United States Department of Labor
Employees' Compensation Appeals Board

H.C., Appellant	)	
and	)	**Docket No. 10-354**
	)	**Issued: May 13, 2010**
DEPARTMENT OF VETERANS AFFAIRS, GREATER LOS ANGELES HEALTHCARE SYSTEM, Los Angeles, CA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
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 November 18, 2009 appellant filed an appeal from an October 9, 2009 merit decision of the Office of Workers' Compensation Programs. 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 she sustained a recurrence of disability on December 12, 2007.

FACTUAL HISTORY

On July 25, 1996 appellant, then a 40-year-old pharmacy technician, sustained employment-related sprains to the left knee and lumbosacral spine while retrieving a large box at work. She stopped work that day and returned to limited duty on August 4, 1996.[1]

On December 12, 2007 appellant filed a Form CA-2a recurrence of disability claim stating that on that day, when she found out her case had been closed since 2000, she went into shock and had to go to the emergency room, noting that she had throbbing pain all over her body 24 hours a day.[2] In support of her claim she submitted a December 12, 2007 work status note in which Dr. Timothy L. Carpenter, an osteopath, diagnosed recurrent major depression and advised that appellant was unable to work from December 12 through 25, 2007 because she had been ill.

In a statement received by the Office on December 21, 2007, Dr. Ronald C. Hamm, chief of administrative medicine at the employing establishment, controverted the claim, noting that one of appellant's complaints was an increased volume of work. He stated that her restrictions were honored, noting that she did not perform repetitive pushing and pulling and had to use a cart once or twice a day for a short distance. Dr. Hamm opined that appellant's intervening injuries caused her knee and lumbar spine condition.[3]

By letter dated December 27, 2007, the Office informed appellant of the type evidence needed to support her recurrence claim and in a January 14, 2008 response, she advised that she had been in pain everyday since July 25, 1996 and wanted to change her treating physician. Appellant stated that she was no longer a pharmacy technician because that agency moved to Tucson, Arizona and was now a patient service assistant and timekeeper. She described her medical condition and job duties, stating that she took patient telephone calls and was the supply person. Appellant stated that the day her back went out she had gone to supply to get six boxes of copy paper and that her friend was pushing the cart and made a quick turn.[4] She submitted an additional note from Dr. Carpenter dated December 19, 2007, in which he advised that she should be off work through January 11, 2008. In a December 27, 2007 report, Dr. Bhavesh

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[1] The record indicates that appellant had a nonwork-related knee injury on August 29, 1996 when she was pushed from a bus. She had left knee surgery on November 19, 1996 and in December 1996 reinjured her left knee when she fell in an elevator while visiting her physician. Appellant missed intermittent periods of work thereafter and on September 22, 2000, the Office found that she was not entitled to wage-loss compensation for the claimed periods of disability. The record also contains an Equal Employment Opportunity Commission decision dated April 17, 2000 finding that she was not discriminated against by the employing establishment beginning in May 1996.

[2] Appellant also filed a Form CA-1, traumatic injury claim, for a December 12, 2007 incident. That claim was adjudicated separately by the Office under file number xxxxxx843. Appellant has an appeal before the Board, Docket No. 09-2249, of the denial of the traumatic injury claim. By order dated January 15, 2010, the Board denied appellant's request for an oral argument and noted that the appeal would proceed to decision based on the case record.

[3] *Supra* note 1. Dr. Hamm referenced an undated letter from a Dr. Daniel Paveloff that is not contained in the record before the Board.

[4] It is unclear from her statement if she was hit by the cart.

Robert J. Pandya, Board-certified in internal and occupational medicine, noted appellant's complaint that since 2000 she had ongoing pain in the neck, tailbone, both knees and feet, that she felt stressed and that she was not working. He reported that on January 1, 2007 she fell in a store, provided findings on physical examination, diagnosed chronic low back pain, opioid dependence, cervical pain, left knee pain, bilateral foot pain, status post right big toe fracture and stress reaction and advised that her condition had worsened but that she could continue to work with permanent restrictions.

On January 31, 2008 the Office denied the claim on the grounds that the medical evidence was insufficient to establish that appellant sustained a recurrence of disability on December 12, 2007. In an Office form dated May 5, 2008, postmarked July 8, 2008, she requested reconsideration. Appellant submitted additional medical evidence including a January 29, 2008 report in which Dr. Melanie S. Dewar, a Board-certified internist, diagnosed chronic kidney disease. In reports dated February 4 to November 19, 2008, Dr. Pandya diagnosed chronic low back pain and advised that appellant could continue to work with permanent restrictions. On November 19, 2008 he reported permanent restrictions, dating back to March 31, 1997, of no standing, walking or sitting for more than 1-1/2 hours at a time throughout an 8-hour workday; no repetitive bending, pushing or pulling; and no driving and no repetitive lifting over 15 pounds. On November 28, 2008 Dr. Emelita B. Talag, a psychiatrist, advised that appellant was seen that day and on December 20, 2008 Dr. Anh Quan Quoc Nguyen, an osteopath, stated that she had completed a chronic pain program.

In treatment notes dated December 12, 2007 to April 8, 2008, Dr. Carpenter noted a history of multiple injuries and symptoms of depression. He diagnosed recurrent major depressive disorder, osteoarthritis of the shoulder region, essential hypertension, chronic low back pain, hyperlipidemia, opioid dependence, hyperuricemia, cervical pain, knee pain, foot pain, chronic kidney disease and obesity. On January 21, 2008 Dr. Carpenter advised that appellant should be off work from January 21 through February 6, 2008. Virginia M. Sikorsky, a licensed social worker, provided treatment notes and correspondence dated December 12, 2007 through April 14, 2009. Appellant also submitted family therapist notes dated January 4 and February 7, 2008 and form reports with illegible signatures dated January 13 and 31, 2008.

By decision dated October 9, 2009, the Office denied modification of the January 31, 2008 decision, finding that the evidence submitted was insufficient to establish that appellant sustained a recurrence of disability on December 12, 2007.

LEGAL PRECEDENT

Section 10.5(x) of the Office's 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 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

[5] 20 C.F.R. § 10.5(x); *see Theresa L. Andrews*, 55 ECAB 719 (2004).

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]

When 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 light duty can be performed, the employee has the burden to establish by the weight of reliable, probative and substantial evidence a recurrence of total disability. As part of this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.[7]

ANALYSIS

The Board finds that appellant did not meet her burden of proof to establish that she sustained a recurrence of disability on December 12, 2007 due to her accepted conditions of left knee and lumbosacral sprains caused by a July 25, 1996 employment injury. The record indicates that she had several intervening injuries including being pushed from a bus in August 1996, a fall in an elevator in December 1996 and a fall in a store in January 2007. Furthermore, appellant did not establish that the nature and extent of her injury-related conditions or her modified duties changed on December 12, 2007 so as to prevent her from continuing to perform her limited-duty assignment.[8]

Regarding the treatment notes from Ms. Sikorsky, a social worker, the Board has long held that the reports of a social worker do not constitute competent medical evidence, as a social worker is not a "physician" as defined by section 8101(2) of the Federal Employees' Compensation Act.[9] Dr. Dewar diagnosed kidney disease, not an accepted condition; Dr. Tang merely advised that appellant was seen on January 28, 2008 and Dr. Nguyen noted that appellant had completed a chronic pain program. As none of the physicians discussed the December 12, 2007 employment incident or provided a cause of any condition, their reports are insufficient to establish that appellant sustained a recurrence of disability on December 12, 2007.[10]

On December 12, 2007 the date of the claimed recurrence, Dr. Carpenter diagnosed a recurrent major depression and advised that appellant could not work from December 12 to 25, 2007 and on December 19, 2007 advised that she could not work until January 11, 2008. He also submitted additional treatment notes dated from December 12, 2007 to April 8, 2008, in which

[6] *Id.*

[7] *Shelly A. Paolinetti*, 52 ECAB 391 (2001); *Terry R. Hedman*, 38 ECAB 222 (1986).

[8] *Id*.

[9] Section 8101(a) and the Act provides that "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by state law. 5 U.S.C. § 8101(2); *see Sedi L. Graham*, 57 ECAB 494 (2006). Appellant also submitted unidentified notes from a family therapist and form reports with illegible signatures. Reports lacking proper identification cannot be considered probative medical evidence in support of a claim. *D.D.*, 57 ECAB 734 (2006).

[10] Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship. *Willie M. Miller*, 54 ECAB 697 (2002).

he noted a history of multiple injuries and symptoms of depression, diagnosed recurrent major depressive disorder, osteoarthritis of the shoulder region, essential hypertension, chronic low back pain, hyperlipidemia, opioid dependence, hyperuricemia, cervical pain, knee pain, foot pain, chronic kidney disease and obesity and advised that appellant should be off work from January 21 through February 6, 2008. Dr. Carpenter, however, did not discuss the claimed December 12, 2007 incident or the cause of any of the diagnosed conditions, none of which, including an emotional condition, have been accepted as employment related. Furthermore, he did not demonstrate any knowledge of the job requirements of appellant's modified assignment. Dr. Carpenter's reports are therefore insufficient to meet her burden.

In reports dating from December 27, 2007 to November 19, 2008, Dr. Pandya noted appellant's complaint that since 2000 she had ongoing pain in the neck, tailbone, both knees and feet and that she felt stressed. He also reported that on January 1, 2007 she fell in a store. Dr. Pandya advised that while her condition had worsened, she could continue to work with permanent restrictions and like the other physicians mentioned above, he did not mention the December 12, 2007 incident or provide a specific cause of any of his diagnosed conditions.[11]

It is appellant's burden of proof to submit the necessary medical evidence to establish a claim for a recurrence.[12] The record in this case does not contain a medical report providing a reasoned medical opinion that her claimed recurrence of disability on December 12, 2007 was caused by the accepted conditions.[13] She therefore did not show a change in the nature and extent of the conditions caused by the July 25, 1996 employment injury.[14] While appellant stated that her job duties changed when the pharmacy mail program was moved to Tucson, she did not specifically allege that the physical requirements of her light-duty job were altered to exceed her physical restrictions of no standing, walking or sitting for more than 1-1/2 hours at a time through an 8-hour workday, no repetitive bending, pushing or pulling and no driving and no repetitive lifting over 15 pounds and Dr. Hamm advised that her restrictions were honored.[15]

CONCLUSION

The Board finds that appellant did not establish that she sustained a recurrence of disability on December 12, 2007.

[11] *Id*.

[12] *Beverly A. Spencer*, 55 ECAB 501 (2004).

[13] *Cecelia M. Corley*, 56 ECAB 662 (2005).

[14] *Theresa L. Andrews*, *supra* note 5.

[15] *See Shelly A. Paolinetti*, *supra* note 7.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 9, 2009 be affirmed.

Issued: May 13, 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