

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

D.H., Appellant	)	
	)	
and	)	Docket No. 11-1601
	)	Issued: April 2, 2012
U.S. POSTAL SERVICE, POST OFFICE,	)	
Forest Park, IL, Employer	)	
	)	

<i>Appearances:</i>	<i>Case Submitted on the Record</i>
<i>Alan J. Shapiro, Esq., for the appellant</i>	
<i>Office of Solicitor, for the Director</i>	

**DECISION AND ORDER**

Before:  
RICHARD J. DASCHBACH, Chief Judge  
ALEC J. KOROMILAS, Judge  
COLLEEN DUFFY KIKO, Judge

**JURISDICTION**

On June 28, 2011 appellant, through her attorney, filed a timely appeal from a May 18, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) 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 has established a recurrence of disability commencing on or about May 5 and July 24, 2010.

**FACTUAL HISTORY**

The case was before the Board on a prior appeal. Since appellant has filed a number of claims for injury, the Board will attempt to summarize the factual background. Appellant filed a claim for injury on February 10, 1995, which was accepted for sciatica and spinal stenosis. In

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

May 2004 she filed a recurrence of disability claim (Form CA-2a) commencing May 22, 2004. Appellant did not identify an original injury date, although she subsequently submitted a CA-2a form dated May 25, 2004 that identified the original injury as February 10, 1995.<sup>2</sup>

On May 31, 2007 appellant filed an occupational claim (Form CA-2) alleging that she sustained sciatica and spinal stenosis as a result of her federal employment. The claim was developed under OWCP File No. xxxxxx631. On March 12, 2008 OWCP stated that the claim was accepted for aggravation of sciatica and spinal stenosis. It also indicated that it was combining the xxxxxx631 case file with the present file.

The record also indicates that appellant has a claim for carpal tunnel syndrome and wrist tendinitis. According to OWCP's March 12, 2008 letter, appellant had been receiving compensation since August 14, 2007 pursuant to the carpal tunnel claim. In its prior decision, the Board affirmed the denial of compensation from May 25 to August 14, 2004 and June 26 to August 11, 2007.

With respect to work restrictions, in a report dated October 27, 2008, Dr. Mark Sokolowski, an orthopedic surgeon, noted that a functional capacity evaluation had been performed and appellant could work sedentary duty with a five-pound lifting restriction. Appellant was referred for a second opinion examination by Dr. David Trotter, a Board-certified orthopedic surgeon. In a report dated April 21, 2009, Dr. Trotter indicated that she could work four hours per day with frequent position changes and a five-pound lifting restriction. OWCP then referred appellant to Dr. Martin Saltzman, a Board-certified orthopedic surgeon selected as a referee physician. Dr. Saltzman completed a work capacity evaluation (OWCP-5) dated July 13, 2009, indicating that she could work four hours per day, with three to four hours sitting, one hour walking and one hour standing. He also indicated that appellant was restricted to no reaching above shoulder, twisting or bending.

The record indicates that on December 23, 2009 the employing establishment offered appellant a light-duty position for four hours per day. The employing establishment indicated that the position involved sitting of three to four hours with 15-minute breaks every two hours, and one hour of walking/standing. According to the employing establishment the position was based on the work restrictions of Dr. Saltzman.

Appellant returned to work in the light-duty, part-time position on April 9, 2010. In a letter dated April 15, 2010, she stated that when she retrieved mail she had to bend, twist and lift.

On May 14, 2010 appellant filed a claim for compensation (Form CA-7) from May 5 to 16, 2010.<sup>3</sup> The time analysis forms indicate that she claimed eight hours compensation for May 22, 23 and 30 and July 6, 2010. Appellant also filed a CA-7 commencing July 24, 2010.

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<sup>2</sup> OWCP stated in a March 19, 2009 statement of accepted facts that there was a separate claim for injury in 2004 with a claim number ending in 225. The identified claim number is not associated with appellant. It appears that OWCP was referring to the 2004 recurrence of disability claim.

<sup>3</sup> The time analysis forms (CA-7a) contain conflicting evidence: one indicates that appellant worked four hours May 5 to 9, 2010, and another indicates that she did not work May 5 to 7, 2010.

With respect to medical evidence, appellant submitted a note dated May 10, 2010 from Dr. Alan Wilson, an internist, stating that she was totally disabled from May 10 to 17, 2010 due to sciatica. In a report dated June 22, 2010, Dr. Wilson stated that she had experienced a severe flare-up of her spinal stenosis with sciatica. He stated that appellant had severe back pain and was unable to perform her job. In a report dated July 23, 2010, Dr. Wilson stated that she suffered from lumbar spinal stenosis with right sciatica. He opined that appellant could not perform any of her job duties, that this was a longstanding condition and she was totally and permanently disabled.

By decision dated September 21, 2010, OWCP denied a claim for recurrence of disability for dates from May 12 to July 6, 2010. In a decision dated November 9, 2010, it denied the claim for compensation commencing July 24, 2010.

Appellant requested a hearing before an OWCP hearing representative with respect to both the September 21 and November 9, 2010 OWCP decisions. In a decision dated May 17, 2011, a hearing representative affirmed the denial of compensation for dates from May 12 to July 6, 2010. By decision dated May 18, 2011, another hearing representative affirmed the denial of compensation commencing July 24, 2010.

### **LEGAL PRECEDENT**

OWCP 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 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.”<sup>4</sup>

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.<sup>5</sup> 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

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<sup>4</sup> 20 C.F.R. § 10.5(x).

<sup>5</sup> *Albert C. Brown*, 52 ECAB 152 (2000); *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222 (1986).

and medical history, and supported by sound medical reasoning, that the disabling condition is causally related to employment factors.<sup>6</sup>

### **ANALYSIS**

In this case, appellant had returned to work in a light-duty position at four hours per day. She claimed compensation for total disability on intermittent dates from May 12 to July 6, 2010, and commencing July 24, 2010. With respect to a change in the nature and extent of the light-duty requirements, appellant did not submit probative evidence in this regard. She briefly indicated in an April 15, 2010 letter that her job required bending, twisting and lifting. Appellant did not indicate whether this represented a change in the light-duty job, and if so, when it occurred and other relevant information. The job description of the position did not require bending, twisting or lifting, and she submitted no probative evidence that the position was outside her work restrictions.

With respect to a change in the nature and extent of the injury-related condition, appellant did not meet her burden of proof. She submitted a note dated May 10, 2010 from Alan Watson, M.D., who briefly indicated that appellant should be off work from May 10 to 17 due to sciatica, without further explanation. In a June 22, 2010 report, Dr. Wilson stated that she had a severe flare up of symptoms from stenosis with sciatica and could not work. But a general statement regarding a flare up of symptoms is of little probative value in establishing a period of disability without further explanation.<sup>7</sup> The case presents a complicated medical history and Dr. Wilson did not provide a medical history or background. Moreover, he did not discuss causal relationship between symptoms and the employment injuries, or provide a rationalized medical opinion as to a specific period of disability causally related to the accepted employment-related conditions. The July 23, 2010 report stated that appellant was permanently disabled without providing a rationalized medical opinion, based on a complete background, establishing an employment-related disability.

It is appellant's burden of proof to establish her claim, and the Board finds she did not meet her burden of proof in this case. She 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 appellant did not establish a recurrence of disability commencing on or about May 5 and July 24, 2010.

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<sup>6</sup> *Maurissa Mack*, 50 ECAB 498 (1999).

<sup>7</sup> See *L.G.*, Docket No. 10-2188 (issued September 21, 2011); *C.C.*, Docket No. 09-1141 (issued February 18, 2010).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated May 18 and 17, 2011 are affirmed.

Issued: April 2, 2012  
Washington, DC

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

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board