

**United States Department of Labor
Employees' Compensation Appeals Board**

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| A.C., Appellant |) | |
| |) | |
| and |) | Docket No. 11-22 |
| |) | Issued: September 14, 2011 |
| DEPARTMENT OF DEFENSE, DEFENSE |) | |
| DISTRIBUTION DEPOT, Norfolk, VA, |) | |
| Employer |) | |
| |) | |

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 4, 2010 appellant filed a timely appeal from a September 16, 2010 merit decision of the Office of Workers' Compensation Programs' (OWCP) which denied her claim for a recurrence of disability. Pursuant to the Federal Employees' Compensation Act (FECA)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 met her burden of proof to establish that she sustained a recurrence of disability beginning October 8, 1999 causally related to her accepted May 13, 1994 employment injury.

FACTUAL HISTORY

On May 16, 1994 appellant, then a 39-year-old materials handler, filed a traumatic injury claim (Form CA-1), alleging that on May 13, 1994 she sustained injury to her back while working on a conveyor belt. She stopped work on May 13, 1994 and returned on May 23, 1994.

¹ 5 U.S.C. § 8101 *et seq.*

Appellant was placed on limited duty in 1995, with physical restrictions. On June 6, 1995 OWCP accepted the claim for left paraspinal muscle strain and lumbago. On February 9, 1996 it accepted a recurrence of disability.² OWCP also accepted intermittent disability for work. Appellant stopped work in August 1999, claiming total disability, and retired on October 8, 1999.

A September 2, 1999 functional capacity evaluation by an occupational therapist noted appellant's current work status was in the sedentary work classification. In a March 30, 2000 report, Dr. Cynthia Su, Board-certified in internal medicine and physical rehabilitation, diagnosed chronic low back and bilateral shoulder pain, with pain symptom augmentation. She checked a box "yes" that appellant's condition was caused or aggravated by her employment. Dr. Su noted "possibly" and explained that she was unable to make a specific correlation given the chronicity of complaints, and that appellant had been out of work for five months without improvement. She advised that appellant was able to return to duty with restrictions that included no bending, twisting, lifting over 15 pounds, no squatting, pulling, pushing, or overhead reaching. Dr. Su also recommended walking, sitting, reaching below horizontal for 40 minutes with 10-minute rest periods to change position based upon the functional capacity evaluation of September 2, 1999.

In a May 3, 2000 report, Dr. Ray Iglecia, Jr. a Board-certified psychiatrist and neurologist, noted that appellant had not worked since October 9, 1999. He advised that appellant was unable to return to her previous position based upon her current level of complaints and diminished level of functioning, even at a sedentary or light-duty status. Dr. Iglecia recommended that appellant be in a chronic pain program focusing on lifestyle modifications. He also recommended referral to an orthopedic surgeon for further evaluation of her right shoulder.

By letters dated September 20 and October 18, 2002, OWCP referred appellant for a second opinion examination, together with a statement of accepted facts, a set of questions and the medical record to Dr. Edward Gold, a Board-certified orthopedic surgeon and Dr. Sarah Moore, a Board-certified psychiatrist and neurologist.

In an October 7, 2002 report, Dr. Gold reviewed appellant's history of injury and treatment, which included complaints of intermittent low back pain and sciatica. Appellant showed some symptom magnification but he saw no outside factors which contributed to her disability. Dr. Gold determined that there were no objective findings to support that her injury was still active. He advised that there was no evidence of a problem prior to appellant's injury or of any preexisting conditions. Dr. Gold noted that she also complained of right shoulder pain but that it was unrelated to the accepted low back injury. He noted that any wrist or upper extremity problems were unrelated to the work injury. Dr. Gold advised that appellant's current disability due to her work injury was an inability to engage in heavy lifting or prolonged standing or walking. He stated that she "is capable of gainful employment which would require limitations which would include; no prolonged sitting without a break, no prolonged standing, limited bonding or kneeling, and no lifting more than 15 pounds. Appellant should be capable of doing a sedentary type job." Dr. Gold noted that appellant may have some disability due to her

² The record reflects that appellant was involved in a nonwork-related motor vehicle accident on May 11, 1996. Appellant injured her left wrist and required surgical intervention.

shoulder and upper extremity problems, but this was not related to the work injury. He found that appellant had reached maximum medical improvement, there was no need for surgery due to the work injury and that her condition was permanent. Dr. Gold related that there was no evidence of any significant psychological problem.

In a November 7, 2002 report, Dr. Moore addressed appellant's history of injury and diagnosed major depression, single episode; hypertension and chronic pain. She stated that the condition "appears to have developed after the lower back injury. It appears to be directly related to the chronic pain but exacerbated by other life stressors such as appellant's son and her financial situation. The depression is now in remission on the Elavil and the consideration of other medications seems in order."

Appellant filed a recurrence of disability (Form CA-2a) on August 7, 2009 alleging that she had a lumbar sprain since May 16, 1994. She stopped work on October 8, 1999 when she retired. Appellant stated that, upon returning to work after her injury, she was on light duty with no lifting over 10 pounds, bending, stooping, sitting for long periods, no working in temperatures at 55 degrees and below.

In a July 31, 2009 report, Dr. Anne Donnelly, a Board-certified family practitioner, diagnosed a backache. In a September 9, 2009 report, she diagnosed shoulder joint pain and back ache. Dr. Donnelly also diagnosed low back pain and advised that appellant was disabled for work beginning in "1999."

On August 4, 2010 OWCP informed appellant of the evidence needed to support her recurrence of disability claim and requested that she submit additional evidence within 30 days.

In a report dated August 20, 2010, Dr. Donnelly noted appellant's history and advised that she was appellant's primary care physician and had occasionally treated her for "pain related to injuries sustained on her job in the early 1990s." She had since seen appellant twice for back pain related to workers' compensation. The first visit was July 31, 2009, when appellant reported that the pain she was having was due to an injury that had occurred in 1994 when she was working in a warehouse at the employing establishment. Dr. Donnelly reviewed a computerized axial tomography (CAT) scan dated November 22, 1995 which revealed mild degenerative changes at L4-L5 and L5-S1. She advised that there was no stenosis, nerve root compression or disc herniation. Examination revealed decreased range of motion due to pain and tenderness to palpation of the lumbosacral paraspinal muscles but no evidence of neurological dysfunction. Dr. Donnelly opined that appellant's symptoms were probably due to degenerative joint disease which was evident on the CT scan from 1995. She did not believe that appellant could work doing any kind of heavy lifting but could work in a more sedentary-type, light-duty job.

In a letter dated August 30, 2010, appellant noted that she had continued pain and disability since October 8, 1999 which she believed was work related.

In a September 16, 2010 decision, OWCP denied the claim finding that the evidence of record did not establish disability as of October 1999 related to the accepted low back injury.

LEGAL PRECEDENT

Section 10.5(x) of OWCP's regulations defines "recurrence of disability" as 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

A claimant has the burden of establishing that he sustained a recurrence of a medical condition⁴ that is causally related to his accepted employment injury. The employee must furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical rationale.⁵ Where no such rationale is present, the medical evidence is of diminished probative value.⁶

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 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 job requirements.⁷

ANALYSIS

Appellant's claim was accepted for left paraspinal muscle strain and lumbago. The employing establishment provided light duty to appellant after her work injury. Appellant subsequently alleged a recurrence of total disability beginning on October 8, 1999. On August 4, 2010 OWCP advised her of the medical and factual evidence needed to establish her claim. The Board finds that appellant did not submit sufficient medical evidence which contained a rationalized opinion from a physician addressing a complete and accurate factual and medical history as to how the recurrence of disability was related to the employment injury. The Board notes that that there is no evidence showing that there was a change in the nature and extent of the light-duty job requirements.

Dr. Donnelly provided several reports noting that she treated appellant for "pain related to injuries sustained on her job in the early 1990s." She opined that appellant "had a backache probably due to degenerative joint disease which was evident on the CT scan from 1995."

³ 20 C.F.R. § 10.5(x) (2002). See *Carlos A. Marrero*, 50 ECAB 117 (1998).

⁴ "Recurrence of medical condition" means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a need for further medical treatment after release from treatment, nor is an examination without treatment. 20 C.F.R. § 10.5(y) (2002).

⁵ *Ronald A. Eldridge*, 53 ECAB 218 (2001).

⁶ *Albert C. Brown*, 52 ECAB 152 (2000).

⁷ *Conard Hightower*, 54 ECAB 796 (2003).

Dr. Donnelly found she could perform work in a more sedentary, lighter-duty job. The Board finds that this report does not establish appellant's claim for a recurrence of disability beginning October 8, 1999. Dr. Donnelly did not specifically state that appellant sustained a recurrence of disability as of October 8, 1999 or otherwise explain the reasons why she could not perform the light-duty work beginning that date. She also attributed appellant's condition to degenerative joint disease which is not an accepted condition.⁸ Dr. Donnelly's July 31, 2009 and September 9, 2009 reports do not specifically address how any disability beginning October 8, 1999 was causally related to the May 13, 1994 work injury.

In a March 30, 2000 report, Dr. Su, diagnosed chronic lower back pain and chronic bilateral shoulder pain, with pain symptom augmentation. She checked a box "yes" in response to whether the condition was employment related but also noted that appellant augmented pain symptoms and advised that she could not make specific correlation due to the chronicity of appellant's complaints. Dr. Su advised that appellant was able to work and prescribed light duty restrictions. The Board notes that bilateral shoulder conditions were not accepted in this claim. Moreover, the checking of a box yes in a form report, without additional explanation or rationale, is not sufficient to establish causal relationship.⁹ Thus, as Dr. Su did not clearly support that appellant was unable to perform her light-duty job beginning October 8, 1999, this report is of limited probative value and insufficient to establish appellant's claim for a recurrence of disability.

In a May 3, 2000 report, Dr. Iglecia noted appellant's history, which included that she was not working since October 9, 1999. While he indicated that appellant was unable to return to her previous position based upon her current level of complaints and diminished level of functioning, even at a sedentary or light-duty status, he did not explain how he arrived at this opinion. In particular, Dr. Iglecia did not explain why appellant's May 13, 1994 work injury caused disability beginning October 8, 1999.

The Board also notes that in an October 7, 2002 report, Dr. Gold, a second opinion physician, advised that appellant was capable of light duty and prescribed restrictions. Dr. Gold indicated that her right shoulder pain wrist and upper extremity problems were unrelated to the work injury. Although he advised that appellant was unable to engage in heavy lifting or prolonged standing or walking due to her work injury, he provided no indication that she was unable to perform her light-duty position. In a November 7, 2002 report, Dr. Moore, a second opinion physician, diagnosed major depression and chronic pain and opined that the conditions "appears to have developed after the lower back injury." She advised that the depression was in remission. The Board notes that OWCP did not accept depression as being employment related and, in any event, Dr. Moore did not offer an opinion regarding appellant's disability beginning October 8, 1999.

While the record contains reports from other physicians, these reports do not provide any opinion regarding whether appellant's total disability beginning October 8, 1999 was due to a spontaneous change in appellant's accepted condition.

⁸ See *Jaja K. Asaramo*, 55 ECAB 200 (2004) (for conditions not accepted by OWCP, the claimant bears the burden of proof to establish that the condition is causally related to the employment injury).

⁹ See *Barbara J. Williams*, 40 ECAB 649, 656 (1989).

In the instant case, appellant did not submit a medical report which contained a rationalized opinion to explain why she could no longer perform the duties of her light-duty position beginning October 8, 1999 and why any such disability or continuing condition would be due to the accepted condition. The Board finds that appellant has failed to establish either a change in the nature and extent of her light-duty job requirements or a change in the nature and extent of her injury-related condition beginning October 8, 1999. As appellant failed to meet her burden of proof, OWCP properly denied her claim for a recurrence of disability.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant failed to establish that she sustained a recurrence of disability beginning on October 8, 1999 that was causally related to her May 13, 1994 employment injury.

ORDER

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

Issued: September 14, 2011
Washington, DC

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

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

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