United States Department of Labor
Employees' Compensation Appeals Board

V.R., Appellant	)	
and	)	**Docket No. 10-444**
	)	**Issued: September 20, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Portland, OR, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 7, 2009 appellant filed a timely appeal from the June 12, 2009 merit decision of the Office of Workers' Compensation Programs denying his recurrence of total 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 his burden of proof to establish that he sustained a recurrence of disability commencing February 13, 2009 due to his accepted employment injuries.

FACTUAL HISTORY

In October 1992, the Office accepted that appellant, then a 33-year-old distribution clerk, sustained a cervical sprain due to his repetitive work duties, including sorting and casing mail.[1]

[1] The Office had previously accepted that appellant sustained a sprain of his lumbar region due to bending and lifting at work on October 25, 1988.

It paid wage-loss compensation for periods of disability. Appellant began work in a limited-duty position, which restricted various duties, including lifting and keying.

In early 2009, appellant was working in a limited-duty position as a general clerk, which did not require lifting, carrying, pushing or pulling more than five pounds, working at or above shoulder level, engaging in repetitive keying, being exposed to temperature extremes (particularly cold) or working overtime.[2] He stopped work on February 13, 2009 and filed a claim alleging that he sustained a recurrence of total disability that day due to his accepted work injuries. Appellant stated that on February 5, 2009 his supervisor gave him a November 18, 2008 letter, which indicated that his limited-duty position was going to be abolished and that he would have to bid on a new position.[3] He indicated that he did not wish to reinjure himself so he stopped work before he was placed in a new job.

In a March 11, 2009 report, Dr. Victor Breen, an attending Board-certified preventive medicine physician, stated that since 2004 appellant had permanent work restrictions which restricted him from lifting, carrying, pushing or pulling more than five pounds, working at or above shoulder level, engaging in repetitive keying, being exposed to temperature extremes (particularly cold) or working overtime. Appellant reported that he had been off work since February 13, 2009 due to neck pain, mostly on the left. He noted that he was to be reassigned to different work that was not within his restrictions and that his employer wanted him to return to a job that required heavy lifting. Dr. Breen took grip strength readings and listed myofascial neck pain, as the primary encounter diagnosis. He stated that appellant should continue with his work restrictions and that he was not interested in neck surgery.

In March 11, 2009 report, Dr. Breen provided the same work restrictions and stated, "I understand that [appellant] has not been at work since February 13, 2009. Had I seen [him] on that date I would [have] listed the restrictions since that date." On April 1, 2009 he reiterated the same work restrictions. Dr. Breen indicated that appellant could lift up to 5 pounds continuously and up to 30 pounds intermittently. Appellant could engage in simple grasping and fine manipulation for eight hours a day, but he could not reach above his shoulders. Dr. Breen stated that appellant reported having problems with his neck pain after several hours of work sorting mail into sacks.

The record contains a copy of a March 13, 2009 offer by the employing establishment of a modified position of mail processing clerk. The position required lifting, carrying, pulling and pushing up to five pounds. The position did not require working above the shoulders.[4] Appellant signed the document on March 13, 2009 indicating that he was accepting the position under protest. He asserted that his prior modified job was a "desk job" and did not require distributing mail for eight hours a day.

[2] These restrictions were based on permanent work restrictions provided by Dr. Jock T. Pribnow, an attending Board-certified occupational medicine physician.

[3] The record contains a copy of the November 18, 2008 letter.

[4] The position required the distribution of some types of mail for one to eight hours a day.

On April 17, 2009 the Office requested that appellant submit additional factual and medical evidence in support of his claim. In an April 22, 2009 statement, appellant contended that he stopped work because his job was being changed to include duties beyond his work restrictions.[5] In a May 22, 2009 form report, Dr. Breen advised that appellant could lift up to 5 pounds continuously and up to 30 pounds intermittently. He stated that appellant could engage in simple grasping and fine manipulation for eight hours a day, but he could not reach above his shoulders.

In a June 12, 2009 decision, the Office denied appellant's claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained a recurrence of disability on or after February 13, 2009 due to his accepted employment injuries.[6]

LEGAL PRECEDENT

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he 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 he 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.[7]

ANALYSIS

In October 1992, the Office accepted that appellant sustained a cervical sprain due to his repetitive work duties.[8] In early 2009, appellant was working in a limited-duty position as a general clerk which, in accordance with medical restrictions from an attending physician, did not require lifting, carrying, pushing or pulling more than five pounds, working at or above shoulder level, engaging in repetitive keying, being exposed to temperature extremes (particularly cold) or working overtime. He stopped work on February 13, 2009 and filed a claim alleging that he sustained a recurrence of total disability on that date due to his accepted work injuries.

[5] Appellant indicated that he had to work as mail processing clerk and submitted a document indicating that this position required heavy lifting and exposure to temperature extremes. The record also contains February 23 and March 3, 2009 documents in which the employing establishment advised him that he had to submit valid reasons for stopping work on February 13, 2009. In a May 13, 2009 letter, the employing establishment advised appellant that he would be suspended for seven days starting June 13, 2009 for failure to show good cause for not returning to work.

[6] The record contains a June 11, 2009 letter in which the Office stated that it was accepting appellant's recurrence of disability claim and expanding his accepted conditions to include cervicalgia and brachial neuritis or radiculitis. In its June 12, 2009 decision, the Office determined that this letter was issued in error.

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

[8] The Office had previously accepted that appellant sustained a sprain of his lumbar region on October 25, 1988.

Appellant claimed that he sustained a recurrence of total disability on February 13, 2009 because his job was being changed to include duties beyond his work restrictions.[9] Although he contended that he worked in such a position prior to stopping work on February 13, 2009 he did not submit evidence showing that this actually occurred. Rather, appellant advised that he did not wish to reinjure himself so he stopped work before he was placed in the new job. Moreover, it appears that the modified position of mail processing clerk that the employing establishment offered on March 13, 2009 was within his work restrictions.[10] The evidence of record shows that when appellant stopped work on February 13, 2009 he had limited-duty work within his work restrictions available to him. Therefore, he has not shown that he sustained a recurrence of total disability commencing February 13, 2009 due to a change in the nature and extent of his limited-duty requirements.

Appellant submitted medical reports from Dr. Breen, an attending Board-certified preventive medicine physician, who provided work restrictions which were in accordance with the duties of the limited-duty work appellant performed in early 2009. Dr. Breen restricted appellant from lifting, carrying, pushing or pulling more than five pounds, working at or above shoulder level, engaging in repetitive keying, being exposed to temperature extremes (particularly cold) or working overtime.[11] The medical evidence does not establish that appellant sustained a recurrence of disability on or after February 13, 2009 due to his accepted employment injuries. Therefore, appellant also did not show that he sustained a recurrence of total disability due to a change in the nature and extent of his injury-related condition and the Office properly denied his claim.

CONCLUSION

The Board finds that appellant did not meet met his burden of proof to establish that he sustained a recurrence of disability on or after February 13, 2009 due to his accepted employment injuries.

[9] Appellant stated that on February 5, 2009 his supervisor gave him a November 18, 2008 letter, which indicated that his limited-duty position was going to be abolished and that he would have to bid on a new position. The record contains a copy of a March 13, 2009 offer by the employing establishment of a modified position of mail processing clerk. The position required lifting, carrying, pulling and pushing up to five pounds and distributing some types of mail for one to eight hours a day. The position did not require working above the shoulder.[9] Appellant signed the document in March 13, 2009 indicating that he was accepting the position under protest.

[10] Appellant submitted a document suggesting that the position of mail processing clerk required heavy lifting and exposure to temperature extremes, but the actual offer made to appellant had no such requirements.

[11] In April 1 and May 20, 2009 reports, Dr. Breen indicated that appellant could lift up to 5 pounds continuously and up to 30 pounds intermittently. Appellant could engage in simple grasping and fine manipulation for eight hours a day, but he could not reach above his shoulders. These restrictions would not prevent appellant from performing his limited-duty work on or after February 13, 2009.

ORDER

IT IS HEREBY ORDERED THAT the June 12, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 20, 2010
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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