

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

Y.T., Appellant

and

**U.S. POSTAL SERVICE, JOHN T. BUCHANAN
POST OFFICE, Chicago, IL, Employer**

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**Docket No. 10-60
Issued: September 14, 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 October 5, 2009 appellant filed a timely appeal of the April 7, 2009 merit decision of the Office of Workers' Compensation Programs' hearing representative, 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 sustained a recurrence of total disability commencing August 14, 2008 causally related to her employment-related injuries.

On appeal appellant contends that the requirements of her limited-duty position caused continuing residuals of her accepted employment-related conditions as they exceeded the physical restrictions set forth by attending physicians and an Office referral physician. She argues that this position involved essentially the same duties as her regular-duty position.

FACTUAL HISTORY

On May 10, 2007 appellant, then a 39-year-old letter carrier, filed an occupational disease claim alleging that while delivering mail on May 1, 2007 she felt a tingling sensation in her left index finger, thumb and arm. Her upper back and shoulders throbbed which continued through the filing date of her claim.¹ Appellant stopped work on May 10, 2007. On July 24, 2007 the Office accepted her claim for left carpal tunnel syndrome and aggravation of degenerative disc disease at C5-6 and C6-7.

Appellant underwent a functional capacity evaluation (FCE) on January 11, 2008. The test revealed that she did not meet the lifting requirement of her letter carrier position. She could perform light-medium work which required lifting up to 35 pounds occasionally with frequent lifting and/or carrying objects weighing up to 20 pounds. The letter carrier position was classified as medium-heavy work and required lifting up to 75 pounds occasionally with frequent lifting and/or carrying objects weighing up to 35 pounds. A description of the letter carrier position required lifting and/or carrying objects weighing up to 70 pounds.

In a February 27, 2008 medical report, Dr. Charles M. Slack, an attending Board-certified orthopedic surgeon, noted appellant's upper back, neck and left forearm symptoms. He listed his essentially normal findings on physical examination with decreased sensation over the dorsum of the left hand and reviewed the January 11, 2008 FCE results. Dr. Slack advised that appellant had persistent cervical derangement associated with her employment-related aggravation of cervical degenerative disc disease. He opined that she was not able to perform her letter carrier work duties. Appellant's return to work would have to fall within the FCE results. In a February 27, 2008 work capacity evaluation (Form OWCP-5c), Dr. Slack listed appellant's physical restrictions. He limited her to sitting up to six hours per day, walking, standing and reaching one to two hours, reaching above the shoulder occasionally with 10 pounds, one to two hours and twisting, bending and stooping zero to one hour. Appellant was restricted from engaging in repetitive movements with her wrists, pushing up to 34 pounds, pulling up to 22 pounds and lifting up to 25 pounds, two to three hours per day, squatting zero to one hour and climbing. Dr. Slack ordered a 5 to 10 minute break every 1 to 2 hours.

On May 7, 2008 the employing establishment advised that appellant returned to full-time limited-duty work on April 9, 2008.

By letter dated May 6, 2008, the Office referred appellant, together with a statement of accepted facts and medical record to, Dr. Jeffrey M. Tioco, a Board-certified orthopedic surgeon, for a second opinion medical examination to determine the nature and extent of any continuing employment-related disability and ability to work full time with no restrictions. In a June 2, 2008 report, Dr. Tioco obtained a history of appellant's employment-related injuries and medical treatment. He noted her complaints of persistent neck pain with left upper extremity radiation, weakness and numbness. Appellant was able to carry heavy objects with her left arm. Dr. Tioco listed his essentially normal findings on physical examination with decreased range of motion of

¹ This case has previously been before the Board. In a May 11, 2009 decision, the Board affirmed the Office's July 7, 2008 decision finding that appellant received an overpayment in the amount of \$2,044.06 for which she was at fault. Docket No. 08-2261 (issued May 11, 2009).

the cervical spine with mild radiculopathy in the left upper extremity. He advised that appellant had reached maximum medical improvement regarding the employment-related conditions. Appellant would continue to suffer from residuals of these conditions which included left arm weakness and numbness and neck pain. Dr. Tioco opined that appellant was unable to return to her letter carrier position as the work requirements of this position could worsen her diagnosis. In an accompanying Form OWCP-5c, he listed her permanent work restrictions.²

After returning to full-time limited-duty work on May 11, 2008, appellant stopped work on July 18, 2008 as work was no longer available. She returned to full-time limited-duty work on July 26, 2008. Appellant stopped work again on August 15, 2008. On September 6, 2008 she filed a claim alleging that she sustained a recurrence of disability commencing August 14, 2008 due to her accepted employment injuries. Appellant stated that upon her return to limited-duty work, her condition was mild. As she continued to work her pain slowly increased. She could not lift, bend, push or pull within a 10 to 15-pound restriction. On the claim form, the employing establishment stated that it offered appellant a limited-duty position to accommodate her limitations due to the accepted employment-related injuries.

By letter dated September 19, 2008, the Office requested that appellant submit factual and medical evidence in support of her claim.

Disability certificates dated August 14 and September 3, 2008 from Dr. Harold T. Pye, an attending orthopedic surgeon, advised that appellant was totally disabled for work from August 14 through an illegible date in September 2008.

By decision dated November 25, 2008, the Office denied appellant's recurrence of disability claim. The medical evidence was found insufficient to establish that she sustained a recurrence of total disability commencing August 14, 2008 due to her accepted employment-related injuries.

On December 17, 2008 appellant requested a review of the written record by an Office hearing representative. In a December 15, 2008 prescription, Dr. Pye ordered physical therapy to treat appellant's bilateral carpal tunnel syndrome and cervical herniated disc. In a February 23, 2009 prescription, Dr. Pye ordered pain management treatment for appellant's cervical herniated nucleus pulposus at C5-6 and sprain.

In a December 22, 2008 report, Dr. Pye noted appellant's complaints of sharp shooting, radicular pain radiating down her neck, left shoulder into her left forearm and hand. Her pain progressively worsened while attempting to perform various repetitive tasks in her current letter carrier position. Appellant experienced intermittent pain, which she rated as 8 out of 10 when she carried, lifted, pushed or pulled objects weighing more than a few pounds. Her pain also increased when she performed any activities that required reaching overhead or repetitive pinching and grasping. Appellant stated that repetitive grasping, pinching and sustained reaching activities were required to case mail into trays and tubs which aggravated her accepted employment-related conditions. The constant requirement to load multiple loads of heavy trays and tubs of mail into hampers required repetitive bending, twisting, squatting, pushing, pulling,

² The Board notes that Dr. Tioco's Form OWCP-5c is not contained in the case record.

lifting and carrying. Appellant pushed and pulled heavy carts loaded with parcels and mail sacks throughout the station. She carried multiple bundles of mail with both hands which required repetitive pinch and grasp movements. Appellant also carried a mail sack that weighed more than 60 to 70 pounds when it was full. On physical examination, Dr. Pye listed essentially normal findings with diffuse paracervical muscle spasm from C4-T5, more on the left than right, full active range of motion of the neck with discomfort at extremes of extension and flexion and diminished grip strength, more on the left than right based on Jamar Dynamometer testing. He reviewed diagnostic test results regarding appellant's cervical spine which showed degenerative disc disease at multiple levels, reversal of normal cervical lordosis at C5-6, left broad-based para-centrals disc protrusion-osteophyte complex at C5-6, degenerative disc disease at C5-6 and C6-7 and facet arthropathy. Dr. Pye diagnosed left wrist carpal tunnel syndrome, cervical herniated disc, cervicalgia and myofascial pain syndrome. He opined that appellant's preexisting cervical conditions were directly aggravated and accelerated by the repetitive tasks she performed as a letter carrier. Dr. Pye planned to place her on work restrictions.

In an August 1, 2008 report, Dr. Bhagwan T. Shahani, a Board-certified physiatrist, listed his essentially normal findings on physical examination with limited range of motion and pain in appellant's neck, right anterior shoulder tenderness. Dr. Shahani advised that she had pain in the left arm and cervical radiculopathy.

By decision dated April 7, 2009, an Office hearing representative affirmed the Office's decision, finding that appellant did not sustain a recurrence of disability commencing August 14, 2008 causally related to her accepted employment-related injuries. The medical evidence was found insufficient to establish a change in the nature and extent of her employment-related conditions or that she could not perform the requirements of her limited-duty position.

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.³ 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.⁴

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 of record establishes that she 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 she cannot perform such limited-duty work. As part of this burden,

³ 20 C.F.R. § 10.5(x).

⁴ *Id.*

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.⁵

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 accepted injury or condition disabled the claimant for work on and after the date of the alleged recurrence of disability.⁶

ANALYSIS

The Board finds that this case is not in posture for decision. The Office denied appellant's recurrence of disability claim on the grounds that she did not submit sufficient medical evidence establishing a change in the nature and extent of her employment-related conditions or that she could not perform the requirements of her limited-duty position such that she sustained a recurrence of total disability commencing August 14, 2008. Appellant alleged a change in the nature and extent of the limited-duty job requirements as the physical requirements of the position exceeded the physical restrictions established by Dr. Slack and Dr. Pye, attending physicians and Dr. Tioco, an Office referral physician. She stated that she could not lift, bend, push or pull within a 15 to 20-pound restriction.

On December 22, 2008 appellant informed Dr. Pye that her employment-related conditions were aggravated when she performed tasks such as, casing mail into trays and tubs which required repetitive grasping, pinching, reaching overhead and pinching. She stated that loading multiple loads of heavy trays and tubs of mail into hampers required her to bend, twist, squat, push, pull, lift and carry on a repetitive basis. Appellant further stated that she pushed and pulled heavy carts loaded with parcels and mail sacks throughout the station. She carried multiple bundles of mail with both hands which required repetitive pinch and grasp movements. Appellant also carried a mail sack that weighed more than 60 to 70 pounds when it was full. However, the Board notes that a description of appellant's limited-duty job requirements is not contained in the record. The Board further notes that although, Dr. Tioco stated in his June 2, 2008 report that appellant could not perform her regular duties as a letter carrier as she would continue to suffer from residuals of the accepted employment injuries, his Form OWCP-5c listing her physical restrictions is not contained in the record.

Although, it is appellant's burden to establish her claim, the Office is not a disinterested arbiter, but rather, shares responsibility in the development of the evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other government source.⁷ In order to properly adjudicate the claim, it is important to secure evidence regarding appellant's actual limited-duty job requirements. While the employing establishment provided brief statements that appellant had returned to full-time limited-duty work on several occasions prior to the claimed recurrence of disability, they did not contain the information

⁵ *Barry C. Petterson*, 52 ECAB 120 (2000); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁶ *James H. Botts*, 50 ECAB 265 (1999).

⁷ *See Claudia A. Dixon*, 47 ECAB 168 (1995).

necessary for a determination of whether appellant has established a change in the nature and extent of her limited-duty job requirements. The employing establishment is responsible for submitting the relevant factual and medical evidence in its possession.⁸

On remand the Office should obtain relevant evidence from the employing establishment regarding appellant's limited-duty job requirements and the extent of any repetitive activities performed. After such further development as deemed necessary, it should issue an appropriate decision.

CONCLUSION

The Board finds that this case is not in position for decision.

ORDER

IT IS HEREBY ORDERED THAT the April 7, 2009 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision.

Issued: September 14, 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

⁸ 20 C.F.R. § 10.118(a).