United States Department of Labor
Employees' Compensation Appeals Board

A.N., Appellant	)	
and	)	**Docket No. 10-1830**
	)	**Issued: June 14, 2011**
U.S. POSTAL SERVICE, POST OFFICE, San Francisco, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On July 1, 2010 appellant filed a timely appeal from a May 13, 2010 decision of the Office of Workers' Compensation Programs affirming the September 2, 2009 denial of her recurrence claim. Pursuant to the Federal Employees' Compensation Act[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 has established a recurrence of disability beginning March 3, 2009 due to her accepted bilateral wrist and hand tenosynovitis.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 29, 2006 appellant, then a 52-year-old mail processor clerk, filed an occupational disease claim alleging that on July 6, 2006 she first realized that her bilateral wrist tendinitis was employment related. The Office accepted the claim for bilateral wrist flexor tendinitis.[2]

On June 1, 2007 appellant accepted a temporary light-duty job which noted that she was responsible for providing an updated duty status report (Form CA-17) yearly or when changes occurred in her condition. Restrictions for the position included: no lifting more than five pounds; no sitting more than 8 hours; intermittent standing; kneeing; twisting and walking up to 15 minutes; no climbing; up to 8 hours pushing/pulling; reaching above the shoulder; fine manipulation and simple grasping; and no machine operation. The duties of the position were ensuring mail was available and ready as related to the dispatch schedule and cull and sweat letter trays for carriers.

A February 9, 2009 duty status report completed by Dr. Robert J. Harrison, a Board-certified internist and occupational medicine specialist, contained diagnoses of foot and hand pain. Restrictions included 15 minutes an hour of standing and walking up to 4 hours a day; pulling/pushing; simple grasping and lifting/carrying up to five pounds for 2 hours a day; no climbing; and up to 8 hours of kneeling, bending/stooping and twisting.

In a May 15, 2009 letter, Glynes Griffin, a supervisor, denied that appellant was required to work outside her restrictions and provided a copy of a March 30, 2009 modified job offer and a March 6, 2009 letter informing her that the employing establishment considered her to be absent without leave (AWOL) beginning February 19, 2009. She stated that appellant's modified job complied with her work restrictions of standing 15 minutes an hour for 4 hours and that most days appellant did not stand. Ms. Griffin related that appellant's work area was changed when she complained about walking so she had a chair and table placed within a few steps of her work area perimeter. Appellant's job required no operation of machinery so no standing was required as was no pushing or pulling of heavy equipment. Ms. Griffin related that appellant stopped working on February 14, 2009 when Ms. Griffin warned her about a 45-minute break which allegedly stressed appellant out. In concluding, she contended that appellant's modified work complied with the work restrictions set by her physician and that appellant was not sent home in February 2009.

The duties of the March 30, 2009 modified job assignment of mail processor listed four hours of quality checks of trayed mail and three hours of culling oversized mail. Physical restrictions of the job included 2 hours a day of simple grasping up to five pounds and intermittent lifting/carrying of up to five pounds and walking/standing of "15 min[ute]s 4 h[ou]rs day."

On June 24, 2009 the Office received appellant's claim for wage-loss compensation (Form CA-7) for the period March 3 to 27, 2009 and March 10, 2009 letter from Geoffray Dumaguit, Jr., her union representative. Mr. Dumaguit stated that he had advised appellant not

[2] By decision dated March 24, 2009, the Office denied appellant's claim for a schedule award on the grounds that the medical evidence failed to demonstrate a measurable permanent impairment.

to report to work as of March 3, 2009 until the employing establishment provided her with a medically suitable job offer.

In a letter dated July 9, 2009, the Office noted receipt of appellant's claim for wage-loss compensation and informed her that it would be treated as a claim for a recurrence of disability. Appellant was advised that the medical and factual evidence required to support her recurrence claim as the evidence of record was currently insufficient to support her claim.

Appellant responded to the Office's request in a July 13, 2009 letter in which she contended that her work duties and assignment had been changed beginning February 2009. She alleged that in the new assignment she was required to walk more than 15 minutes every hour, carry trays weighing more than 10 pounds, continuous grasping of mail weighing more than 5 pounds and push and pull carts weighing more than 50 pounds for over 2 hours a day. Appellant noted that these duties exceeded her work restrictions and aggravated her condition such that she could not work. In concluding, she stated that the employing establishment failed to provide her with a medically suitable job and that she indicated that there was no job for her within her restrictions.

In an August 18, 2009 letter, appellant reiterated that the new assignment required her to work outside her restrictions as it required lifting, pushing, pulling and carrying over 10 pounds when her restrictions were 5 pounds. She noted that her supervisor would verbally give her assignments for the day and that no written job offer was given. Appellant alleged that the first time she and Mr. Dumaguit were aware of a written job offer was the week prior to the date of the letter.

In a letter dated August 18, 2009, appellant's representative related that the March 2009 job offer sent by the employing establishment to the Office had not been given to appellant at that time. He contended the new job offer was not suitable as it listed general duties without providing specific descriptions of what the duties entail. In addition, the hours for the physical restrictions and the duties do not add up to eight hours, so appellant's representative wondered what appellant would be doing the remaining hours.

By decision dated September 2, 2009, the Office denied appellant's recurrence claim. The Office found appellant failed to establish that her condition had worsened or that she was unable to perform her limited-duty job.

On September 17, 2009 appellant requested an oral hearing before an Office hearing representative, which was held on February 24, 2010.[3]

Following the hearing, appellant submitted an undated statement from Laura Bernardino, a retired coworker, stating that when Ms. Griffin became appellant's supervisor she noticed that appellant was given additional work including pushing a cart of mail, which could weigh up to 100 pounds. Ms. Bernardino related that she had seen appellant carrying a tray of mail weighing 20 pounds, culling mail standing up and doing more walking back and forth.

[3] Appellant retired from the employing establishment effective October 31, 2009.

In a report dated March 18, 2010, Dr. Harrison stated that appellant was examined on March 30, 2009 for bilateral tingling, numbness and wrist pain. He stated that on April 9, 2009 he indicated that she was unable to return to work as no suitable job had been offered to her. In concluding, Dr. Harrison reported that recent magnetic resonance imaging scans revealed objective tenosynovitis evidence and small wrist joint effusion which he attributed to appellant's working outside of her restrictions.

By decision dated May 13, 2010 an Office hearing representative affirmed the denial of appellant's recurrence claim.

LEGAL PRECEDENT

Where an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee 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 to show that he or she 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.[4]

The Office's implementing regulations define a recurrence of disability as 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.[5] 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.[6]

ANALYSIS

The Office accepted appellant's claim for bilateral wrist flexor tendinitis. She filed a claim for a recurrence of total disability beginning March 3, 2009. Appellant has the burden to provide medical evidence establishing that she was disabled on March 3, 2009 due to a worsening of her accepted bilateral wrist flexor tendinitis or a change in her job duties such that she was unable to perform her light-duty work.

[4] *Richard A. Neidert*, 57 ECAB 474(2006); *Cecelia M. Corley*, 56 ECAB 662 (2005)*; A.M.*, Docket No. 09-1895 (issued April 23, 2010).

[5] 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b(a)(1) (May 1997). *See also Phillip L. Barnes*, 55 ECAB 426 (2004).

[6] *Id*. *See A.M.*, *supra* note 4; *K.S.*, Docket No. 08-2105 (issued February 11, 2009); *Hubert Jones, Jr.*, 57 ECAB 467 (2006).

The Board finds that appellant has not submitted medical evidence in support of a change in her injury-related condition on March 3, 2009. While she submitted a narrative statement and testified that her condition had been aggravated by her work duties, appellant has not submitted a medical report consistent with her assertions. The only medical report addressing a worsening of her condition is a March 18, 2010 report from Dr. Harrison in which he contended that she was totally disabled on April 9, 2009 because there was no suitable work available for her and that objective testing revealed objective tenosynovitis evidence and small wrist joint effusion which he attributed to her working outside of her restrictions. However, Dr. Harrison provided no rationale explaining his conclusion that appellant's condition had worsened due to working outside her restrictions or identified how she was required to work outside of her restrictions. As his report contains no rationale explaining his conclusion, his report is insufficient to support that appellant sustained a worsening of her condition.[7]

The record also contains duty status forms containing work restrictions. Appellant's September 14, 2006 work restrictions included limited lifting, pushing/pulling up to 10 pounds for eight hours a day and two hours of standing and walking. Dr. Harrison revised her work restrictions on October 6, 2008 to no lifting, pushing and pulling more than five pounds for 8 hours and sitting and standing were limited to 15 minutes every hour for up to 8 hours. On February 9, 2009 he limited the amount of lifting, pushing and pulling five pounds to two hours a day. The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.[8] As appellant has not submitted medical evidence supporting that she sustained a change in the nature and extent of her injury-related condition on or after March 3, 2009, she has not met her burden of proof that she sustained a material worsening of her condition.

Appellant has alleged that there was a change in the light-duty job, as she was required to exceed her work restrictions. Although Dr. Harrison reported that she worked outside of her restrictions, he does not explain how and why this debilitated her thereby rendering her incapable of working.

The record also contains a statement from Ms. Bernardino, a retired coworker, supportive of appellant's allegations that she was required to work outside her restrictions. Ms. Bernardino related that she had observed appellant being given additional work including pushing a heavy cart of mail, carrying heavy trays of mail, culling mail standing up and doing more walking back and forth. However, her statement provided no specific dates when she observed appellant working outside her restrictions. This statement is in contrast to Ms. Griffin's previous response in which she indicated that appellant was not required to work outside of her restrictions. Additionally, Ms. Griffin previously indicated that most days appellant did not stand. She also noted changing appellant's work area when she complained about walking so that she had a chair and table placed within a few steps of her work area perimeter. Ms. Bernardino's statement

[7] *See Sedi L. Graham*, 57 ECAB 494 (2006) (medical form reports and narrative statements merely asserting causal relationship generally do not discharge a claimant's burden of proof).

[8] *William A. Archer* 55 ECAB 674, 679 (2004).

indicated that appellant performed certain activities requiring more walking, standing and lifting while at work but they do not relate the precise time and place in which appellant was observed. This statement is insufficient to show that there was a change in the nature and extent of appellant's light-duty job requirements.

The Board accordingly finds that appellant did not meet her burden of proof in this case. Appellant did not establish a change in the nature and extent of the injury-related condition or the light-duty job and the Office properly denied the claim.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish a recurrence of total disability on or after March 3, 2009, causally related to her accepted employment injuries.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 13, 2010 is affirmed.

Issued: June 14, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board