United States Department of Labor
Employees' Compensation Appeals Board

F.T., Appellant	)	
and	)	**Docket No. 10-1731**
	)	**Issued: March 15, 2011**
U.S. POSTAL SERVICE, GENERAL MAIL FACILITY, Philadelphia, PA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On June 17, 2010 appellant filed a timely appeal from an April 16, 2010 merit decision of the Office of Workers' Compensation Programs. 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 established a recurrence of disability as of July 23, 2006.

FACTUAL HISTORY

The case was before the Board on a prior appeal.[1] The Board issued an order remanding the case on the grounds that the Office failed to make findings with respect to appellant's argument that the employing establishment did not have a light-duty job available as of July 23, 2006. The history of the case as provided by the Board in its prior order is incorporated herein by reference.

[1] Docket No. 09-890 (issued October 21, 2009).

With respect to appellant's work stoppage, the record contains a September 11, 2007 letter from an employing establishment case manager. During the period July 23 to August 5, 2006, appellant's "workplace was moving from one building to another. Because she was on work restrictions and there was no work available within her restrictions, she was sent home." The letter stated that, at the time of this transition, the employing establishment believed the work restrictions were not employment related. The case manager stated that it had been brought to her attention that appellant had ongoing restrictions and the medical documentation included a July 7, 2006 OWCP-5c (work capacity evaluation) form.

The record contains a July 7, 2006 OWCP-5c form from Dr. Sanul Corrielus, an internist, providing work restrictions that included limitations on lifting and activities such as pushing and pulling.[2] Dr. Corrielus indicated that appellant could work eight hours per day. The record also contains a treatment note dated July 28, 2006 with diagnoses including neck pain and carpal tunnel syndrome and an August 24, 2006 note with diagnoses that included carpal tunnel syndrome, allergic rhinitis and low back pain. The signatures are illegible. In a report dated December 5, 2007, Dr. Amelia Tabuena, a physiatrist, provided a history of a work-related "fall accident" on October 28, 1991, with another accident in January 2006. She diagnosed unresolved lumbar sprain "over work[-]related fall accident" of October 28, 1991, rule out herniated disc, degenerative disc disease and lumbar radiculopathy. Dr. Tabuena opined that the January 2006 incident aggravated a preexisting back injury related to the 1991 incident.

In a decision dated April 16, 2010, the Office denied a claim for recurrence of disability. It noted the September 11, 2007 letter from the employing establishment and indicated there was no evidence that the restrictions were employment related.

LEGAL PRECEDENT

The Office's regulations define the term recurrence of disability as follows:

> "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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. 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 or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations."[3]

When 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 of record establishes that he or she 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

[2] There is a specific lifting restriction but it is difficult to read.

[3] 20 C.F.R. § 10.5(x).

disability and show that he or she cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.[4] To establish a change in the nature and extent of the injury-related condition, there must be probative medical evidence of record. The evidence must include a medical opinion, based on a complete and accurate factual and medical history, and supported by sound medical reasoning, that the disabling condition is causally related to employment factors.[5]

ANALYSIS

Appellant's claim was accepted for a lumbosacral sprain/strain on October 28, 1991 when her chair collapsed. While her work history since 1991 is not entirely clear from the record, the employing establishment provided modified-duty job offers commencing October 1, 2003. It is appellant's contention that the light-duty job was unavailable from July 23 to August 5, 2006, and therefore she is entitled to compensation for wage loss for this period. She did not allege or submit any supporting medical evidence to establish a change in the nature and extent of an employment-related condition as of July 23, 2006.

The employing establishment confirmed that from July 23 to August 5, 2006 a light-duty job was not available within appellant's existing work restrictions at that time. Dr. Corrielus had provided work restrictions in a July 7, 2007 OWCP-5c form. The issue, however, is whether those work restrictions were causally related to the October 28, 1991 employment injury. To establish entitlement to compensation, the light-duty job must be a position made to accommodate employment-related restrictions and the job must be unavailable. If the reason the job is withdrawn is not related to the employment injury, there is no disability under the Federal Employees' Compensation Act.[6]

Dr. Corrielus provided no opinion as to causal relationship between any work restrictions and the accepted employment injury. He provided no diagnosis or other information with the work restrictions. The Board notes that the evidence of record contains no medical evidence after a May 20, 1992 lumbar x-ray until the July 7, 2006 OWCP-5c form. Treatment notes from July 28 and August 24, 2006 diagnosed carpal tunnel syndrome and other conditions, with no discussion of causal relationship with employment. Dr. Tabuena refers to an "unresolved" lumbar sprain in her December 5, 2007 report, without providing a detailed description of the 1991 work incident, a complete medical history, or a rationalized opinion that any work restrictions in July 2006 were related to the 1991 employment injury. This evidence is not sufficient to establish her claim of employment-related disability.

It is appellant's burden of proof to establish the claimed recurrence of disability. There is no probative evidence that the light-duty job was withdrawn from July 23 to August 5, 2006 due

[4] *Albert C. Brown*, 52 ECAB 152 (2000); *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222 (1986).

[5] *Maurissa Mack* 50 ECAB 498 (1999).

[6] *See C.S.*, Docket No. 08-2218 (issued August 7, 2009).

to employment-related work restrictions. For the above reasons, the Board finds appellant did not meet her burden of proof in this case.

CONCLUSION

The Board finds that appellant did not establish a recurrence of disability commencing July 23, 2006.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 16, 2010 is affirmed.

Issued: March 15, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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