United States Department of Labor
Employees' Compensation Appeals Board

H.C., Appellant	)	
and	)	**Docket No. 10-1233**
	)	**Issued: March 4, 2011**
U.S. POSTAL SERVICE, POST OFFICE, San Juan, PR, 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 March 31, 2010 appellant filed a timely appeal from a March 15, 2010 merit decision of the Office of Workers' Compensation Programs that denied his claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of appellant's claim.

ISSUE

The issue is whether appellant established he sustained a recurrence of disability commencing July 27, 2005, causally related to his accepted employment injury.

FACTUAL HISTORY

On April 18, 2005 appellant, a 61-year-old letter box mechanic, filed a traumatic injury claim (Form CA-1) for low back pain he attributed to bending over to clean a box on April 15, 2005. He returned to light-duty work but on September 28, 2005 appellant alleged that he sustained a recurrence of disability commencing July 27, 2005.[1]

[1] The record reflects appellant retired on August 29, 2005.

The Office initially denied appellant's recurrence claim on February 28, 2006, and then vacated that decision by order dated July 5, 2006. It determined it had never accepted appellant's initial claim for back injury.

By decision dated June 24, 2008, an Office hearing representative accepted that appellant had established he sustained lumbar strain on April 15, 2005 in the performance of duty. He remanded the case to the Office for further development concerning his recurrence claim filed September 28, 2005.

In a report dated July 7, 2005, Dr. Luis E. Clavell examined appellant, reviewed the medical history from May 2, 2003 to June 13, 2005 and diagnosed bilateral sensory-motor carpal tunnel syndrome, bilateral cubital tunnel syndrome, ulnar sensory neuropathy, left C5-6 radiculopathy, bilateral L5-S1 radiculopathy, peripheral polyneuropathy, bilateral hammer toes and aggravated osteoarthritis in his knees. Dr. Clavell recommended appellant retire from federal service because his conditions were permanent, progressive and predicted they would worsen.

By report (Form CA-17) dated July 20, 2005, Dr. Clavell presented findings on examination and diagnosed lumbosacral sprain and cervical sprain. He advised that appellant was to be on bed rest from July 20, 2005 for an indefinite period and that he was permanently and totally disabled but also provided work restrictions. It is not clear from the report how the restrictions relate to the finding of permanent total disability. On December 4, 2007 Dr. Clavell reported that appellant received treatment for carpal tunnel syndrome, cubital tunnel syndrome, lumbar strain and radiculopathy. He advised that appellant was disabled from work commencing August 2000 and further recommended appellant retire from federal service.

On February 16, 2008 appellant requested an oral hearing, which was held by telephone on June 4, 2008. He was present and provided testimony concerning his history of injury and how his employment duties caused his condition. Appellant submitted unsigned notes, illegibly-signed notes and treatment notes signed by Dr. Clavell. By note dated February 18, 2010, appellant described his history of injury and explained how his federal employment caused his disability.

By decision dated March 15, 2010, the Office denied the claim because appellant had not demonstrated a change in the nature or extent of his accepted employment injury-related disability or in the nature and extent of his light-duty position.

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 establishes that he can perform the light-duty position, the employee has the burden of establishing by the weight of the reliable, probative and substantial evidence a recurrence of total disability. 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.[2]

[2] *See S.F.*, 59 ECAB 525 (2008).

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."[3] A recurrence may also result from a change in the employee's light-duty requirements.[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 an employee 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] Where no such rationale is present, medical evidence is of diminished probative value.[6]

ANALYSIS

The Office accepted appellant's April 15, 2005 claim for lumbar sprain. Appellant returned to light duty and worked until July 27, 2005. He retired on August 29, 2005. Appellant's alleged recurrence of disability and his burden is to demonstrate that his disabling condition was totally disabling. He must also show that the condition developed spontaneously, without any intervening cause, and that it was causally related to the accepted employment injury of April 15, 2005.[7] If appellant was doing light-duty work, he may also establish a recurrence by showing a change in his light-duty requirements.[8] This is a medical issue that can only be proven by probative medical opinion evidence.[9]

The Board finds the medical evidence of record insufficient to satisfy appellant's burden of proof as it does not explain how the accepted employment injury caused appellant to be totally disabled from work commencing July 27, 2005.

[3] *R. S.*, 58 ECAB 362 (2007); 20 C.F.R. § 10.5(x).

[4] *Herbert Jones Jr.*, 57 ECAB 467 (2006).

[5] *I.J.*, 59 ECAB 498 (2008); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

[6] *See Ronald C. Hand*, 49 ECAB 113 (1957); *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

[7] *R.S.*, 58 ECAB 362 (2007); 20 C.F.R. § 10.5(x).

[8] *Richard A. Neidert*, 57 ECAB 474 (2006).

[9] The Board notes that appellant submitted a report from a physical therapist. Because healthcare providers such as nurses, acupuncturists, physician assistants and physical therapists are not considered "physicians" under the Act, their reports and opinions do not constitute competent medical evidence. 5 U.S.C. § 8101(2); *see also G.G.*, 58 ECAB 389 (2007); *Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jan A. White*, 34 ECAB 515 (1983). Thus the physical therapy report appellant submitted has no probative value. Similarly, the illegibly signed notes have no probative value because they cannot be identified as having been prepared by a "physician" as defined by the Act. *See Willie M. Miller*, 53 ECAB 697 (2002).

Dr. Clavell diagnosed bilateral L5-S1 radiculopathy and numerous other conditions; these are not described in any detail.[10] His opinions, notes, and reports have diminished probative value because he did not explain how any of the conditions caused appellant to be disabled from work after July 27, 2005. Of equal importance, Dr. Clavell did not show how the conditions named were causally connected to appellant's accepted low back injury. In a document dated December 14, 2007, Dr. Clavell found that appellant was disabled from work and recommended that he should retire from federal service. This notation is also inadequate to meet appellant's burden of proof that he experienced a recurrence.

At a minimum, Dr. Clavell should explain how the alleged recurrence of disability was caused by the low back injury. He does not explain what the diagnosed conditions are or how appellant developed them. Dr. Clavell fails to explain how they have progressed and whether they are mild or severe. He does not discuss whether any of appellant's medical problems pre-existed the April 15, 2005 injury. Finally, a medical report that offers only a check mark to indicate causal connection has little probative value.[11] For these reasons, Dr. Clavell's opinions, reports and notes do not establish the required causal relationship.

The Board also notes that appellant has not alleged a change in the nature and extent of his light-duty job requirements.

An award of compensation may not be based on surmise, conjecture or speculation.[12] Appellant has not submitted sufficient medical evidence supporting his claim, evidence containing a reasoned discussion explaining how his total disability was caused by a spontaneous change in his accepted employment-related medical condition.

CONCLUSION

The Board finds appellant has not established he sustained a recurrence of disability on July 27, 2005 causally related to his employment injury.

[10] Dr. Clavell diagnosed the following additional conditions in his report dated July 7, 2005: bilateral sensory-motor carpal tunnel syndrome, bilateral cubital tunnel syndrome, ulnar sensory neuropathy, left C5-6 radiculopathy, peripheral poly-neuropathy, bilateral hammer toes, and aggravated osteoarthritis in his knees.

[11] *See Frederick H. Coward, Jr.*, 41 ECAB 843 (1990); *Lillian M. Jones*, 34 ECAB 379 (1982).

[12] *Edgar G. Maiscott*, 4 ECAB 558 (1952) (holding appellant's subjective symptoms and self-serving declarations do not, in the opinion of the Board, constitute evidence of a sufficiently substantial nature).

ORDER

IT IS HEREBY ORDERED THAT the March 15, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 4, 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