United States Department of Labor
Employees' Compensation Appeals Board

R.F., Appellant	)	
and	)	**Docket No. 10-548**
	)	**Issued: October 26, 2010**
U.S. POSTAL SERVICE, PITTSBURGH PERFORMANCE CLUSTER, Pittsburgh, PA, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On December 22, 2009 appellant, through counsel, filed a timely appeal of the November 19, 2009 merit decision of the Office of Workers' Compensation Programs.[1] Pursuant to 5 U.S.C. § 8149 and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether appellant is entitled to wage-loss benefits for total disability from June 3, 2009.

[1] The Office issued a July 7, 2009 decision denying appellant's schedule award claim. As appellant's representative has not appealed this merit decision, it is not being considered herein by the Board. *See* 20 C.F.R. § 501.

FACTUAL HISTORY

On January 14, 2005 appellant, then a 52-year old letter carrier, filed a claim alleging that she sustained carpal tunnel syndrome, neck and shoulder pain as a result of her employment duties. The Office accepted her claim for cervicalgia.

On October 27, 2005 appellant's treating physician, Dr. Yvonne Braver, Board-certified in internal medicine, provided work restrictions, including: lifting and carrying a maximum of two pounds; performing activities involving fine manipulation for no more than two hours per day; sitting for no more than two hours continuously and five hours intermittently; no driving, climbing, kneeling, bending, stooping or reaching above the shoulder.

On November 7, 2005 appellant returned to work in a limited-duty position as a modified carrier. Her duties included lifting and carrying -- two hours per day; sitting -- four to six hours per day; delivery confirmation and overtime list -- four hours per day. All duties were to be "assigned within restrictions." The daily physical requirements of the position were identified as: sitting 4 to 6 hours; standing 30 minutes; lifting 2 hours; fine manipulation 2 hours. Appellant accepted several subsequent offers of modified duty, all of which included some degree of filing, fine manipulation and lobby sweeps.

On April 27, 2009 appellant accepted another modified position as a limited duty carrier. Duties included overtime alert, holding mail, "voyager," and "all other duties assigned within restrictions." Physical requirements involved lifting/carrying 2 hours; sitting 4 to 6 hours; standing 3 to 5 minutes at a time (30 minutes per day); walking 10 minutes at a time (1 hour per day); fine manipulation 2 hours per day.

On June 2, 2009 the employer offered appellant a limited-duty assignment with the following duties: lobby "sweeps" (picking up "hold" mail or retrieving "certifieds") -- 10 minutes, four times per day; overtime list, hold mail and "voyager" (matching gas receipts with credit card charges) -- 1 hour per day; answering telephones -- 8 hours per day; area P.M. call-in (record "all-clear" calls from area stations) -- 1 hour per day. Physical requirements included: lifting up to two pounds -- one hour per day; fine manipulation -- one to two hours per day intermittently; walking one hour per day and sitting seven hours per day. Appellant refused the June 2, 2009 limited-duty offer on the grounds that it violated her restrictions."[2] On June 13, 2009 she requested wage-loss compensation commencing June 3, 2009, claiming that she was being worked outside her limited-duty requirements.[3]

By letter dated July 8, 2009, the Office found that the evidence did not establish that the modified assignment appellant had been offered on June 1, 2009 was outside of her physical restrictions.[4] Further, it advised appellant that in order to substantiate her claims for wage loss, contemporaneous medical evidence would have to be provided explaining if and how this

[2] The June 2, 2009 offer clarified a June 1, 2009 offer of modified duty regarding appellant's lifting capacity and fine manipulation requirement.

[3] Additional Form CA-7s were filed for consecutive periods after that date.

[4] Although the letter is dated 2008, the dates in the letter refer to 2009 and is clearly a 2009 letter.

modified-duty assignment adversely affected her physical condition and directly resulted in her work stoppage.

In a letter dated July 18, 2009, appellant stated that the April 2009 job offer was within her restrictions but that the June 2009 offers were not. She provided a July 13, 2009 duty status report from her physician, which she contended represented her current limitations.

In a July 13, 2009 report, Dr. Braver diagnosed cervical and lumbar radiculopathy. She recommended that appellant be restricted from lifting more than two pounds; sitting more than 2 hours continuously, or 5 hours intermittently (5 to 6 hours per day); walking more than 10 minutes -- 1 hour per day; simple grasping more than 1 hour continuously or 2 hours intermittently; or standing more than 3 minutes at a time -- 30 minutes per day. Appellant was precluded from climbing, bending, stooping, reaching above the shoulder and fine manipulation, including keyboarding.

By decision dated August 11, 2009, the Office denied appellant's wage-loss claim. It found that there was insufficient medical evidence to support her work stoppage, or to explain how her medical condition had changed such that the job offer was no longer appropriate.

By letter dated September 1, 2009, appellant requested reconsideration. She contended that the requirement of answering telephones and performing lobby sweeps exceeded her fine manipulation and grasping restrictions.

In an August 5, 2009 report, Dr. Braver stated that appellant had been "chronically disabled due to the effects of cervical disc degeneration, rotator cuff injury, carpal tunnel syndrome, degenerative arthritis of the lumbar spine and osteoarthritis of the knee. She has been on limited duty for these concerns since March 2002." Dr. Braver restricted appellant from lifting more than 10 pounds, moving repetitively with the shoulders and legs, prolonged standing, pushing or pulling more than 20 pounds and more than two hours of fine manipulation or one hour of grasping. She noted that there had been "some improvement in her symptoms but they are exacerbated by overuse."

On August 31, 2009 Dr. Braver stated that the June 1, 2009 job offer was "inappropriate." Specifically, appellant would be unable to perform regular lobby sweeps of 10 minutes four times a day because "it is not possible to gauge the weight of packages." Dr. Braver found appellant limited to "one time maximum carry of seven pounds." Further, she found appellant "unable to sit and answer a [tele]phone eight hours a day with associated computerized and written documentation unless she is provided with an appropriate headset and ergonomic desk and chair" due to "radicular symptoms for cervical degenerative arthritis." Dr. Braver limited walking to six minutes at a time due to osteoarthritis of the knees. Appellant could sit for 80 minutes at a time and "fine manipulation would require proper ergonomics to be performed comfortably."

By decision dated November 19, 2009, the Office denied modification of its prior decision, finding the medical evidence insufficient to establish a material worsening of her accepted work-related condition or that appellant was incapable of performing the limited-duty assignment.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of proof to establish the essential elements of her claim by the weight of the evidence.[5] For each period of disability claimed, the employee has the burden of establishing that she was disabled for work as a result of the accepted employment injury.[6] Whether a particular injury causes an employee to become disabled for work and the duration of that disability, are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.[7] To meet her burden, a claimant must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting a causal relationship between the alleged disabling condition and the accepted injury.[8]

Under the Act, the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.[9] Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.[10] An employee who has a physical impairment causally related to her federal employment, but who nonetheless has the capacity to earn the wages she was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.[11] When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in her employment, she is entitled to compensation for any loss of wages.[12]

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a limited-duty position or the medical evidence establishes that she can perform the limited-duty position, the employee has the burden of proof to establish a recurrence of total disability and that she cannot perform such limited-duty work. As part of this burden, the employee must show a change in the nature or extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.[13]

---

[5] 5 U.S.C. § 8101 *et seq.*; *see Amelia S. Jefferson*, 57 ECAB 183 (2005); *see also Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

[6] *See Amelia S. Jefferson*, *supra* note 5; *see also David H. Goss*, 32 ECAB 24 (1980).

[7] *See Edward H. Horton*, 41 ECAB 301 (1989).

[8] *A.D.*, 58 ECAB 166 (2006).

[9] *S.M.*, 58 ECAB 149 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Conard Hightower*, 54 ECAB 796 (2003); 20 C.F.R. § 10.5(f).

[10] *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

[11] *Merle J. Marceau*, 53 ECAB 197 (2001).

[12] *Id*.

[13] *See John I. Echols*, 53 ECAB 481 (2002); *Terry R. Hedman*, 38 ECAB 222 (1986).

The Office's definition of 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. The term also means the inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to her work-related injury or illness is withdrawn, except for when such withdrawal occurs for reasons of misconduct, nonperformance of the job duties, or a reduction-in-force (RIF).[14] The Board has held that when a claimant stops work for reasons unrelated to the accepted employment injury, there is no disability within the meaning of the Act.[15]

The Board has held that whether a particular injury causes an employee to be disabled for work is a medical question that must be resolved by competent and probative medical evidence.[16] The weight of medical opinion is determined on the report of a physician, who provides a complete and accurate factual and medical history, explains how the claimed disability is related to the employee's work and supports that conclusion with sound medical reasoning.[17]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that she sustained a recurrence of disability beginning June 3, 2009. Appellant did not allege that she experienced a change in the nature or extent of her employment-related condition. Rather, she alleged that her recurrence was the result of a change in the nature and extent of her light-duty assignment, such that she was unable to perform the duties of the job. The evidence of record does not support her claim.

Appellant had been working in various light-duty positions since November 7, 2005. It was the offer of the new light-duty position in June 2009 that triggered the present claim. Appellant refused the offer, claiming that duties in the new position description exceeded her medical restrictions, including those involving grasping and fine manipulation. A comparison, however, of the duties outlined in the June 2009 job offer with those described in her most recent position description establish her assertion to be incorrect. The Board notes that the restrictions for the physical requirements of the modified position accepted by appellant on April 27, 2009 included fine manipulation of two hours per day. The June 2, 2009 modified job offer called for "fine manipulation" for one to two hours a day intermittently. Appellant further contended that the additional requirement of answering telephones 8 hours a day, 40 minutes of lobby sweeps (picking up hold mail and/or retrieving certified mail for customers in the lobby) and doing four 30-minute reports would put her over her "fine manipulation" restriction. The record reflects,

[14] *See* 20 C.F.R. § 10.5(x).

[15] *See John I. Echols, supra* note 13; *John W. Normand*, 39 ECAB 1378 (1988). Disability is defined to mean the incapacity because of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total. *See* 20 C.F.R. § 10.5(f).

[16] *See R.C.*, 59 ECAB 546 (2008); *Carol A. Lyles*, 57 ECAB 265 (2005); *Donald E. Ewals*, 51 ECAB 428 (2000).

[17] *Sandra D. Pruitt*, 57 ECAB 126 (2005).

however, that appellant had been performing many of these duties, including lobby sweeps overtime alert, holding mail, "voyager," and "all other duties assigned within restrictions," since she returned to work on November 7, 2005. The Board finds that the duties delineated and the physical requirements of the June 2, 2009 limited-duty position offered were substantially the same as those previously performed by appellant.

There is also insufficient medical evidence to establish that appellant's claimed disability to perform those duties was causally related to her accepted employment injury. On August 5, 2009 Dr. Braver stated that appellant's restrictions were due to all of her medical conditions, including "cervical disc degeneration, rotator cuff injury, carpal tunnel syndrome, degenerative arthritis of the lumbar spine and osteoarthritis of the knee." On May 6, 2009 she provided restrictions for "central/lumbar radiculopathy." Dr. Braver's July 13, 2009 restrictions were for "cervical and lumbar radiculopathy." August 13, 2009 restrictions were for "cervical radiculopathy and OA [osteoarthritis] knees." The reports did not identify which restrictions were specific to appellant's cervicalgia condition, rather than her other diagnosed conditions. Therefore, they are insufficient to establish the required causal relationship between the recommended restrictions and appellant's accepted condition.

Dr. Braver's August 31, 2009 report also fails to establish that the recommended restrictions were causally related to appellant's cervicalgia condition. Restrictions regarding sitting and answering telephones (with associated computerized documentation) were "due to radicular symptoms for cervical degenerative arthritis," and walking limitations addressed osteoarthritis of the knees. Neither of these conditions was accepted by the Office. Dr. Braver did not explain whether the lifting and fine manipulation restrictions were due to the accepted condition or other nonemployment-related conditions. The Board notes that appellant had been performing sweeping activities and operating under a two-pound lifting restriction since November 2005 and the June 2009 modified position did not require her to exceed that lifting restriction. The medical evidence is insufficient to establish that the offered position was outside appellant's restrictions due to her accepted condition.[18]

Further, the restrictions focus on a concern that doing certain duties might lead to further exacerbation of her employment-related condition. The Board has consistently held that fear of future injury is not compensable.[19] Dr. Braver's concerns of future exacerbation do not establish that appellant is currently unable to perform the duties of the job.

Appellant has not alleged that her claimed recurrence was the result of a change in the nature and extent of her employment-related condition. Nonetheless, the Board has reviewed the record and finds appellant's submission of medical evidence insufficient to reflect any worsening of her work-related condition of cervicalgia. On the contrary, the medical evidence suggests her conditions are improving.

It is appellant's burden of proof to provide evidence from a qualified physician to support the recurrence of total disability for any period of time. The Board finds that appellant did not

[18] *See T.E.*, Docket No. 09-2040 (issued July 27, 2010).

[19] *See Calvin E. King*, 51 ECAB 394 (2000).

establish that she sustained a recurrence of disability beginning June 3, 2009 due to a change in the nature or extent of her accepted condition or a change in the nature and extent of the light-duty job requirements.[20] Accordingly, the Board finds the Office properly denied appellant's claim for recurrence.

CONCLUSION

The Board finds that appellant has not established that she is entitled to wage-loss benefits for total disability beginning June 3, 2009 causally related to her accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 19, 2009 is affirmed.

Issued: October 26, 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

[20] Appellant's representative had argued that by changing the duties of her position, the employing establishment had effectively withdrawn appellant's light-duty position. As the Board finds the duties of the June 2009 position to be substantially similar to her light-duty position, appellant's argument is not persuasive.