was disabled from work, as required.[12] In a November 26, 2008 work slip, Dr. Obayan advised that appellant was treated on that date and that she should engage in "no activity after injection." The Board notes that appellant may be entitled to compensation for time missed from work for a medical appointment; however, the November 26, 2008 work slip does not contain any opinion that she was totally disabled from work due to her accepted injury. Therefore, it is of limited probative value and is insufficient to establish appellant's claim. The remaining reports from Dr. Obayan do not address the claimed period of disability and are of diminished probative value.

In a November 20, 2008 report, Dr. Bohra, a second opinion physician, found no evidence of any disease process that required any work limitations. He opined that appellant was capable of performing the duties of her date-of-injury position and that no further treatment was warranted. Although Dr. Bohra did not specifically address her claimed disability for work during the period in question, his report supports her general ability to work rather than her disability.[13]

[11] *C.W.*, 60 ECAB ___ (Docket No. 07-1816, issued January 16, 2009).

[12] *See supra* note 3 and accompanying text.

[13] The Board notes that Dr. Bohra's examination occurred during the period of appellant's claimed disability.

In November 21 and December 8, 2008 disability slips, Dr. Harris stated that appellant was totally disabled from November 13 through 26, 2008. He did not, however, provide a history of injury, examination findings or any explanation as to how her disabling condition was causally related to her accepted injury. Therefore, Dr. Harris' opinion is of diminished probative value.[14]

Appellant submitted reports from a nurse at the employer's health unit. A nurse is not defined as "physician" under the Federal Employees' Compensation Act. These reports do not constitute probative medical opinion evidence.[15] The remaining medical evidence of record, which includes test results, which does not contain an opinion on causal relationship, is insufficient to establish appellant's compensation claim.

The evidence of record also fails to establish that appellant sustained a recurrence of disability. 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 resulting from a previous injury or illness without a new or intervening injury.[16] To establish that a claimed recurrence of a condition was caused by the accepted injury, medical evidence of bridging symptoms between the present condition and the accepted injury must support the physician's conclusion of causal relationship.[17] As noted, appellant has alleged that she sustained a repetitive stress injury to the right upper extremity as a result of performing her employment duties after returning to work without restrictions. She and her physician have asserted that her work activities exacerbated her prior right upper extremity condition. As appellant submitted no medical evidence that established a spontaneous change in her medical condition resulting from the accepted injury, she did not meet her burden of proof to establish that she sustained a recurrence of disability.

Appellant had the burden of proving by the preponderance of the reliable, probative and substantial evidence that she was disabled for work as a result of her employment injury. For the reasons stated above, the Board finds that appellant failed to sustain her burden of proof to establish that she was totally disabled due to her accepted employment condition during the claimed period.[18]

On appeal, counsel contends that the hearing representative's June 25, 2009 decision was contrary to fact and law. For reasons stated, the Board finds that appellant did not submit sufficient medical evidence to support her claim.

[14] *Supra* note 7.

[15] Section 8101(2) of the Act provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law."

[16] *See supra* note 4 and accompanying text.

[17] *C.W., supra* note 11.

[18] *See Fereidoon Kharabi, supra* note 4.

CONCLUSION

The Board finds that appellant has not established intermittent disability from November 14, 2008 other than the two hours a day accepted by the Office to November 26, 2008.

ORDER

IT IS HEREBY ORDERED THAT the June 25, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 7, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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