United States Department of Labor
Employees' Compensation Appeals Board

S.G., Appellant	)	
and	)	**Docket No. 10-1713**
	)	**Issued: May 3, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Nashville, TN, Employer	)	

Appearances:
Capp P. Taylor, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 15, 2010 appellant filed a timely appeal of a February 23, 2010 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act[1] and 20 C.F.R. §§ 501.2 (c) and 501.3, the Board has jurisdiction.

ISSUE

The issue is whether appellant has established disability for the period December 24, 2008 to January 26, 2009 as a result of her employment-related conditions.

FACTUAL HISTORY

On October 19, 2008 appellant, then a 54-year-old casual mail handler, sustained a traumatic injury to her right wrist on October 12, 2008 while in the performance of duty. She stopped work on October 13, 2008 and returned the next day.

[1] 5 U.S.C. § 8101 *et seq.*

In an October 14, 2008 report, Dr. Shon Nolin, Board-certified in occupational medicine and an osteopath, diagnosed wrist tenosynovitis. He released appellant to work with restrictions and continued to treat her. The Office accepted the tenosynovitis condition.

A November 6, 2008 magnetic resonance imaging (MRI) scan read by Dr. John Ross, a Board-certified diagnostic radiologist, revealed nonspecific carpus signal abnormalities and rheumatoid arthritis. Dr. Ross opined that the carpal signal abnormalities might be degenerative in nature. In reports dated October 28, November 11 and 25, 2008, Dr. Steve Salyers, a Board-certified orthopedic surgeon, examined appellant and diagnosed possible extensor carpi ulnaris (ECU) and possible ECU subluxation with avulsion fracture of the tendon sheath. He recommended that she continue on light duty. Dr. Salyers noted that appellant had undergone an MRI scan; however, he opined that "since her pain has all been radial, I am having a hard time accepting any of those findings as explaining her discomfort."

Appellant was referred by Dr. Salyers to Dr. Vincent P. Novak, a Board-certified orthopedic surgeon, who examined her on December 16, 2008 and diagnosed a post-traumatic deformity of the right wrist that was consistent with a remote injury to her wrist, most likely due to an "untreated malunited distal extraarticular distal radius fracture, ulnar styloid tip fracture minimally displaced." Dr. Novak found evidence of mild degenerative changes. Regarding an acute wrist sprain at work, he did not believe that her condition was related to the acute work injury as her condition was a chronic malunion of the distal radius. Dr. Novak recommended treatment for the preexisting condition.

On December 18, 2008 the Office accepted the claim for tenosynovitis of the right hand and wrist.

In a January 6, 2009 report, Dr. Salyers advised that appellant had reached maximum medical improvement and could work light duties. He concurred with Dr. Novak and opined that she no longer suffered from an on the-job-injury.

On January 26, 2009 appellant submitted a Form CA-7 requesting wage-loss compensation from December 24, 2008 to January 26, 2009. The employing establishment noted that she was separated from service on December 31, 2008.

In a letter dated February 4, 2009, the employing establishment noted that appellant worked full time as a grocery store cashier since March 1999. Appellant was hired on July 19, 2008 as a temporary employee and that her assignment ended on December 31, 2008 due to seasonal mail volume.

By letter dated February 5, 2009, the Office requested that appellant submit evidence to support her claim for disability compensation.

In a decision dated March 16, 2009, the Office denied the claim for wage-loss compensation, noting that the medical evidence was insufficient to support disability.

On March 24, 2009 appellant's representative requested a telephonic hearing which was held on June 15, 2009. He noted that, prior to her work at the employing establishment, appellant sustained a right wrist injury; however, she was not having any problems when she

began work. Appellant's representative wrote to Dr. Novak to inquire if her October 12, 2008 work injury aggravated the preexisting condition. He noted that Dr. Novak advised that it was an aggravation of a preexisting distal radius chronic malunion. Appellant testified that she had previously worked for the employing establishment in 2007 and she did not have wrist problems until her injury. She noted that December 24, 2008 was the last day she worked because her light duty was taken away. Appellant also testified that her temporary job should not have ended until January 2009. She alleged that Darrell Robinson, her supervisor, advised her on December 24, 2008 that her light-duty job was not available. Appellant confirmed that she maintained a full-time job as a cashier, but did not utilize her right hand or wrist.

The Office received a copy of a February 20, 2009 letter, in which appellant's representative asked Dr. Novak if appellant's October 12, 2008 work injury aggravated the preexisting condition. The record also contained Dr. Novak's March 6, 2009 handwritten response. Which indicated that he was clarifying his diagnosis and noted that appellant's condition was an aggravation of a preexisting distal radius chronic malunion.

In a letter dated July 16, 2009, Judy Hooper, a human resources specialist with the employing establishment, explained that appellant was a casual employee, who worked in increments up to 90 days. She advised that, if a casual employee finished their 90-day increment, the employee could be reinstated for another appointment; however, each appointment could last up to 90 days but never exceed it. Ms. Hooper indicated that appellant's appointment expired on December 31, 2008. She stated that 12 other mail handler casual employees working on tour 3 were released on December 24, 2008 even though their appointments did not end until January 16, 2009. Ms. Hooper denied that appellant was terminated because of her injury. After her injury, appellant was reappointed effective October 16, 2008 and her appointment expired on December 31, 2008.

In a letter dated August 11, 2009, counsel contended that the Office ignored Dr. Novak's statement that appellant's condition was an aggravation of the preexisting malunion of the distal radial fracture and that the condition should be accepted. Despite the fact that appellant was a casual employee whose term of employment ended, she claimed ongoing compensation for her disability.

In an August 28, 2009 decision, the Office hearing representative affirmed the March 16, 2009 decision.

On December 2, 2009 appellant's representative requested reconsideration. He provided another copy of Dr. Novak's March 6, 2009 report. Appellant's representative alleged that because appellant's condition caused her to have restrictions, the reasons provided by the employing establishment were irrelevant.

In a letter dated January 6, 2010, Ms. Hooper noted that, during the hearing, appellant confirmed that she continued to work 40 hours a week at the grocery store while she was on limited duty with the employing establishment. She noted that none of appellant's physician's found that appellant was disabled or unable to work. On February 2, 2010 response counsel repeated his arguments.

By decision dated February 23, 2010, the Office denied modification of its prior decision.

LEGAL PRECEDENT

The term disability as used in the Act[2] means the incapacity because of an employment injury to earn the wages that the employee was receiving at the time of injury.[3] Whether a particular injury caused an employee disability for employment is a medical issue which must be resolved by competent medical evidence.[4] When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in the employment held when injured, the employee is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.[5] 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 employee's to self-certify their disability and entitlement to compensation.[6]

An employee generally will not be considered to have experienced a compensable recurrence of disability as defined in 20 C.F.R. § 10.5(x) merely because his or her employer has eliminated the employee's light-duty position in a reduction-in-force or some other form of downsizing.[7]

ANALYSIS

In support of her claim for disability for the period from December 24, 2008 to January 26, 2009, appellant submitted reports from her treating physician, Dr. Novak. On December16, 2008 Dr. Novak diagnosed a post-traumatic deformity of the right wrist and determined that her injury was consistent with a remote injury to her wrist, most likely due to an "untreated malunited distal extraarticular distal radius fracture, ulnar styloid tip fracture minimally displaced." He did not believe that appellant's condition was related to the acute work injury as her condition was a chronic malunion of the distal radius. The Board notes that Dr. Novak did not offer any opinion that she was disabled for work. He did not support that appellant should be excused from work during this time frame. The report is of limited probative value. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[8] On March 6, 2009 Dr. Novak clarified the diagnosis and stated that appellant's condition was an aggravation of a

[2] 5 U.S.C. §§ 8101-8193; 20 C.F.R. § 10.5(f).

[3] *Paul E. Thams*, 56 ECAB 503 (2005).

[4] *Id*., *W.D*., Docket No. 09-658 (issued October 22, 2009).

[5] *Id.*

[6] *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

[7] *See* 20 C.F.R. § 10.509.

[8] *K.W*., 59 ECAB 271 (2007).

preexisting distal radius chronic malunion.[9] He did not address whether her accepted condition caused disability for the period December 24, 2008 to January 26, 2009. Dr. Salyers did not address whether appellant was disabled due to her accepted condition for the period at issue.

Appellant alleged that she was disabled from December 24, 2008 to January 26, 2009, due to her accepted employment injury. The medical evidence of record does not establish that her claimed disability was related to her accepted tenosynovitis. No medical evidence specifically addressed how appellant's claimed period of disability related to her October 12, 2008 work injury.

The employing establishment confirmed that appellant was a casual employee who worked in increments up to 90 days and that her work ended when her appointment ended. Appellant was reappointed as a casual employee effective October 16, 2008, after her injury and her appointment was set to expire on December 31, 2008. The employing establishment explained that, because the seasonal mail volume slowed down, she was separated. The employing establishment noted that 12 other mail handler casual employees were working on the same tour as appellant and they were also released about a week before appellant even though their appointments expired after appellant's appointment. The employing establishment denied that she was let go because of her injury. The evidence also indicates that appellant continued to work as a cashier in a grocery store for 40 hours a week. As noted in 20 C.F.R. § 10.509, an employee generally will not be considered to have experienced a compensable recurrence of disability as defined in 20 C.F.R. § 10.5(x) merely because his or her employer has eliminated the employee's light-duty position in a reduction-in-force or some other form of downsizing.[10] The Board finds that the evidence does not support that the end of appellant's term of work was in any way related to her work injury.

On appeal, appellant's representative asserted that the Office did not consider that Dr. Novak's report supported an aggravation of a preexisting condition. He alleged that the claim should be expanded. As explained, appellant did not meet her burden of proof in establishing her claim.

CONCLUSION

The Board finds that appellant failed to establish that she was disabled for the period December 24, 2008 to January 26, 2009 as a result of her employment-related injuries.

[9] Although appellant contends that an aggravation of the malunion condition should be accepted, Dr. Novak did not explain the reasons for his opinion in his March 6, 2009 report. For conditions not accepted by the Office as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not the Office's burden to disprove such relationship. *S.R.*, Docket No. 09-2332 (issued August 16, 2010).

[10] *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(2)(a) (May 1997) (a recurrence of disability does not include a work stoppage caused by the termination of a temporary employment).

ORDER

IT IS HEREBY ORDERED THAT the February 23, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 3, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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