

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

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D.P., Appellant)	
)	
and)	
)	Docket No. 11-47
)	Issued: August 3, 2011
U.S. POSTAL SERVICE, LOGISTICS & DISTRIBUTION CENTER, Warrendale, PA,)	
Employer)	
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Appearances:
Douglas Sughrue, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 6, 2010 appellant, through her representative, filed a timely appeal from an August 9, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act (FECA)¹ and 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 a recurrence of disability commencing February 28, 2008 causally related to her January 31, 2006 employment injury.

FACTUAL HISTORY

On February 4, 2006 appellant, then a 43-year-old mailhandler, filed a traumatic injury claim (Form CA-1) alleging that she sustained a neck and shoulder injury while lifting and

¹ 5 U.S.C. § 8101 *et seq.*

throwing mail on January 31, 2006. OWCP accepted the claim for C6-7 herniated disc. Appellant returned to work part time on July 5, 2006 and, as of May 23, 2007, she performed her regular, full-time employment.

In a report dated March 4, 2008, Dr. Ellen Mustovic, a physiatrist, stated that appellant reported stiffness and pain in her neck radiating into her shoulder on February 29, 2008. She indicated that appellant had taken off work since February 29, 2008. Dr. Mustovic provided brief results on examination and diagnosed a history of a left C6-7 disc herniation with left arm radiculopathy and recent increase of pain. In a March 26, 2008 report, she stated that appellant continued to have pain and was working a limited-duty job. On March 26, 2008 Dr. Mustovic stated that appellant should be excused from work March 14, 17, and 19 to 21, 2008 “[secondary] to work injury.” The record contains an April 3, 2008 magnetic resonance imaging (MRI) scan noting no change from a May 10, 2007 MRI scan.

On April 29, 2008 appellant submitted a claim for a recurrence of disability (Form CA-2a) commencing February 29, 2008. She stated that she woke up on February 29, 2008 unable to move the left side of her neck and that her previous injury had never resolved.²

In a letter dated May 30, 2008, appellant stated that her work activities since May 23, 2007 as a mailhandler included repetitive movements including pushing, pulling, tying of sacks and lifting. She stated that the constant repetitive motion had aggravated her injury and caused disability. According to appellant, she had been assigned limited duty since March 5, 2008.

In a decision dated June 9, 2008, OWCP denied the claim for a recurrence of disability. It found the medical evidence was insufficient to establish that appellant’s disability commencing February 29, 2008 was due to her accepted injury.

By report dated July 16, 2008, Dr. Mustovic advised appellant’s condition remanded unchanged and she should continue modified duties. In a report dated August 18, 2008, Dr. Richard Plowey, a neurologist, provided a history and results on examination. He noted that appellant would be scheduled for cervical epidural injections.

On April 14, 2009 appellant requested reconsideration of her claim. She submitted a Form CA-7 claim for compensation for intermittent disability from February 29, 2008 to March 6, 2009. In a report dated February 18, 2009, Dr. Mustovic stated that appellant had been under her care since March 23, 2006 for the January 31, 2006 work injury. She stated that appellant was released to full duty, but her symptoms again increased and she needed additional conservative treatment, including injections. Dr. Mustovic concluded, “In my opinion all of [appellant’s] ongoing symptoms relate back to her date of injury of [January 31, 2006].”

By decision dated May 8, 2009, OWCP reviewed the case on its merits and denied modification of the June 9, 2008 decision. It noted that if appellant was claiming additional

² Appellant also submitted a claim for compensation (Form CA-7) dated May 1, 2008 for intermittent dates from February 29 to April 22, 2008.

work duties that aggravated her accepted condition, this would constitute a new injury and an appropriate claim should be filed.³

In an undated letter received by OWCP on May 11, 2010, appellant, through her representative, requested reconsideration. Appellant argued that she sustained a recurrence of disability, asserting a modification of her limited-duty job and that OWCP failed to consider the medical evidence from May 23, 2007 to February 29, 2008 regarding her treatment. In a report dated March 18, 2010, Dr. Mustovic stated that appellant lifted packages out of a large bin on the date of injury and developed a painful sensation on the left side of the neck. She advised that appellant had undergone several courses of physical therapy and pain management. Dr. Mustovic stated that appellant contacted her on March 28, 2008 with a flare up of pain which Dr. Mustovic felt was not a new injury but an exacerbation of the previous work injury. She stated, "It is my understanding that she does do repetitive pushing and pulling as well as repetitive lifting and tying of sacks which is an aggravating factor for her ongoing problem."

By decision dated August 9, 2010, OWCP reviewed the case on its merits and denied modification of the May 8, 2009 decision.

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 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

OWCP accepted a cervical disc herniation resulting from lifting and throwing mail on January 31, 2006. Appellant returned to full-time work on May 23, 2007. She filed a recurrence of disability claim for intermittent disability commencing February 29, 2008. It appeared from appellant's May 30, 2008 letter that she claimed her work duties since May 23, 2007 had aggravated her accepted condition and caused disability. As OWCP explained, this would be

³ The record indicates that appellant filed a Form CA-2 dated August 18, 2009.

⁴ 20 C.F.R. § 10.5(x).

⁵ *Robert H. St. Onge*, 43 ECAB 1169 (1992); *Dennis J. Lasanen*, 43 ECAB 549 (1992).

considered a new injury since new work factors were involved.⁶ The record indicates that appellant filed a claim for a new occupational injury. This issue is not before the Board on this appeal.

As to the recurrence of disability claim, it is appellant's burden of proof to show there was a change in her employment-related condition causing disability for the periods claimed. The issue of her intermittent disability is a medical question to be supported by probative medical evidence of an employment-related disability on the specific dates claimed.⁷ Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work.⁸ In this case, appellant claimed a recurrence of disability commencing February 29, 2008, but did not submit adequate medical evidence to support her disability.

Appellant received treatment on March 4, 2008 from Dr. Mustovic, but she reported only stiffness and neck pain. There was no opinion provided regarding causal relationship with the employment injury. There are brief notes from Dr. Mustovic as to dates of disability secondary to work injury without further explanation. Dr. Mustovic did not provide specific examination findings or any explanation regarding the relationship between the disability found and the employment injury. In the March 18, 2010 report, she referred to repetitive work being an aggravating factor, but again this would be a new injury and would be relevant to the Form CA-2 claim filed.

The Board finds that the medical evidence of record does not establish an employment-related recurrence of intermitted disability commencing February 29, 2008. On appeal, appellant's representative argues that OWCP did not consider all the medical evidence. He notes that the May 8, 2009 OWCP decision stated that appellant worked "without apparent difficulty" from May 23, 2007 to February 29, 2008. The record shows that appellant received treatment prior to February 29, 2008, but the issue of a recurrence of disability is medical in nature. The Board has discussed the evidence of record and notes that appellant does not cite any specific medical report that establishes a recurrence of disability in this case.

Appellant also asserts that she was working a light-duty job that was withdrawn, citing *Arthur Gunning*.⁹ The evidence of record clearly establishes that appellant returned to regular, full-time work in May 2007. This was not a situation where a claimant is working a light-duty job that was specifically designed to accommodate the employment-related work restrictions, and the light-duty job was withdrawn.¹⁰ It was appellant's burden of proof to submit medical

⁶ Even if it involves a prior accepted condition, renewed exposure to work factors is a new injury. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(2) (May 1997).

⁷ When a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that she hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation. *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁸ *Id.*

⁹ 33 ECAB 1808 (1982). This case involved a determination of rate of pay and the Board noted that a recurrence of disability would be established when the claimant's supervisor refused to extend the light-duty job assignment.

¹⁰ *See, e.g., N.S.*, Docket No. 10-1766 (issued May 25, 2011).

evidence establishing disability causally related to the January 31, 2006 employment injury. Appellant did not meet her burden of proof in this case.

CONCLUSION

The Board finds appellant did not meet her burden of proof to establish a recurrence of disability commencing February 28, 2008.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 9, 2010 is affirmed.

Issued: August 3, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

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