

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

A.W., Appellant)
and) Docket No. 10-1352
U.S. POSTAL SERVICE, POST OFFICE,) Issued: April 6, 2011
St. Louis, MO, Employer)

)

Appearances:

Appellant, pro se

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 15, 2010 appellant filed a timely appeal from a March 8, 2010 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act (the Act)¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant has established a recurrence of disability commencing December 9, 2009 causally related to her February 5, 2009 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the issuance of the March 8, 2010 Office decision and on appeal, appellant submitted new evidence. However, the Board is precluded from reviewing evidence which was not before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1). Appellant may resubmit this evidence, together with a formal written request for reconsideration to the Office, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606.

FACTUAL HISTORY

On April 15, 2010 appellant, then a 50-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that her body hurt “all over” after she twisted her left ankle and fell on damaged steps in the performance of duty on February 5, 2009.

On March 25, 2009 the Office accepted appellant’s claim for neck sprain, contusion of left shoulder, left ankle sprain and back sprain in the lumbar region.³

Appellant submitted a December 9, 2009 emergency department summary by Yolanda A. Acklin, a nurse practitioner, who diagnosed cervical sprain. Ms. Acklin noted that appellant presented with neck pain from lifting at work and reported that appellant had a magnetic resonance imaging scan when she hurt her neck in February 2009.

On January 13, 2010 appellant filed a notice of recurrence (Form CA-2a) for neck and shoulder pain which commenced on December 9, 2009 as she was pulling down mail. She stopped work on December 9, 2009. Appellant stated that after returning to work after the February 5, 2009 employment injury she was unable to work her entire route for five months and described the December 9, 2009 pain as “the same” pain she experienced since the original employment injury.

On February 4, 2010 the Office requested additional factual and medical information from appellant. It allotted her 30 days to submit additional evidence and respond to its inquiries.

Appellant submitted a report dated February 11, 2010 by Dr. Fred J. Balis, a Board-certified internist, who reported that he saw appellant on February 10, 2009 after she was “involved in a motor vehicle accident while driving for the employing establishment and suffered a significant head and neck trauma.” Also, later that day, she stumbled and fell at work injuring her left shoulder. In a duty status report (Form CA-17) dated January 26, 2010, Dr. Balis indicated that he examined appellant on December 10, 2009 and diagnosed her with left cervical radiculopathy. He advised appellant to resume work on January 12, 2010 with restrictions on walking and lifting over 10 pounds.

By decision dated March 8, 2010, the Office denied appellant’s claim for a recurrence of disability for the period December 9, 2009 through January 11, 2010 on the basis that the medical evidence submitted was insufficient to establish that she sustained a recurrence of disability commencing on December 9, 2009, causally related to the February 5, 2009 employment injury.

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 has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that

³ On July 16, 2009 appellant filed a claim for compensation (Form CA-7) for 16 hours of leave without pay from June 25 to 26, 2009. The Office denied this claim on July 22, 2009.

caused the illness.⁴ A person who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.⁵

ANALYSIS

On March 25, 2009 the Office accepted appellant's claim for neck sprain, contusion of her left shoulder, left ankle sprain and back sprain in her lumbar region. The issue on appeal is whether she has established a recurrence of disability commencing on December 9, 2009. The medical evidence of record does not contain a rationalized medical opinion establishing a spontaneous change in the accepted medical condition resulting in an inability to work. The Board finds that appellant has failed to establish that she sustained a recurrence of disability commencing December 9, 2009, causally related to her February 5, 2009 employment injury.

On February 11, 2010 Dr. Balis reported that he saw appellant on February 10, 2009 after she sustained significant head and neck trauma and a left shoulder injury while in the performance of duty. In a January 26, 2010 report, he indicated that he examined and diagnosed her with left cervical radiculopathy on December 10, 2009. Dr. Balis advised appellant to resume work on January 12, 2010 without walking or lifting over 10 pounds. He did not provide a report establishing a spontaneous change in the accepted employment-related injuries. Dr. Balis did not indicate knowledge of a recurrence of disability on December 9, 2009 at work and did not reference any particular employment factors as causing appellant's shoulder and neck pain. Therefore, appellant did not meet her burden of proof.

The December 9, 2009 emergency department summary from Ms. Acklin, a nurse practitioner, is of no probative value as nurse practitioners are not physicians under the Act.⁶ As such, the Board finds that appellant did not meet her burden of proof with this submission.

The Board finds that the evidence submitted by appellant lacks adequate rationale to establish a causal connection between her alleged recurrence of disability and the February 5, 2009 employment injury. Thus, appellant did not meet her burden of proof to establish a claim for a recurrence.

⁴ 20 C.F.R. § 10.5(x). *See T.S.*, Docket No. 09-1256 (issued April 15, 2010).

⁵ *B.B.*, Docket No. 09-1858 (issued April 16, 2010). *See Robert H. St. Onge*, 43 ECAB 1169 (1992); *Dennis J. Lasanen*, 43 ECAB 549 (1992).

⁶ 5 U.S.C. § 8101(2). Section 8101(2) of the Act provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." *See also Paul Foster*, 56 ECAB 208, 212 n.12 (2004); *Joseph N. Fassi*, 42 ECAB 677 (1991); *Barbara J. Williams*, 40 ECAB 649 (1989).

CONCLUSION

The Board finds that appellant failed to establish that she sustained a recurrence of disability commencing December 9, 2009 causally related to her February 5, 2009 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the March 8, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 6, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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