United States Department of Labor
Employees' Compensation Appeals Board

A.L., Appellant	)	
and	)	**Docket No. 10-2021**
	)	**Issued: May 5, 2011**
U.S. POSTAL SERVICE, REDWOOD CITY POST OFFICE, Redwood City, CA Employer	)	

Appearances:
Alan J. Shapiro, Esq., 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 3, 2010 appellant, through her attorney, filed a timely appeal of a July 6, 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 to consider the merits of the case.

ISSUE

The issue is whether appellant has met her burden of proof in establishing that she sustained a recurrence of disability effective on September 4, 2009 causally related to an accepted employment injury.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 8, 2006 appellant, then a 62-year-old distribution clerk, filed a traumatic injury claim alleging that she injured her lower back in the performance of duty on January 28, 2006.[2] Dr. Joseph Debonis, a physician Board-certified in emergency medicine, examined her on January 28, 2006 and diagnosed low back strain. He indicated that appellant was totally disabled through February 4, 2006. In a report dated May 1, 2006, Dr. Rose Melgar, a physician specializing in occupational medicine, diagnosed acute exacerbation of chronic back pain. She found that appellant could return to modified work on May 1, 2006 and that appellant was permanently precluded from engaging in her usual and customary occupation. Dr. Melgar completed a form report on May 1, 2006 and diagnosed acute exacerbation of chronic back pain. She stated that appellant's permanent restrictions were effective September 25, 2000 and included no lifting of more than 10 pounds, standing and walking for one half hour per hour, no twisting and no bending. Dr. Melgar discharged appellant from her care. The Office accepted her claim for lumbar sprain and strain on July 27, 2006.

Appellant submitted a series of form reports from her attending physician, Dr. Sabrina Hill, an osteopath, beginning on December 21, 2005 providing her work restrictions as standing, walking and climbing one half hour of every hour, no kneeling, bending, stooping, twisting, pushing or pulling and lifting up to five pounds. Appellant could reach above the shoulder for four hours, driving for two hours, operate machinery for four hours and experience temperature extremes for five hours. Dr. Hill also limited appellant's noise exposure to four hours a day.

In a letter dated August 21, 2006, the employing establishment noted that appellant's work restrictions from her November 2, 2001 employment injury[3] were lifting and carrying no more than five pounds, one-half hour sitting, standing and walking, no climbing, kneeling, bending, stooping, twisting, pushing or pulling.

Appellant filed a notice of recurrence of disability on September 4, 2009. On the reverse of the form, her supervisor stated that no necessary tasks meeting appellant's medical restrictions were available after September 4, 2009. Appellant filed a claim for compensation on September 21, 2009 requesting wage-loss compensation from September 11 through 25, 2009.

In a letter dated October 7, 2009, the Office stated that appellant's claim was closed as she no longer suffered residuals of the January 28, 2006 injury. It stated that she sustained a lumbar sprain and that on July 27, 2006 the medical evidence established that she experienced a preexisting back condition and had returned to baseline. The Office stated, "Therefore, you no longer suffered residuals of the January 28, 2006 injury, as the sprain had healed, and you were returned to your date-of-injury job. That job may have been a light-duty job, but was based on restrictions due to other medical conditions which may or may not have been work related. As such the restrictions that you have been under were not due to the accepted back strain under this

[2] Appellant originally filed a notice of recurrence of disability relating her condition on January 28, 2006 to a May 2004 employment injury.

[3] The employing establishment listed appellant's claim File No. xxxxxx291.

case, but were related to a 'chronic preexisting back condition,' and the [employing establishment] having no light duty available is not related to this claim."

By decision dated January 27, 2010, the Office denied appellant's claim for disability for the period September 11 through 25, 2009 finding that she had no residuals of her January 28, 2006 employment injury. Appellant, through counsel, requested a telephonic hearing. Counsel appeared at the oral hearing on May 4, 2010 and requested 30 days to submit additional medical evidence.

By decision dated July 6, 2010, an Office hearing representative affirmed the Office's denial of appellant's claim for a recurrence of disability causally related to her January 28, 2006 employment injury.

LEGAL PRECEDENT

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that 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 disability and show that 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 requirements.[4] This burden includes the necessity of furnishing 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 employment factors and supports that conclusion with sound medical reasoning.[5]

ANALYSIS

Appellant filed a claim in June 2006 alleging that she had sustained a back injury due to her employment duties. The Office accepted this claim for back strain. Appellant then filed a notice of recurrence of disability alleging that the employing establishment withdrew her light-duty job assignment. The employing establishment confirmed that there was no work available within her work restrictions beginning September 4, 2009. Appellant filed a claim for compensation requesting wage-loss compensation from September 11 through 25, 2009.

The evidence in the record including medical treatment notes from Dr. Melgar and a letter dated August 21, 2006 from the employing establishment indicate that appellant had a previously accepted claim for back injury and that her work restrictions on September 4, 2009 were due to this November 2, 2001 employment injury. The employing establishment provided claim File No. xxxxxx291 as resulting in appellant's work restrictions. The Office did not address whether this was an accepted claim or whether she was still working under restrictions due to a November 2, 2001 employment injury. The Board's review of the record finds strong

[4] *Terry R. Hedman*, 38 ECAB 222 (1986).

[5] *See Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

suggestions that appellant had a previously accepted back injury and that the Office failed to combine the related case files as dictated by its procedures.

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.[6] On remand the Office should double this case File No. xxxxxx187 with any other injury claim appellant has filed for the same part of the body, including case File No. xxxxxx291 in accordance with its procedures.[7] The Office procedure manual provides that cases must be doubled when a new injury is reported for an employee who previously filed an injury claim for a similar condition or to the same part of the body.[8] It should develop the factual and medical evidence to determine whether the employing establishment's withdrawal of appellant's light-duty work assignment on September 4, 2009 constituted a recurrence of disability under any of her accepted claims. Following this and any other further development as the Office deems necessary, an appropriate final decision should be issued on appellant's claim for compensation.[9]

CONCLUSION

The Board finds that this case is not in posture for decision as to whether appellant sustained a recurrence of disability on September 4, 2009 due to the withdrawal of her light-duty assignment. On remand, the Office should combine the appropriate claim files and issue a *de novo* decision.

[6] *Claudio Vazquez*, 52 ECAB 496 (2001).

[7] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c)(1) (February 2000).

[8] *Id.*

[9] *T.M.*, Docket Nos. 09-1090, 09-2226 (issued March 8, 2010); *T.D.*, Docket No. 07-2331 (issued June 19, 2008).

ORDER

IT IS HEREBY ORDERED THAT the July 6, 2010 decision of the Office of Workers' Compensation Programs is not in posture for decision and must be remanded for further action consistent with this decision of the Board.

Issued: May 5, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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