

2004 OWCP accepted a prolapsed bladder.² Appellant underwent anterior colporrhaphy surgery on January 12, 2005 by Dr. Clifton Wheeler. She returned to a light-duty position and continued to work light duty. In a duty status report (Form CA-17) dated December 18, 2006, Dr. Wheeler indicated that appellant could work with a 10-pound lifting restriction.

In a memorandum of telephone call (Form CA-110) dated September 21, 2009, appellant reported that she was told on September 15, 2009 that the employing establishment no longer had work within her restrictions. On January 25, 2010 OWCP received a January 18, 2010 Form CA-2a (notice of recurrence) commencing September 15, 2009. Appellant stated that the employing establishment no longer provided work within her medical restrictions.

By decision dated April 5, 2010, OWCP denied the claim for a recurrence of disability. It found that the job withdrawn was not a light-duty job made to specifically accommodate a work-related injury.

Appellant requested a telephonic hearing, which was held on August 11, 2010. The hearing representative requested that she submit additional medical evidence. In a report dated September 8, 2010, Dr. Wheeler reviewed appellant's history and noted the January 12, 2005 surgery. He indicated that, when she returned to work postoperatively, she was given a 10-pound lifting restriction. Dr. Wheeler stated this restriction was "indefinite," that appellant was seen in December 2006, July 2007, August 2008 and October 8, 2009 and "on all of those visits and with the 10-pound lifting restriction still in place, she has shown adequate to good support with no evidence of recurrent cystocele." He further stated, "Based on the patient's history of the acute onset of symptomatic cystocele following the lifting of heavy tubs of mail at her employment with the postal service, findings immediately following the reported event, progression to surgical correction, and the sustainment of good support subsequent to surgery, I have no reason to lift the restriction of a 10-[pound] limitation on weight lifting." Dr. Wheeler concluded that this restriction was permanent.

By decision dated September 28, 2010, the hearing representative affirmed the April 5, 2010 OWCP decision. The hearing representative found it was appellant's burden of proof, that Dr. Wheeler did not provide objective findings and offered prophylactic restrictions.

LEGAL PRECEDENT

OWCP'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

² OWCP explained that a physician had diagnosed a cystocele, or a bladder hernia that herniated out of the vaginal opening. The ICD9 diagnosis code 618.0 describes the condition as a prolapse of the vaginal walls without uterine prolapse.

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 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

It is appellant’s burden of proof to establish a recurrence of disability commencing September 15, 2009. As noted, the withdrawal of a light-duty job made to accommodate the claimant’s work-related restrictions is a recurrence of disability. OWCP does not contest that the employing establishment withdrew the light-duty job that appellant had been performing. It is its position that as of September 15, 2009 the light-duty job was not a job assignment made to specifically accommodate work-related restrictions.

OWCP does not acknowledge that on this issue it would be their burden of proof to establish that on or prior to September 15, 2009 the work-related restrictions had ceased. In this case it accepted an abdominal wall strain and a prolapsed bladder (cystocele). Appellant returned to a light-duty job following surgery and continued to work with restrictions. For OWCP to prevail on its argument, it must establish that the accepted conditions had resolved, or that any continuing work restrictions were not related to the accepted work injuries.⁶

In this regard OWCP reviewed Dr. Wheeler’s September 8, 2010 report and concluded that the physician provided only prophylactic restrictions that is, restrictions based solely on the possibility of a future injury, not on appellant’s residuals of her accepted bladder condition. Dr. Wheeler’s report however clearly states that appellant’s 10-pound lifting restriction was

³ 20 C.F.R. § 10.5(x).

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 Once OWCP accepts a claim, it has the burden to establish that the disability had ceased or that it was no longer related to the employment. *Elaine Sneed*, 56 ECAB 373 (2005); *Patricia A. Keller*, 45 ECAB 278 (1993); 20 C.F.R. § 10.503.

permanent. He did not provide any opinion that the employment-related conditions had resolved.

The record establishes that appellant's light-duty position, which was offered to accommodate her work-related medical restrictions, was withdrawn. The medical evidence of record also establishes that appellant still required light duty for her accepted conditions. OWCP has not established that her accepted medical conditions and restrictions ceased. Appellant has established a recurrence of disability as the light-duty work offered to accommodate her medical restrictions was withdrawn.

CONCLUSION

The Board finds that appellant has established a recurrence of disability due to withdrawal of light-duty work.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 28, 2010 is reversed.

Issued: September 7, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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