

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

_____)	
L.N., Appellant)	
)	
and)	Docket No. 11-266
)	Issued: September 8, 2011
U.S. POSTAL SERVICE, POST OFFICE,)	
Pembroke Pines, FL, Employer)	
_____)	

Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 8, 2010 appellant, through her attorney, filed a timely appeal of a September 17, 2010 Office of Workers' Compensation Programs' (OWCP) merit decision. Pursuant to the Federal Employees' Compensation Act (FECA)¹ and 20 C.F.R. §§ 501.2(c)(1) 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 was totally disabled from October 23 to November 6, 2009.

FACTUAL HISTORY

On March 13, 2007 appellant, then a 47-year-old clerk, filed an occupational disease claim alleging that she developed pain in her back radiating to her hip and legs due to her employment duty of twisting and turning. She first became aware of her condition in January 2006 and first related the condition to her employment on March 7, 2007. OWCP

¹ 5 U.S.C. § 8101 *et seq.*

accepted appellant's claim for lumbar sprain on March 27, 2007. Appellant's attending physician, a neurologist, with an illegible signature released her to return to light-duty work on April 18, 2007. He continued to provide work restrictions on January 22, 2008. Dr. Nancy L. Erickson, an osteopath specializing in pain management, completed a duty status report on May 12 and November 12, 2008 and indicated that appellant could work with restrictions based on her functional capacity evaluation of May 29, 2007.² A magnetic resonance imaging scan on December 6, 2008 demonstrated a disc bulge at L5-S1. Dr. Erickson performed a lumbar neuroforaminal injection on February 9, 2009. She indicated that appellant had continued work restrictions on March 24, 2009.

Dr. Erickson examined appellant on June 29, 2009 and performed a therapeutic bilateral lumbar epidural steroid injection. She continued to support appellant's work restrictions on August 13, 2009. On August 31, 2009 appellant reported pain in the low back radiating down her left leg to her calf and Dr. Erickson performed a therapeutic caudal epidural steroid injection.

On November 4, 2009 appellant filed a claim for compensation requesting wage-loss compensation for leave without pay from October 23 through November 6, 2009. On the reverse of the form, the employing establishment stated that she was sent home under the national reassessment process. In a letter dated November 13, 2009, OWCP noted that appellant's limited-duty assignment may have been withdrawn as part of the employing establishment national reassessment process. It requested medical evidence establishing that appellant still had residuals due to her January 2006 work injury. OWCP allowed 30 days for a response. By decision dated March 31, 2010, it denied appellant's claim finding that she failed to submit any supportive medical evidence. Counsel requested an oral hearing on April 12, 2010. A notification of personnel action dated April 30, 2010 indicated that appellant utilized disability retirement on April 20, 2010. Counsel and appellant appeared at the oral hearing on June 29, 2010. Appellant stated that the employing establishment informed her that no more light duty was available for her beginning September 22, 2009. She stated that she had four separate claims with OWCP for her back, hands, shoulder and neck and that the employing establishment created a job for her.

In a report dated July 27, 2010, Dr. Erickson related appellant's condition to an injury on January 1, 2006 when she was pulling heavy equipment and injured her back. She diagnosed lumbar and cervical radiculopathy.

By decision dated September 17, 2010, the Branch of Hearings and Review, denied appellant's claim on the grounds that she had not submitted the necessary medical evidence to establish that she continued to experience employment-related residuals of the March 13, 2007 lumbar strain.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of establishing the essential elements of his or her claim, including that any disability or specific condition for which

² The Board is unable to locate the functional capacity evaluation in the record.

³ 5 U.S.C. §§ 8101-8193.

compensation is claimed is causally related to the employment injury.⁴ The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.⁵

Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.⁶ Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work. When a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that she hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.⁷ The Board will not require OWCP 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 employees to self-certify their disability and entitlement to compensation.⁸

FECA Bulletin No. 09-05 provides in pertinent part:

“B. LWEC decision HAS NOT been issued –

“1. If the claimant has been on light duty due to an injury[-]related condition without an LWEC [loss of wage-earning capacity] rating ..., payment for total wage loss should be made based on the CA-7 as long as the following criteria are met:

- the current medical evidence in the file (within the last 6 months) establishes that the injury[-]related residuals continue;
- the evidence of file supports that light duty is no longer available; and
- there is no indication that a retroactive LWEC determination should be made. (Note -- Retroactive LWEC determinations should not be made in these NRP [National Reassessment Program] cases without approval from the District Director.)”⁹

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

⁴ *G.T.*, 59 ECAB 447 (2008); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ 20 C.F.R. § 10.5(f); *see, e.g., Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury but no loss of wage-earning capacity).

⁶ *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁷ *Id.*

⁸ *Id.*

⁹ FECA Bulletin No. 09-05 (issued August 18, 2009, expiration date August 18, 2010).

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.¹⁰

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.¹¹ Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹² Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹³

ANALYSIS

OWCP accepted that appellant sustained a lumbar sprain on March 27, 2007. Appellant returned to light-duty work on April 18, 2007. She filed a claim for compensation on November 4, 2009 requesting wage-loss compensation for leave without pay from October 23 to November 6, 2009. This form indicated that appellant's light-duty position was withdrawn through the national reassessment program. OWCP requested that she provide medical evidence supporting her continued partial disability due to the accepted lumbar sprain. Appellant did not respond and it denied her claim.

OWCP procedures as outlined in FECA Bulletin No. 09-05¹⁴ provide that in cases such as this one, when a formal wage-earning capacity decision has not been issued, then an appellant will receive compensation if there is medical evidence less than six months old establishing that injury-related residuals continue and light duty is no longer available. Appellant has not submitted any medical evidence establishing that she has injury-related residuals due to the accepted lumbar strain. There is medical evidence from Dr. Erickson which was less than six months old at the time appellant filed the claim for compensation, but Dr. Erickson's July 27, 2010 report before the hearing representative indicates that she was treating appellant for a 2006 traumatic back injury resulting from pulling heavy equipment rather than for residuals of the accepted occupational disease claim due to twisting and turning in the performance of duty. As appellant did not comply with OWCP's request for medical evidence and as the record does not

¹⁰ *Terry R. Hedman*, 38 ECAB 222 (1986).

¹¹ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹² *Leslie C. Moore*, 52 ECAB 132 (2000).

¹³ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹⁴ *Supra* note 9.

establish that she has residuals due to her March 27, 2009 lumbar injury that was accepted by OWCP, the Board finds that OWCP properly denied her claim for compensation.

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 has not submitted the necessary medical opinion evidence to establish that she had medical residuals due to the 2007 lumbar strain which required continued light-duty work.

ORDER

IT IS HEREBY ORDERED THAT the September 17, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 8, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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