

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

K.G., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Jacksonville, FL, Employer**

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**Docket No. 09-1886
Issued: May 5, 2010**

Appearances:

*Capp P. Taylor, 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 15, 2009 appellant filed a timely appeal from the August 13, 2008 and May 5, 2009 merit decisions of the Office of Workers' Compensation Programs denying her recurrence of disability claim. 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 met her burden of proof to establish that she sustained a recurrence of total disability commencing June 14, 2008 due to her May 13, 2006 work injury.

FACTUAL HISTORY

The Office accepted that on May 13, 2006 appellant, then a 44-year-old letter carrier, sustained a left pneumothorax wound, left rib fracture, right arm laceration, left clavicle fracture, left sacral fracture and left acetabular fracture due to a vehicular accident at work.¹ In

¹ The Office authorized surgeries performed in May 2006 related to these injuries.

September 2006, she returned to light-duty work at the employing establishment for four hours a day.

Dr. Larry Chidgey, an attending Board-certified orthopedic surgeon, stated on a September 25, 2006 work restrictions form that appellant could return to sedentary work for 4 hours a day, or more as tolerated, with no prolonged standing greater than 30 minutes and a lifting restriction of two to three pounds with the left arm. On February 22, 2007 appellant underwent a functional capacity evaluation. The validity criteria suggested very poor effort or voluntary submaximal effort which was not related to pain, impairment or disability.

In a June 27, 2007 note, Dr. Kalia K. Sadasivan, an attending Board-certified orthopedic surgeon, indicated that appellant was not significantly limited by her injuries except that pain was a persistent problem. On August 8, 2007 he stated that appellant could increase to working six hours a day in about a month. In July 10 and August 10, 2007 reports, Dr. David Lotman, an attending Board-certified orthopedic surgeon, advised that appellant could work eight hours per day within outlined restrictions.

In September 2007, appellant began working in a modified city letter carrier position for six hours a day. The job restricted her from engaging in prolonged standing (more than 30 minutes at a time) or lifting more than three pounds (more than 2 hours per day).

On October 3, 2007 Dr. Sadasivan stated that appellant could increase her work level to eight hours of sit-down work a day in four to six weeks and that she could engage in standing work as tolerated for a maximum of one to two hours and could sort mail during that period. He indicated that the sorting work would start on a one-to-two hour basis as tolerated and would progress as appellant got stronger. In an October 22, 2007 work restrictions form, Dr. Sadasivan noted that appellant was able to stand for one to two hours, but she could not engage in twisting, bending, operating a motor vehicle, pushing, pulling, lifting, squatting, kneeling and climbing. He did not explain the reasons for the increased disability. Appellant continued to work six hours a day at the modified letter carrier job. On November 28, 2007 Dr. Sadasivan stated that appellant reported she had been doing well and had been able to perform her duties "quite nicely."

In a December 18, 2007 letter, the Office advised appellant that it was reducing her compensation based on her actual wages as a modified letter carrier working six hours a day effective September 29, 2007. The letter was not a formal wage-earning capacity determination.

On February 13, 2008 Dr. Sadasivan stated that appellant had been working at a sit-down job until approximately three weeks prior when she reinjured herself. A memorandum documenting a March 31, 2008 telephone conversation between appellant and an Office claims examiner noted that appellant reinjured her back at work on January 11, 2008 and stopped work that day. On May 28, 2008 Dr. Sadasivan indicated that appellant wanted an overall evaluation for lack of energy and inability to perform her activities of daily living. He indicated that appellant expressed many diffuse complaints. Dr. Sadasivan did not address her work capabilities.

On June 27, 2008 appellant completed a Form CA-7 claiming wage-loss compensation for temporary total disability from June 14 to 27, 2008. In a July 7, 2008 letter, the Office requested that appellant submit additional factual and medical evidence in support of her claim.

In a July 24, 2007 letter, appellant's attorney contended that her modified-duty job was outside the physical restrictions provided by her attending physicians and required extensive standing.

In an August 13, 2008 decision, the Office denied appellant's claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained a recurrence of total disability from June 14 to 27, 2008 due to her May 13, 2006 work injury.

In an October 29, 2008 report, Dr. Oregon Hunter, an attending Board-certified physical medicine and rehabilitation physician, detailed the history of the May 13, 2006 injury and appellant's subsequent treatment and current symptoms. In September 2006, appellant returned to work four hours a day and did very little lifting. Appellant was placed in work for six hours a day in September 2007 but could not tolerate the activity and had been disabled since January 2008. Dr. Hunter provided findings on physical examination and diagnosed a number of conditions, including pain. He found that appellant could work four hours a day with restrictions, which had been recommended in a February 22, 2007 functional capacity evaluation, with no repetitive reaching, pulling or pushing with the left arm. In November 26, 2008 and January 26, 2009 reports, Dr. Hunter noted that appellant continued to have pain in multiple areas in her neck, left shoulder, low back and left hip.² Appellant claimed that she had work-related disability since June 14, 2008.

Appellant requested a hearing before an Office hearing representative. At the February 11, 2009 hearing, counsel asserted that the record contained a wage-earning capacity which was erroneous in that the position appellant performed was outside of her work restrictions. The Office hearing representative stated that the relevant issue was recurrence of total disability as the record did not contain a formal wage-earning capacity determination. Counsel contended that appellant's job requirements were expanded to require her to perform more standing, forward reaching and bending and claimed that she had to leave the position due to her inability to perform these duties. Appellant testified that she started casing mail when she began working six hours a day in late 2007. She had difficulty with the standing, bending, twisting, and reaching she had to perform to case mail, duties she performed most of the time. Appellant denied that she sustained a traumatic injury to her back at work on or about January 11, 2008.

In a May 5, 2009 decision, the Office hearing representative affirmed the Office's August 13, 2008 decision.

² In the January 26, 2009 report, Dr. Hunter stated that he first evaluated appellant on October 29, 2008 and opined that she should not have performed the duties of the modified job assignment as they were outside the restrictions recommended in the functional capacity evaluation of February 22, 2007.

LEGAL PRECEDENT

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she 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 show that 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.³

ANALYSIS

The Office accepted that on May 13, 2006 appellant sustained a left pneumothorax wound, left rib fracture, right arm laceration, left clavicle fracture left sacral fracture and left acetabular fracture due to a vehicular accident at work.⁴ Appellant returned to light-duty work for the employing establishment beginning in September 2006. In September 2007, she began working in a modified letter carrier job for six hours per day. The job restricted appellant from engaging in prolonged standing (more than 30 minutes at a time) or lifting more than three pounds (more than 2 hours per day).⁵ Appellant claimed that she sustained a recurrence of total disability on or after June 14, 2008 due to her May 13, 2006 work injury.

On appeal, appellant's attorney contends that the Office failed to consider whether appellant's wage-earning capacity determination should be modified. The Board finds, however, that the record does not contain such a decision. The December 18, 2007 letter of record advised appellant that the Office was reducing her compensation based on her actual wages. It does not constitute a formal wage-earning capacity determination, contain appeal rights or evaluate appellant's situation under the standards for formal wage-earning capacity determinations. Rather, under the Office's procedure manual, if a claimant is entitled to compensation for partial wage loss after the return to work, the claims examiner is to compute entitlement using the *Shadrick* formula and advise the claimant that compensation will be paid based on actual earnings. Such a letter does not constitute a formal wage-earning capacity determination.⁶ Therefore, the Office properly evaluated appellant's case under the standards for recurrence of disability claims.

Appellant alleged a change in the nature or extent of her light-duty job requirements prevented her from performing her work on and after June 14, 2008. She claimed that the modified letter carrier position actually required her to perform duties, such as standing, which exceeded the duties dictated in the job description. The Board finds appellant did not present

³ *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁴ The Office authorized surgeries performed in May 2006 related to these injuries.

⁵ Appellant stopped working in the position on January 11, 2008 and did not return.

⁶ See Federal (FECA) Procedure Manual, Part 2 – Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.7(b)(2) (December 1995). See also, *V.G.*, Docket No. 07-916 (issued November 15, 2007).

evidence sufficient to support a finding that her light-duty requirements changed such that she was rendered totally disabled as of June 14, 2008.

The Board further finds that appellant did not submit sufficient medical evidence to establish that she sustained a recurrence of total disability on or after June 14, 2008 due to her May 13, 2006 work injury.

In an October 29, 2008 report, Dr. Hunter, an attending Board-certified physical medicine and rehabilitation physician, noted that in September 2006, appellant returned to work four hours a day and did very little lifting. He indicated that she was placed in work for six hours per day in September 2007 but could not tolerate the activity and had been disabled since January 2008. Dr. Hunter provided physical examination findings and diagnosed several conditions, including pain. He stated that appellant could work four hours a day with restrictions which had been recommended in a February 22, 2007 functional capacity evaluation, including no repetitive reaching, pulling or pushing with the left arm. In November 26, 2008 and January 26, 2009 reports, Dr. Hunter noted that appellant continued to have pain in multiple areas in her neck, left shoulder, low back and left hip.

Although Dr. Hunter recommended additional work restrictions, his reports do not establish that appellant sustained a recurrence of total disability on or after June 14, 2008. He did not provide adequate medical rationale in support of his opinion on her capacity for work. His recommendations appear to be based on appellant's self-reporting of problems at work. Dr. Hunter did not explain the findings on examination or diagnostic testing established that she could no longer perform her light-duty requirements. He did not explain the medical process through which appellant's accepted medical conditions worsened and caused such disability for the relevant time period. The record does not contain any other medical evidence recommending work restrictions on or after June 14, 2008.

Appellant has not established 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. Therefore, the Office properly denied her recurrence of disability claim.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a recurrence of total disability on or after June 14, 2008 due to her May 13, 2006 work injury.

ORDER

IT IS HEREBY ORDERED THAT that the May 5, 2009 and August 13, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 5, 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