

**United States Department of Labor
Employees' Compensation Appeals Board**

M.P., Appellant)	
)	
and)	Docket No. 09-1752
)	Issued: June 7, 2010
U.S. POSTAL SERVICE, TRENTON)	
PROCESSING & DISTRIBUTION CENTER,)	
Trenton, NJ, Employer)	

Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 29, 2009 appellant, through counsel, filed a timely appeal of the Office of Workers' Compensation Programs' October 24, 2008 and May 7, 2009 merit decisions denying his recurrence of disability claims. 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 established that he sustained a recurrence of disability commencing November 10, 2007 causally related to his July 14, 2007 employment injuries.

On appeal, counsel contends that the Office's decisions are contrary to fact and law.

FACTUAL HISTORY

The Office accepted that on July 14, 2007 appellant, then a 42-year-old flat sorter machine clerk, sustained back, lumbosacral joint and left acromioclavicular sprains as a result of loading mail into an overfilled cage at the employing establishment. Following his injury, appellant performed limited-duty work as a manual clerk.

On March 26 and April 1, 2008 appellant filed claims (Form CA-7) for wage-loss compensation (Form CA-7) for the period November 10, 2007 to March 28, 2008.

In a March 14, 2008 note, Dr. Joshua M. Zimmerman, an attending Board-certified orthopedic surgeon, advised that appellant sustained an injury. He indicated with an affirmative mark that the injury was due to the July 14, 2007 employment injuries. Appellant could return to work with restrictions. In a March 14, 2008 medical report, Dr. Zimmerman reported tenderness on physical examination of appellant's cervical spine. He advised that appellant had issues related to his cervical spine.

By letter dated April 2, 2008, the Office requested that appellant submitted a recurrence of disability claim (Form CA-2a) for the period November 10, 2007 to March 28, 2008. It addressed the medical and factual evidence he needed to submit to establish his claim.

A July 17, 2007 report which contained a physician's illegible signature stated that appellant sustained lumbosacral and left shoulder strains. Appellant could perform his regular work duties with restrictions. In a September 6, 2007 report, Dr. Moti L. Tiku, a Board-certified internist, advised that appellant had psoriatic arthritis. He was pleased on light-duty work for three to six weeks with a gradual return to full-duty work.

In a March 21, 2008 report, Dr. Zimmerman advised that appellant's neck injury required physical therapy. On April 11, 2008 he reiterated that appellant sustained an injury causally related to the July 14, 2007 employment injuries by an affirmative mark. In an April 11, 2008 report, Dr. Zimmerman advised that appellant's neck pain had not improved but that appellant could continue working four hours per day.

On April 16, 2008 appellant filed a Form CA-7 for the period March 29 through April 11, 2008.

A report from appellant's physical therapist addressed the treatment of appellant's cervical strain on April 18, 2008.

By letter dated April 24, 2008, the Office advised appellant to submit a Form CA-2a for the claimed period of total disability from March 29 to April 11, 2008.

On April 29, 2008 appellant filed a Form CA-2a alleging that he sustained a recurrence of disability on December 4, 2007. He stopped work on December 4, 2007 because his neck and shoulder pain worsened. Appellant stated that, following his employment injuries, he performed light-duty work, 32 hours per week from January 20 to February 15, 2008, six hours per day from February 15 to March 14, 2008 and four hours per day beginning March 14, 2008. He contended that his current condition was caused by the July 14, 2007 employment injuries because it had worsened since that date. On the claim form, the employing establishment stated that appellant was working four hours per day.

A December 31, 2007 report from Dr. Natalio Damien, Jr., a Board-certified radiologist, advised that a magnetic resonance imaging (MRI) scan of the cervical spine showed moderate disc bulging at C5-6 impressing on the anterior thecal sac. He also noted moderate diffuse sphenoidal and ethmoidal sinusitis.

In form reports dated January 4 to June 6, 2008, Dr. Zimmerman noted that appellant sustained an injury causally related to the July 14, 2007 employment injuries by an affirmative mark. He advised that appellant was totally disabled for work for two weeks. Dr. Zimmerman stated that appellant could work with restrictions. In a February 15, 2008 report, he advised that appellant sustained shoulder and upper arm injuries.

In an April 17, 2008 report, Dr. Francisco I. Del Valle, a Board-certified physiatrist, reviewed a history of appellant's July 14, 2007 employment injury, medical treatment and family and social background. He listed his findings on physical examination and diagnosed cervical radiculopathy and secondary segmental dysfunction with myofascial pain of the cervical spine.

In reports dated August 5, 2008, Dr. Zimmerman advised that appellant had cervical back and shoulder pain. In a January 18, 2008 prescription, he ordered physical therapy to treat appellant's cervical pain. On July 8, 2008 Dr. Zimmerman advised that appellant was totally disabled for work.

By decision dated October 24, 2008, the Office denied appellant's claims for recurrence of disability. It found the medical evidence of record insufficient to establish that he was totally disabled from December 4, 2007 to January 19, 2008 due to his July 14, 2007 employment injuries.

In a November 2, 2008 letter, appellant, through counsel, requested a telephonic hearing before an Office hearing representative and submitted reports dated November 4 and December 8, 2008 from Dr. Zimmerman.

In a November 18, 2008 prescription, Dr. Indravadan T. Patel, a Board-certified internist, ordered an epidural injection and advised that appellant was unable to work for four weeks.

In a December 11, 2008 report, Dr. Del Valle stated that the results of electromyogram/nerve conduction (EMG/NC) studies revealed left C6 radiculopathy, concomitant left median nerve entrapment and left carpal tunnel syndrome. Dr. Zimmerman ordered diagnostic testing of the lumbar spine to determine whether appellant had a herniated nucleus pulposus.

At the February 10, 2009 hearing, appellant testified that, after being placed on total disability by Dr. Tiku, he was released to limited-duty work from January to August 2008 by Dr. Zimmerman. He worked from four to six hours a day. Appellant was placed off work by Dr. Zimmerman commencing August 2008. He did not receive any compensation for the difference between the hours he actually worked and the hours he would have worked prior to his partial disability or for the period of total disability.

In a February 3, 2009 report, Dr. Zimmerman listed his findings on physical examination and diagnosed possible herniated nucleus pulposus. In a February 27, 2009 note, he diagnosed back strain causally related to the July 14, 2007 employment injuries as indicated by an affirmative mark. In reports dated February 5 and March 2, 2009, Dr. Zimmerman again listed back pain and an acromioclavicular joint injury.

A February 22, 2009 report from Dr. Thurairasah Vijayanathan, a Board-certified radiologist, reviewed the results of an MRI scan of the lumbar spine which demonstrated a slight annular disc bulging at L5-S1 and no evidence of spinal stenosis.

In a December 11, 2008 disability certificate, Dr. Del Valle reiterated his diagnosis of cervical radiculopathy and that appellant was unable to work from December 17, 2008 to April 5, 2009. In a February 26, 2009 report, he stated that appellant received two cervical epidural injections to treat chronic cervical radiculopathy. Dr. Del Valle complained about neck pain with stiffness and low back pain radiating pain down his right leg. He listed findings on physical examination and diagnosed significant axial neck pain that may have been related to appellant's cervical facet arthropathy which resulted from his psoriatic arthritis. Dr. Del Valle also advised that appellant had a recent onset of lumbar radiculopathy.

By decision dated May 7, 2009, an Office hearing representative affirmed the October 24, 2008 decision. The hearing representative found that appellant failed to establish that he sustained a recurrence of disability commencing November 2007 causally related to the July 14, 2007 employment injuries.

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.¹ 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.²

When an employee who is disabled from the job he held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that he can perform the limited-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 cannot perform such limited-duty work. 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 limited-duty job requirements.³

To show a change in the degree of the work-related injury or condition, the claimant must submit rationalized medical evidence documenting such change and explaining how and why the

¹ 20 C.F.R. § 10.5(x).

² *Id.*

³ *Barry C. Petterson*, 52 ECAB 120 (2000); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

accepted injury or condition disabled the claimant for work on and after the date of the alleged recurrence of disability.⁴

ANALYSIS

The Office accepted that appellant sustained back, lumbosacral joint and left acromioclavicular sprains on July 14, 2007 while in the performance of duty. Following injury, appellant performed limited light-duty work. He claimed a partial and total disability commencing November 10, 2007 causally related to his accepted employment injuries. Appellant must demonstrate either that his conditions changed such that he could not perform the light-duty activities required by his modified job or that the requirements of the limited light-duty jobs changed. The Board finds that the record contains no evidence that the limited light-duty job requirements were changed or withdrawn or that his employment-related conditions changed to the point that he was precluded from engaging in limited light-duty work.

Dr. Zimmerman provided a series of form reports addressing his treatment of appellant due to the July 14, 2007 employment injury. He supported causal relation by an affirmative mark. Dr. Zimmerman either placed appellant on total disability for work or released him to work with restrictions. The Board has held that form medical reports which only address causal relationship with a check mark are insufficient to establish causal relationship and are of diminished probative value.⁵ Dr. Zimmerman advised that appellant had issues with his cervical spine with neck pain but did not diagnose a specific medical condition or explain how any cervical condition was caused by the July 14, 2007 employment injury. He did not provide adequate rationale explaining why appellant became disabled for work during the claimed period due to the accepted employment injury. A mere medical conclusion without rationale for the opinion reached is of diminished probative value.⁶

The February 27, 2009 note only opined that appellant's back strain was causally related to the accepted employment injury as indicated by an affirmative mark. Dr. Zimmerman did not explain how the diagnosed condition was caused by the July 14, 2007 employment injuries.⁷ He did not address how appellant sustained any disability commencing November 10, 2007 due to the accepted back or left shoulder sprain. Dr. Zimmerman ordered physical therapy to treat appellant's cervical pain and diagnostic testing of his lumbar spine; but did not provide adequate medical opinion addressing appellant's disability commencing November 10, 2007 due to the July 14, 2007 employment injury.

The evidence from Dr. Zimmerman does not provide any narrative opinion addressing appellant's incapacity from work from November 10, 2007 to March 28, 2008. While Dr. Zimmerman indicated that appellant was totally disabled during the claimed period, he did not provide any medical opinion explaining how the disability was related to the July 14, 2007 employment injury.

⁴ *James H. Botts*, 50 ECAB 265 (1999).

⁵ *See Frederick H. Coward, Jr.*, 41 ECAB 843 (1990); *Lillian M. Jones*, 34 ECAB 379 (1982).

⁶ *See Beverly A. Spencer*, 55 ECAB 501 (2004).

⁷ *See cases cited supra* note 5.

In a February 3, 2008 report, Dr. Zimmerman stated that appellant sustained a “possible” herniated nucleus pulposus. This diagnosis was speculative in nature, and, thus, insufficient to establish appellant’s claim.⁸ Further, Dr. Zimmerman did not address how the diagnosed condition was caused by the July 14, 2007 employment injuries. His February 15, 2008 note stated that appellant could work with restrictions. Dr. Zimmerman did not address whether appellant sustained any disability commencing November 10, 2007 due to the accepted employment injuries. The Board finds that Dr. Zimmerman’s notes are insufficient to establish appellant’s claim.

The remainder of the medical evidence is insufficient to establish that appellant sustained a recurrence of disability. The July 17, 2007 report containing an illegible signature is of no probative value as it is not certain that the author is a physician.⁹ Dr. Tiku’s September 6, 2007 report stated that appellant had psoriatic arthritis and he could perform light-duty work for three to six weeks. This evidence predates the alleged recurrence of disability and thus, did not address disability for the relevant period commencing November 10, 2007. The Board finds that the evidence is insufficient to establish appellant’s claim.

The December 31, 2007 and February 22, 2009 diagnostic test results of Dr. Damien and Dr. Vijayanathan regarding appellant’s cervical and lumbar conditions do not provide any medical opinion addressing whether the diagnosed conditions are causally related to the July 14, 2007 employment injury. These reports, therefore, are insufficient to establish appellant’s claim.

Dr. Del Valle’s reports listed findings on physical examination. He diagnosed cervical radiculopathy and secondary segmental dysfunction with myofascial pain of the cervical spine, significant axial neck pain that may be related to appellant’s cervical facet arthropathy due to his psoriatic arthritis and features of a recent onset of lumbar radiculopathy. Dr. Del Valle obtained EMG/NC studies that revealed left C6 radiculopathy, concomitant left median nerve entrapment and left carpal tunnel syndrome. He did not explain, however, whether any diagnosed conditions were caused by the July 14, 2007 employment injury. Dr. Del Valle did not provide a medical opinion addressing appellant’s disability for work commencing November 10, 2007 due to the accepted conditions.

On a December 11, 2008 disability certificate, Dr. Del Valle diagnosed cervical radiculopathy. He stated that appellant was totally disabled for work from December 17, 2008 to April 5, 2009. On November 18, 2008 Dr. Patel prescribed an epidural injection to treat appellant’s pain. He stated that appellant was totally disabled for work for four weeks. This evidence is insufficient to establish appellant’s claim. Although Dr. Del Valle and Dr. Patel stated that appellant was totally disabled during the claimed period, neither physician related the disability to his accepted employment injuries. The condition of cervical radiculopathy has not been accepted by the Office as employment related. The Board finds that these reports are insufficient to establish appellant’s claim.

The April 18, 2008 report from appellant’s physical therapist is of no probative medical value. A physical therapist is not a “physician” as defined under the Federal Employees’

⁸ *L.R. (E.R.)*, 58 ECAB 369 (2007); *Kathy A. Kelley*, 55 ECAB 206 (2004).

⁹ *See Merton J. Sills*, 39 ECAB 572 (1988).

Compensation Act.¹⁰ This report does not constitute competent medical evidence to support appellant's recurrence of disability claim.

Appellant has not met his burden of proof in establishing that there was a change in the nature or extent of the injury-related conditions or a change in the nature and extent of the limited light-duty requirements which would prohibit him from performing the limited light-duty position he assumed after he returned to work.

CONCLUSION

The Board finds that appellant has failed to establish that he sustained a recurrence of total disability commencing November 10, 2007 causally related to his July 14, 2007 employment injuries.

ORDER

IT IS HEREBY ORDERED THAT the May 7, 2009 and October 24, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 7, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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

¹⁰ See 5 U.S.C. § 8101(2); A.C., 60 ECAB ____ (Docket No. 08-1453, issued November 18, 2008).