United States Department of Labor
Employees' Compensation Appeals Board

M.O., Appellant	)	
	)	**Docket No. 10-64**
and	)	**Issued: July 2, 2010**
	)	
U.S. POSTAL SERVICE, RAVENSWOOD STATION, Chicago, IL, Employer	)	

Appearances:
Appellant, pro se
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 October 7, 2009 appellant filed a timely appeal from a June 30, 2009 merit decision of the Office of Workers' Compensation Programs finding that she did not establish 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 sustained a recurrence of disability on March 12, 2009 causally related to her July 4, 2006 employment injury.

FACTUAL HISTORY

On July 12, 2006 appellant, then a 31-year-old letter carrier, filed a claim alleging that on July 4, 2006 she sustained pain in her lower back and tailbone in the performance of duty. She

stopped work on July 6, 2006 and returned to limited-duty employment on July 10, 2006. The Office accepted the claim for lumbar strain.[1]

On April 1, 2009 appellant filed a notice of recurrence of disability on March 12, 2009 causally related to her July 4, 2006 work injury. She stopped work on March 12, 2009. Appellant related that she carried mail for a week and a half when she returned to work but began experiencing sharp mid and lower back pain. She stated, "When I returned to work since the last injury the back pain was coming and going. At the time I was doing clerk duties. Now I've been carrying mail for about 2 week and injured again."

In an accompanying statement, a manager with the employing establishment indicated that appellant performed clerical duties after her work injury. On March 2, 2008 appellant began working as a letter carrier two hours per day in accordance with her medical restrictions. The manager related, "During this two[-]week period of her return she has consistently requested to do indoor work which is outside of her job as a letter carrier…."

By letter dated April 15, 2009, the Office requested additional factual and medical information from appellant regarding her alleged recurrence of disability. It informed her that she should submit a supporting statement that she stopped work while in a light-duty position because the position changed such that it was no longer within her work restrictions. The Office further advised appellant that if she stopped work because her condition worsened she should submit supporting medical evidence.

In a disability certificate dated March 12, 2009, a chiropractor diagnosed lumbosacral and shoulder pain.[2] He found that she was disabled from March 12 to 17, 2009.[3]

In a report dated May 7, 2009, Dr. Alicja Poleszak, Board-certified in family practice, noted that she treated appellant for low back pain radiating into the right leg and knee which increased "with prolonged sitting, getting-up and any movements." On examination she found tenderness of the right paraspinal muscle and decreased range of motion due to pain. Dr. Poleszak related that a magnetic resonance imaging (MRI) scan study showed "mild spondylotic changes, mild degenerative changes of L5-S1 level and mild foramina stenosis." She indicated that she had referred appellant for chiropractic care.

On May 11, 2009 appellant related that she "wanted to know about my reimbursement dating back to March 14, 2009. Currently, I am not receiving pay for those 2 hours per day, five days a week that I'd worked, since I return for modified duty in Feb 2009." She also questioned whether she had authorization for treatment for her back.

[1] By decision dated May 2, 2008, the Office denied appellant's claim for compensation from July 24 to August 18, 2007 on the grounds that the medical evidence was insufficient to show that she was disabled due to her accepted work injury.

[2] The diagnosed conditions are nearly illegible and the name of the chiropractor is illegible.

[3] Appellant also submitted medical evidence predating the alleged recurrence of disability.

By decision dated June 30, 2009, the Office found that appellant had not established a recurrence of disability causally related to her July 4, 2006 work injury. It determined that the medical evidence was insufficient to show that she had a current condition due to her accepted employment injury.

On appeal, appellant contends that her continuing back injury and March 2009 recurrence of disability resulted from her original injury. She noted that she had a recurring back injury after a few weeks of carrying mail which resulted in recurrent bilateral carpal tunnel syndrome.

LEGAL PRECEDENT

Where 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 the employee 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 to 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.[4]

Office 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.[5] 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.[6]

ANALYSIS

The Office accepted that appellant sustained lumbar strain due to a July 4, 2006 employment injury. Appellant stopped work on July 6, 2006 and returned to limited-duty employment on July 10, 2006. On March 2, 2008 she began performing the duties of a letter carrier for two hours per day. Appellant stopped work on March 12, 2009 and filed a notice of recurrence of disability beginning that date causally related to her July 4, 2006 employment injury.

By letter dated April 15, 2009, the Office requested that appellant submit a supporting statement if she believed that she sustained a recurrence of disability as the result of a change in the requirements of her limited-duty position. Appellant did not respond to the Office's request

[4] *Richard A. Neidert*, 57 ECAB 474 (2006); *Jackie D. West*, 54 ECAB 158 (2002); *Terry R. Hedman*, 38 ECAB 222 (1986).

[5] 20 C.F.R. § 10.5(x).

[6] *Id*.

and thus has neither alleged nor established a change in the nature and extent of her light-duty job requirements. Consequently, she must provide medical evidence establishing that she was disabled beginning March 12, 2009 due to a worsening of her accepted work-related condition of lumbar strain.[7]

On March 12, 2009 a chiropractor diagnosed lumbosacral and shoulder pain and opined that appellant was disabled from March 12 to 17, 2009. Section 8101(2) of the Federal Employees' Compensation Act provides that the "term 'physician' includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist…."[8] A chiropractor cannot be considered a physician under the Act unless it is established that there is a subluxation as demonstrated by x-ray evidence.[9] As the chiropractor did not diagnose a subluxation as demonstrated by x-ray, he is not considered a "physician" under the Act and his report is of no probative value.[10]

On May 7, 2009 Dr. Poleszak described her treatment of appellant for low back pain radiating down the right lower extremity which increased with movement and extended sitting. She listed findings of tenderness of the right paraspinal muscle and loss of range of motion due to pain and discussed the MRI scan study findings of mild degenerative changes at L5-S1, mild foramina stenosis and mild spondylotic changes. Dr. Poleszak did not address the cause of appellant's low back pain or the findings on MRI scan study. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.[11] Additionally, Dr. Poleszak did not address the relevant issue of whether appellant was disabled from work beginning March 12, 2009.[12]

On appeal, appellant contends that her March 2009 recurrence of disability was causally related to her accepted work injury.[13] An award of compensation, however, may not be based on surmise, conjecture, speculation or upon her own belief that there is a causal relationship

[7] *See Jackie D. West, supra* note 4.

[8] 5 U.S.C. § 8101(2); *see also Michelle Salazar*, 54 ECAB 523 (2003).

[9] The Office's regulation, at 20 C.F.R. § 10.5(bb), defines subluxation to mean an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae which must be demonstrated on x-ray. *See Mary A. Ceglia*, 55 ECAB 626 (2004).

[10] *Isabelle Mitchell*, 55 ECAB 623 (2004).

[11] *S.E.*, 60 ECAB ___ (Docket No. 08-2214, issued May 6, 2009); *Conrad Hightower*, 54 ECAB 796 (2003).

[12] *Carol A. Lyles*, 57 ECAB 265 (2005) (whether a particular injury caused an employee disability from employment is a medical issue which must be resolved by competent medical evidence).

[13] Appellant also noted that she had a recurring back injury after a few weeks of carrying mail which resulted in recurrent bilateral carpal tunnel syndrome. A recurrence of disability, however, does not include disability resulting from exposure to new work factors, even if it involves the same part of the body previously injured. 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3b(2) (May 1997).

between her claimed condition and her employment.[14] Appellant must submit a physician's report in which the physician reviews those factors of employment she identified as causing her condition and, taking these factors into consideration as well as findings upon examination and the medical history, explain how employment factors caused or aggravated any diagnosed condition and present medical rationale in support of his or her opinion.[15] She failed to submit such evidence and therefore failed to discharge her burden of proof.

CONCLUSION

The Board finds that appellant has not established that she sustained a recurrence of disability on March 12, 2009 causally related to her July 4, 2006 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 30, 2009 is affirmed.

Issued: July 2, 2010
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

[14] *George H. Clark*, 56 ECAB 162 (2004); *Patricia J. Glenn*, 53 ECAB 159 (2001).

[15] *Robert Broome*, 55 ECAB 339 (2004).