United States Department of Labor
Employees' Compensation Appeals Board

Y.R., Appellant	)	
and	)	**Docket No. 10-1589**
	)	**Issued: May 19, 2011**
U.S. POSTAL SERVICE, TACOMA PROCESSING & DISTRIBUTION CENTER, Tacoma, WA, Employer	)	

Appearances:
Ricky T. Robinson, for the appellant
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 May 27, 2010 appellant, through her representative, filed a timely appeal of the December 14, 2009 merit decision of the Office of Workers' Compensation Programs denying her recurrence of disability 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 that she sustained a recurrence of disability commencing April 11, 2009 causally related to her accepted employment-related injury.

On appeal, appellant's representative contended that the Office failed to provide any medical rationale to support its decision as appellant was not sent to an Office referral physician.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 23, 2004 appellant, then a 50-year-old flat sorter machine clerk, filed an occupational disease claim alleging that on July 22, 2004 she first became aware of her right wrist and arm pain and realized that her condition was caused by her federal employment. By letter dated September 17, 2004, the Office accepted her claim for bilateral wrist tenosynovitis.

On March 12, 2009 appellant accepted the employing establishment's job offer for a modified automation clerk position. The position required her to work eight hours per day, five days per week.

On April 16 and 24, 2009 appellant filed claims for wage-loss compensation (Form CA-7) alleging that the employing establishment withdrew her modified position from April 11 through 24, 2009. She submitted CA-7a forms, time analysis sheets claiming intermittent time loss from work during the claimed period based on a supervisor's orders to use leave without pay (LWOP). On the Form CA-7a for the period April 11 through 17, 2009, the employing establishment stated that appellant's statement could not be verified. On the April 24, 2009 Form CA-7 the employing establishment stated that eight hours of work was not available for appellant.

Medical reports dated October 16, 2008 through April 8, 2009 from Dr. Hui Wang, an attending Board-certified physiatrist, indicated that appellant was working at the employing establishment with restrictions. Dr. Wang listed his findings on physical examination and advised that she had right elbow and wrist tendinitis, bilateral elbow, wrist and hand strain, more on the right, due to a repetitive work injury. Appellant also had cervico muscular strain. Dr. Wang advised that she could work eight hours per day, five days per week with physical restrictions.

By letter dated April 28, 2009, the Office advised appellant about the factual and medical evidence needed to establish her claim for disability.

Appellant submitted Dr. Wang's April 17, 2009 report, which advised that a nerve conduction study was normal. There was no electrodiagnostic evidence to support median or ulnar entrapment neuropathy or myopathy in the bilateral upper extremities. There was no electrodiagnostic evidence of cervical radiculopathy. Dr. Wang advised that his diagnoses regarding appellant's bilateral elbow, wrist and hand conditions remained the same.

In a May 6, 2009 letter, appellant described her repetitive work duties as a flat sorter machine clerk since 1994. Following her accepted employment injury, she performed limited-duty work as a time clerk, two days per week. Appellant was later assigned full-duty work by Mr. Dexter, a new supervisor. One year later her condition progressively worsened. Appellant experienced a burning sensation in her wrists and right arm up to her elbow. On January 14, 2009 an attending physician placed her on limited-duty work status which involved working three days instead of five days per week, eight hours per day. Appellant's condition improved until she began performing repetitive work duties again which caused pain. She used her left hand to protect her right hand, which caused the current pain and burning sensation in her left wrist. Appellant contended that Mr. Dexter threatened to place her on the night shift or send her

home. Mr. Dexter advised her to take a few months off work to get better and then return to regular-duty work. An attending physician evaluated appellant's conditions and ordered her to perform more limited-duty work hours. On April 9, 2009 Mr. Dexter revised her work schedule to reflect a four- to six-hour workday. He instructed appellant to take leave for the remainder of the workday without pay and file a workers' compensation claim with the Office. When appellant asked Mr. Dexter why she could not finish her work, he responded that he had to save work for other employees. She contended that, due to a decreased workload, he took away work duties from limited-duty employees and assigned them to full-duty employees.

On May 14, 2009 the Office requested that the employing establishment provide clarification as to whether it was to able to provide full-time limited-duty work to appellant for the period April 11 through 17, 2009, noting that an attending physician recommended physical limitations due to her repetitive work duties and a modified job offer. The employing establishment did not respond.

Appellant filed CA-7 forms dated May 8 and 26, 2009 for the period April 25 through May 22, 2009. In accompanying CA-7a forms, she again claimed intermittent time loss from work due to a supervisor's orders to use LWOP. In reports dated November 19, 2008 and May 6, 2009, Dr. Wang indicated that appellant was performing modified work due to bilateral elbow, hand and wrist pain. He reiterated his diagnoses of bilateral elbow, wrist and hand strain, more on the right side, right elbow and wrist tendinitis and cervical muscular strain.

On May 28, 2009 appellant advised the Office that she lost no time from work prior to or after the accepted employment injury. In 2004, she performed her regular work duties, three days per week and limited-duty work two days per week. Mr. Dexter required appellant to perform her regular work duties from mid-2006 through April 10, 2009.

In a June 2, 2009 decision, the Office found that appellant was not totally disabled commencing April 11, 2009 due to her employment-related injury on the grounds that the evidence did not show that she was working in a limited-duty position and that this assignment changed. Further, the medical evidence did not establish that appellant experienced a worsening of her accepted condition.

On June 24, 2009 appellant requested a telephonic oral hearing before an Office hearing representative.[2] In a June 18, 2009 report, Dr. Alan B. Thomas, a Board-certified orthopedic surgeon, advised that she had bilateral wrist tendinitis with ulnar impaction syndrome. Appellant also had congenital Madelung's deformity. Dr. Thomas stated that her current symptoms were more probably than not related to repetitive overuse of the upper extremities while working at the employing establishment for the past 15 years. He indicated that appellant was currently on limited-duty status, but that she was sent home without pay due to a lack of work. Dr. Thomas

[2] Also, on June 24, 2009 appellant filed a Form CA-7 for the period January 23 through March 6, 2009. In a September 15, 2009 decision, the Office found that she was not totally disabled during the claimed period due to her accepted employment injury on the grounds that the evidence did not show that she was working in a limited-duty position that changed. It further found the medical evidence insufficient to establish that appellant experienced a worsening of her employment-related condition. On November 16, 2009 the Office reissued the September 15, 2009 decision to protect her appeal rights.

stated that she should receive compensation for time lost from work. He reiterated his diagnosis of bilateral wrist tendinitis with ulnar impaction syndrome in reports dated August 13 through November 2, 2009. Dr. Thomas advised that appellant could work with physical restrictions.

In a May 29, 2009 note and report, Dr. Wang placed appellant off work from May 30 through June 5, 2009 due to her bilateral elbow and wrist pain. Appellant's condition was exacerbated by repetitive activity.

During the October 7, 2009 telephonic hearing and in an October 30, 2009 letter, appellant stated that she performed her regular duties as a flat sorter machine clerk and limited-duty work as a time's clerk from July 2004 to October 2008. She performed limited-duty work in the stated positions from October 2008 to June 2009.

In a December 14, 2009 decision, an Office hearing representative affirmed the June 2, 2009 decision, finding that appellant did not sustain a recurrence of disability commencing April 11, 2009. He found that she was not working modified duty as a result of her accepted employment injury. The hearing representative noted appellant's hearing testimony that she performed modified-duty work beginning in 2004, but found that the evidence established that she performed regular work duties on more than one occasion in 2004 and 2005 and as late as October 2008. He concluded, therefore, that it was not clear that she was restricted to modified-duty work as a result of her employment-related injury. The hearing representative found that appellant should file a claim for a new injury based on Dr. Thomas' opinion that the duties she performed after 2004 and earlier were partially responsible for her current condition. He further found that the diagnosis of ulnar impaction syndrome, which had not been accepted by the Office, was an apparent factor of her claimed disability.

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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[3] 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.[4]

When an employee who is disabled from the job she held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that she can perform the limited-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 she cannot perform such limited-duty work. As part of this burden,

[3] 20 C.F.R. § 10.5(x).

[4] *Id.*

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 limited-duty job requirements.[5]

To show a change in the degree of the work-related injury or condition, the claimant must submit rationalized medical evidence documenting such change and explaining how and why the accepted injury or condition disabled the claimant for work on and after the date of the alleged recurrence of disability.[6]

ANALYSIS

The Board finds that the case is not in posture for decision. The Office found that appellant did not sustain a recurrence of disability because she was not performing modified work at the time of her claimed recurrence of disability commencing April 11, 2009. Appellant alleged that the employing establishment withdrew her modified position commencing that date, as she was told that eight hours of work was no longer available. It is not clear whether she performed modified work and whether her position was withdrawn by the employing establishment at that time. On March 12, 2009 appellant accepted the employing establishment's job offer for a modified automation clerk position. However, she contended that Mr. Dexter required her to perform her regular work duties from mid-2006 to April 10, 2009. Appellant also contended that she performed limited-duty work from October 2008 to June 2009. Dr. Wang advised, in reports dated October 16, 2008 through May 6, 2009, that she required physical accommodations, but his reports indicated that accommodations had already been made by the employing establishment.

Regarding appellant's contention that her position was withdrawn, the employing establishment initially stated that it could not verify that a supervisor ordered her to use LWOP for time loss from work from April 11 through 17, 2009. The employing establishment later acknowledged that it could not provide eight hours of work to her. Appellant contended that Mr. Dexter changed her eight-hour limited-duty work schedule to a four- to six-hour limited-duty work schedule on April 9, 2009 despite her attending physician's orders that she work more limited-duty hours. She further contended that he instructed her to use LWOP for the remainder of the workday and file a workers' compensation claim because he wanted to reassign work duties of limited-duty employees to full-duty employees due to a decreased workload. The Board notes that the employing establishment did not respond to the Office's May 14, 2009 request for clarification as to whether it was able to provide appellant with full-time limited-duty work during the claimed period of disability.

Proceedings under the Act are not adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.[7] The Office

[5] *Albert C. Brown*, 52 ECAB 152, 154-55 (2000); *Barry C. Petterson*, 52 ECAB 120 (2000); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

[6] *James H. Botts*, 50 ECAB 265 (1999).

[7] *William J. Cantrell*, 34 ECAB 1223 (1983).

needs to make proper factual findings as to whether appellant was performing full-time limited-duty work on April 11, 2009 and if so, whether the employing establishment thereafter advised her that such work was no longer available to her. This evidence is of the character normally obtained from the employing establishment and is, therefore, more readily accessible to the Office than to appellant. It is a well-established principle that the Office must make proper findings of fact and a statement of reasons in its final decisions.[8] Once factual findings are made, the Office should properly address the evidence to determine if a recurrence of disability has been established commencing April 11, 2009.

The Board will, therefore, remand the case to the Office for further development. After such further development as the Office deems necessary, it should issue an appropriate decision.

CONCLUSION

The Board finds that the Office did not make proper findings on the issue of whether appellant sustained an employment-related recurrence of disability commencing April 11, 2009 and the case will be remanded for an appropriate decision.

[8] *See Arietta K. Cooper*, 5 ECAB 11 (1952); 20 C.F.R. § 10.126.

ORDER

IT IS HEREBY ORDERED THAT the December 14, 2009 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this decision.

Issued: May 19, 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