

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

M.G., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Lake Charles, LA, Employer**

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**Docket No. 09-1608
Issued: March 3, 2010**

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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 8, 2009 appellant filed a timely appeal from the March 16, 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 that she was entitled to wage-loss compensation beginning December 4, 2008.

FACTUAL HISTORY

On July 25, 2008 appellant, then a 39-year-old city letter carrier, sustained a traumatic injury to her neck and back when she was attacked by a pit bull while delivering mail. Her claim was accepted for neck and lumbar strain.

In a July 25, 2008 duty status report, Dr. Sandra Bruno, a Board-certified internist, opined that appellant could return to light duty, provided that she be restricted from climbing,

kneeling, bending, stooping, twisting, lifting more than 10 pounds, or pushing or pulling more than 5 pounds. Appellant returned to light duty on August 8, 2008.

Appellant stopped working and filed claims for compensation for total disability commencing December 4, 2008. She identified July 25, 2008 as the date of injury.

In a December 8, 2008 report, Dr. Bruno diagnosed "lumbar strain with radiculitis -- acute exacerbation." Her notes reflect that appellant had a flare-up of right leg symptoms as a result of lifting a 50- to 60-pound box at work the previous week. Appellant's pain began a day or two after the lifting incident.

The record contains a December 19, 2008 report from Dr. Vasilos Matthews, a treating physician, who stated that appellant injured her right hip on June 7, 2008 when she was attacked by a pit bull. Dr. Matthews noted that an MRI scan report showed no evidence of significant disc herniation, but did reveal some disc bulging of the lumbar spine.

In a December 19, 2008 duty status report, Dr. Bruno indicated that appellant was unable to perform her duties as a city carrier. In a December 23, 2008 attending physician's report, she diagnosed neck and lumbar strain and noted that the date of injury was July 25, 2008. Dr. Bruno indicated by placing a checkmark in the "yes" box that the condition was caused or aggravated by conditions of employment. She stated that appellant was totally disabled beginning December 4, 2008.

In a letter dated January 3, 2009, the Office informed appellant that the evidence submitted was insufficient to establish her claim and advised her to submit a medical report which established that she was totally disabled for work as of December 4, 2008 due to her accepted employment injury.

In a narrative report dated February 9, 2009, Dr. Bruno stated that appellant was initially injured on July 25, 2008 when she was attacked by a dog. She gradually increased appellant's duties as her symptoms improved. On December 8, 2008 appellant reported that she had experienced increased pain since lifting items at work which exceeded her restrictions. She indicated that her supervisor "told her to do it."

The record contains a February 9, 2009 report from Dr. Gregory Rubino, a Board-certified neurological surgeon, who provided a history of injury, which reflected that appellant sustained a back injury on July 25, 2008 when she fought off a pit bull. Appellant's pain reportedly worsened in December 2008 after she lifted a heavy package at work. Dr. Rubino's examination revealed sciatica notch tenderness on the right; moderate tenderness on palpation of the lumbar spine; mildly limited lumbar spine flexion. He diagnosed lumbago and recommended that an EMG be performed, since the spinal MRI scan failed to reveal the etiology of appellant's pain.

By decision dated March 16, 2009, the Office denied appellant's compensation claim. It found that the evidence of record failed to support that she was totally disabled as of December 4, 2008 due to her accepted employment injury.

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 her employment injury.¹ 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.²

Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work. Appellant's burden of proving 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.³ Where no such rationale is present, the medical evidence is of diminished probative value.⁴

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 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.⁶ Where no such rationale is present, medical evidence is of diminished probative value.⁷ To establish that a claimed recurrence of 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.⁸

¹ *Fereidoon Kharabi*, 52 ECAB 291 (2001); see also *David H. Goss*, 32 ECAB 24 (1980).

² *Fereidoon Kharabi*, *supra* note 1.

³ *Ronald A. Eldridge*, 53 ECAB 218 (2001).

⁴ *Mary A. Ceglia*, 55 ECAB 626 (2004).

⁵ 20 C.F.R. § 10.5(x).

⁶ *Mary A. Ceglia*, *supra* note 4.

⁷ See *Ronald C. Hand*, 49 ECAB 113 (1957); *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

⁸ C.W., 60 ECAB ____ (Docket No. 07-1816, issued January 16, 2009).

ANALYSIS

Appellant filed claims for compensation alleging that she was totally disabled from working beginning December 4, 2008 due to her accepted July 25, 2008 injury. The Board finds, however, that she failed to submit any probative medical evidence demonstrating total disability for this period of time due to her accepted condition.

Dr. Bruno, appellant's treating physician, opined that appellant was disabled as of December 4, 2008. However, she attributed the disability not to the July 25, 2008 accepted injury, but rather to an intervening event, namely lifting heavy boxes on December 4, 2008. On December 8, 2008 Dr. Bruno diagnosed "lumbar strain with radiculitis -- acute exacerbation," noting that appellant had a flare-up of right leg symptoms as a result of lifting a 50- to 60-pound box at work the previous week. Similarly, on February 9, 2009 Dr. Bruno stated that appellant had gradually increased her duties at work following her July 25, 2008 dog attack as her symptoms improved, but that she reported increased pain since lifting heavy items at work. These reports do not establish a causal relationship between the claimed disability and the accepted injury, as required. In her December 23, 2008 attending physician's report, Dr. Bruno opined that appellant was totally disabled beginning December 4, 2008 and indicated by placing a checkmark in the "yes" box that her condition was caused or aggravated by conditions of employment. The Board has held that a report that addresses causal relationship with a checkmark, without a medical rationale explaining how the work conditions caused the alleged injury, is of diminished probative value and is insufficient to establish causal relationship.⁹

Dr. Rubino's February 9, 2009 report also fails to establish that appellant was disabled due to the accepted injury. In fact, he did not offer any opinion on the cause of her current condition, but instead noted that her MRI scan failed to reveal the etiology of her pain. Medical evidence which does not offer an opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁰ The Board notes that Dr. Rubino's notes were consistent with Dr. Bruno's reports, which reflected that appellant's pain was exacerbated by a December 8, 2008 lifting incident. The intervening lifting incident, if established, would constitute a new injury, for which appellant could file a traumatic injury claim.

Dr. Matthews' December 19, 2008 report does not contain an opinion as to whether appellant was disabled during the period in question, or as to the cause of her condition. Therefore, it is of limited probative value. 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 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

⁹ See *Calvin E. King, Jr.*, 51 ECAB 394 (2000); see also *Frederick E. Howard, Jr.*, 41 ECAB 843 (1990).

¹⁰ *A.D.*, 58 ECAB 149 (2006); *Michael E. Smith*, 50 ECAB 313 (1999).

or illness without a new or intervening injury.¹¹ 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.¹² As noted, appellant has alleged, and the medical evidence reflects, that she experienced an intervening incident on December 4, 2008, which triggered her disabling symptoms. As she 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.¹³

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 in establishing that she was totally disabled due to her accepted employment condition subsequent to December 4, 2008.¹⁴

CONCLUSION

The Board finds that appellant has not established entitlement to wage-loss benefits for any period after December 4, 2008.

¹¹ See *supra* note 6 and accompanying text.

¹² C.W., *supra* note 8.

¹³ Appellant alleged that her pain symptoms increased because her supervisor required her to lift items that exceeded her weight restrictions. There is no evidence, however, to support appellant's allegations that she was required to work outside of her limitations.

¹⁴ See *Fereidoon Kharabi*, *supra* note 1. (The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the particular period of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.)

ORDER

IT IS HEREBY ORDERED THAT the March 16, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 3, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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