United States Department of Labor
Employees' Compensation Appeals Board

L.R., Appellant	)	
and	)	**Docket No. 11-1837**
	)	**Issued: April 12, 2012**
U.S. POSTAL SERVICE, ALLENDALE CARRIER ANNEX, Allendale, NJ, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 4, 2011 appellant, through her attorney, filed a timely appeal from a May 3, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) finding that she did not establish a recurrence of disability. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant sustained a recurrence of disability beginning January 27, 2010 due to her accepted work injury; and (2) whether she sustained a consequential emotional condition.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted that on October 29, 1996 appellant, then a 32-year-old mail carrier, sustained the toxic effect of venom from a snake bite to her left calf in the performance of duty. She stopped work on October 29, 1996 and returned to limited-duty employment on January 13, 1997.[2]

In a report dated August 11, 1997, Dr. M.J. Izbal, a Board-certified psychiatrist, diagnosed post-traumatic stress disorder (PTSD) and found that appellant was unable to perform outside work. On September 28, 1999 Dr. Bruce Johnson, a Board-certified psychiatrist, noted that appellant had experienced "an event that was an actual threat to physical integrity itself." He discussed her symptoms of recurrent dreams about the snake bite and determined that she had intense psychological distress. Dr. Johnson diagnosed PTSD due to the October 29, 1996 snake bite. On September 26, 2000 Dr. Claudio I. Dicovsky, a psychiatrist, diagnosed major depression, PTSD and adjustment disorder and found that work aggravated appellant's condition due to her serious employment injury and harassment by supervisors.

On August 21, 2006 appellant accepted a position as a modified letter carrier. The job required intermittent sitting for seven hours, reaching above the shoulders for two hours, intermittent twisting and turning for two hours and intermittent walking for 30 minutes. Appellant's duties included answering the telephone for five hours, filing express mail for one hour, casing mail for 30 minutes and verifying addresses for one hour and 30 minutes a day. In a duty status report dated March 6, 2007, Dr. James M. Katz, a Board-certified dermatologist, found that she could work sitting up to seven hours a day and standing and walking up to 30 minutes a day.

On January 27, 2010 the employing establishment offered appellant a position as a modified city carrier for four hours a day. The duties included casing mail on a stool for up to three hours and delivering mail for 30 minutes. The job offer set forth the physical requirements as picking up mail and reaching to a shelf case for up to three hours, standing while casing mail for one hour, operating a motor vehicle for 30 minutes and walking for 30 minutes. Appellant indicated on the offer that she would accept casing mail but refused to deliver mail outside.

In a duty status report dated January 27, 2010, Dr. Katz diagnosed severe anxiety, PTSD, pain, swelling and cellulitis. He found that appellant could not work outside due to her cellulitis. Dr. Katz further indicated that she could not stand more than 30 minutes a day.

On February 3, 2010 appellant filed a notice of recurrence of disability beginning January 27, 2010 due to her October 28, 1996 employment injury. She related that the employing establishment sent her home under the National Reassessment Process (NRP). On the claim form, the employing establishment noted that, following appellant's original injury, it accommodated her by providing work answering the telephone and customer questions and other administrative duties.

[2] By decision dated March 22, 2000, OWCP granted appellant a schedule award for a 15 percent permanent impairment of the left lower extremity.

By letter dated March 10, 2010, Rick Yannotti, a supervisor, related that appellant "was sent home on January 27, 2010 and has not returned to work because the [employing establishment] cannot accommodate the restrictions set forth by her physician." On April 8, 2010 the employing establishment notified OWCP that after appellant received a new job offer she submitted a duty status report with new restrictions.

In a report dated April 22, 2010, Dr. Katz related that he had treated appellant from October 1996 to the present. He found that she was disabled from employment and stated:

> "[Appellant] sustained a snake bite while working on the job in 1996. I have been evaluating and treating [her] for severe pain, cellulitis and lymphatic obstruction of the lower extremities associated with severe swelling and difficulty ambulating and walking. [Appellant] is also experiencing symptoms associated with stress disorder because of her condition. She has also developed chronic infections from the above conditions."

On April 26, 2010 Dr. Frank L. Gazzillo, a Board-certified neurologist, evaluated appellant for "persistent painful paresthesias in the left leg" since a snake bite on October 29, 1996. On examination he found decreased sensation in the left leg and pain moving the left ankle. Dr. Gazzillo determined that appellant was disabled due to painful paresthesias related to her superficial peroneal nerve injury in the left leg.

In a report dated May 18, 2010, Dr. Dicovsky related that he had treated appellant since August 31, 2000 for depression and suicidal and homicidal ideation related to stress at work. He indicated that she believed that she was harassed at work when she began working modified duty as a result of an employment-related snake bite. Dr. Dicovsky diagnosed major depression, PTSD and adjustment disorder. He found that appellant's current employment aggravated her condition because she "suffered a serious injury while at her job" and as she asserted that she was harassed by her supervisors. Dr. Dicovsky opined that she was disabled from employment.

On May 17, 2010 OWCP referred appellant to Dr. Lynne Carmickle, a Board-certified neurologist, for a second opinion evaluation. In a report date June 2, 2010, Dr. Carmickle reviewed appellant's history of injury on October 29, 1996 and provided findings on examination. She determined that appellant had no objective evidence of a nerve injury and that her sensory complaints had a functional overlay. Dr. Carmickle advised that appellant had "shiny skin in the left lower extremity but no tenderness" that might be due to persistent scratching rather than the snake bite. She noted that appellant had recently stopped work after 10 years. Dr. Carmickle found that there was "no objective evidence of any change in neurological status that would affect appellant's ability to work" and opined that she had no work restriction neurologically.

On June 10, 2010 Dr. Gazzillo diagnosed "painful paresthesias as the result of a superficial peroneal nerve injury in the left lower extremity from the previous snake bite. At this time [appellant] remains unable to function in any type of work setting and she is totally and permanently disabled."

By decision dated June 23, 2010, OWCP found that appellant had not established a recurrence of disability beginning January 27, 2010 due to her October 29, 1996 employment injury. It determined that the medical evidence did not show that she was now disabled from her employment or that she had a psychiatric condition due to the work injury.[3]

On July 2, 2010 appellant, through her attorney, requested an oral hearing before an OWCP hearing representative. In a report dated July 22, 2010, Dr. Gazzillo described his evaluation of her for paresthesias in the left leg.[4] He attributed the condition to appellant's snake bite and found that she was totally disabled due to her inability to stand or walk.

At the hearing, held on November 5, 2010, appellant related that the job offer by the employing establishment as part of the NRP was outside of her work restrictions. She asserted that she could not case mail on a stool due to the pressure on her legs.

On December 1, 2010 the employing establishment related that as part of the NRP "all employees working limited-duty assignments had their jobs evaluated to determine if they were performing necessary work." It noted that appellant submitted new medical evidence when offered another position.

By decision dated December 30, 2010, OWCP's hearing representative affirmed the June 23, 2010 decision. She discussed the findings of the second opinion physician that appellant could return to full duty. The hearing representative also determined that appellant had not submitted sufficient medical evidence to show a psychiatric condition due to her work injury.

On January 9, 2011 appellant was admitted to the hospital after complaining of having snakes all over her. Dr. Mariza Del Rosario-Garcia, a Board-certified psychiatrist, diagnosed a somatic-type delusional disorder, PTSD and left leg pain due to a snake bite 13 years earlier.

On January 31, 2011 counsel requested reconsideration. He requested expansion of the claim to include PTSD. Counsel also argued that appellant had established a recurrence of disability through the withdrawal of her light-duty work.

By decision dated May 3, 2011, OWCP denied modification of its December 30, 2010 decision.

On appeal, counsel argued that appellant has established a recurrence of disability due to the withdrawal of her limited-duty employment under the NRP. He further contended that OWCP should have developed the issue of whether appellant sustained a consequential injury due to her work injury.

[3] OWCP noted that appellant worked 12 hours a week in private employment.

[4] On September 13, 2010 Dr. Gazzillo again found that appellant was disabled and diagnosed a peroneal nerve injury with persistent painful paresthesias.

LEGAL PRECEDENT -- ISSUE 1

Where 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 establishes that the employee 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 to show that he or 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.[5]

OWCP regulations provide that a 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.[6] 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, (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force) or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.[7]

Section 8123(a) provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.[8] The implementing regulation states that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination. This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.[9]

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained the toxic effect of venom from a snake bite to her left calf on October 29, 1996. She returned to limited-duty employment on January 13, 1997. On February 3, 2010 appellant filed a notice of recurrence of disability beginning January 27, 2010 due to her October 29, 1996 work injury. She maintained that the employing establishment sent her home on that date after withdrawing her limited-duty position as part of the NRP.

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[5] *Richard A. Neidert*, 57 ECAB 474 (2006); *Jackie D. West*, 54 ECAB 158 (2002); *Terry R. Hedman*, 38 ECAB 222 (1986).

[6] 20 C.F.R. § 10.5(x).

[7] *Id*.

[8] 5 U.S.C. § 8123(a).

[9] 20 C.F.R. § 10.321.

The employing establishment offered appellant a position on January 27, 2010 for four hours a day. The position had increased physical requirements from her prior limited-duty position of standing for one hour rather than 30 minutes a day and delivering mail outside for 30 minutes.

OWCP procedures as outlined in FECA Bulletin No. 09-05[10] provide that in cases where a formal wage-earning capacity decision has not been issued and limited-duty work is withdrawn, OWCP should evaluate the medical evidence to determine if the current evidence establishes that the employment-related residuals continue.

In a duty status report dated January 27, 2010, Dr. Katz diagnosed severe anxiety, PTSD and cellulitis. He advised that appellant could not work outside due to cellulitis or stand over 30 minutes a day. On April 22, 2010 Dr. Katz related that he had treated her since 1996 for a snake bite and diagnosed cellulitis and lymphatic obstruction. He found that appellant was disabled from employment.

On April 26, 2010 Dr. Gazzillo noted that appellant experienced painful paresthesias secondary to an October 29, 1996 snake bite. He found that she was disabled due to a peroneal nerve injury in the left leg resulting in paresthesias. On June 10, 2010 Dr. Gazillo attributed the peroneal nerve injury to the snake bite and again advised that appellant was totally disabled.

OWCP referred appellant to Dr. Carmickle for a second opinion examination. On June 22, 2010 Dr. Carmickle determined that appellant had no objective evidence of a nerve injury and no neurological disability. She found that appellant had some shiny skin on the left leg that might be a result of scratching rather than the snake bite.

The Board finds that a conflict in medical opinion exists between Dr. Katz and Dr. Gazzillo, appellant's attending physicians and Dr. Carmickle, who provided a second opinion examination, regarding whether the current evidence establishes that her work-related residuals continue. Section 8123 of FECA provides that, if there is a disagreement between the physician making the examination for the United States and the employee's physician, OWCP shall appoint a third physician, who shall make an examination.[11] The case will therefore be remanded for an impartial medical examiner to resolve the conflict in medical opinion. Following this and such further development as deemed necessary, it should issue a *de novo* decision.

LEGAL PRECEDENT -- ISSUE 2

The general rule respecting consequential injuries is that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause, which is attributable to the employee's own intentional conduct. The subsequent injury is compensable if it is the direct and natural result of a compensable

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

[11] *Supra* note 8 at § 8123; *see Y.A.*, 59 ECAB 701 (2008).

primary injury. With respect to consequential injuries, the Board has stated that, where an injury is sustained as a consequence of an permanent residual to an employment injury, the new or second injury, even though nonemployment related, is deemed, because of the chain of causation to arise out of and in the course of employment and is compensable.[12]

A claimant bears the burden of proof to establish a claim for a consequential injury. As part of this burden, he or she must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship. Rationalized medical evidence is evidence which relates a work incident or factors of employment to a claimant's condition, with stated reasons of a physician. The opinion must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship of the diagnosed condition and the specific employment factors or employment injury.[13]

In discussing the range of compensable consequences, once the primary injury is causally connected with the employment, Larson notes that, when the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury, the rules that come into play are essentially based upon the concepts of direct and natural results and of claimant's own conduct as an independent intervening cause. The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.[14]

ANALYSIS -- ISSUE 2

OWCP accepted that appellant sustained the toxic effect of venom from an October 29, 1996 snake bite to her left calf. She alleged that she sustained an emotional condition as a consequence of the accepted snake bite. Appellant has the burden to establish that her stress-related condition is the direct and natural result of her injury.[15]

On August 11, 1997 Dr. Izbal diagnosed PTSD and found that appellant could not work outdoors. In a report dated September 28, 1999, Dr. Johnson noted that the snake bite was a life-threatening event that caused recurrent dreams and significant psychological distress. He diagnosed PTSD due to the October 29, 1996 snake bite. On September 26, 2000 Dr. Dicovsky diagnosed major depression, adjustment disorder and PTSD. He found that work aggravated appellant's condition and attributed the aggravation to both her significant work injury and harassment. In a report dated May 18, 2010, Dr. Dicovsky related that he had treated her beginning August 31, 2000 for depression and suicidal and homicidal ideation caused by employment-related stress. He discussed appellant's belief that she was harassed at work due to her snake bite injury and needed her to work modified duty. Dr. Dicovsky diagnosed PTSD, adjustment disorder and major depression due to a serious work injury and her belief that she was harassed by her supervisors. He found that appellant was disabled. On January 9, 2011

[12] *See S.S.*, 59 ECAB 315 (2008); *Debra L. Dillworth*, 57 ECAB 516 (2006).

[13] *Charles W. Downey*, 54 ECAB 421 (2003).

[14] Larson, *The Law of Workers' Compensation* § 10.01; *see supra* note 13.

[15] *See supra* note 12.

Dr. Rosario-Garcia noted that appellant reported snakes climbing over her and admitted her to the hospital with diagnoses of delusional disorder, PTSD and leg pain due to a snake bite 13 years earlier.

It is well established that proceedings under FECA are not adversarial in nature.[16] While appellant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.[17] It has an obligation to see that justice is done.[18] The medical reports from appellant diagnosed PTSD beginning near the time of her snake bite. While the opinions of Dr. Johnson and Dr. Dicovsky that her emotional condition arose from her work injury are not completely rationalized, they are sufficient to raise an uncontroverted inference of causal relationship sufficient to warrant further development.[19] On remand, OWCP should refer appellant for a second opinion examination to determine whether appellant sustained a consequential emotional condition due to her October 29, 1996 snake bite. After such further development as deemed necessary, it should issue a *de novo* decision on this issue.

CONCLUSION

The Board finds that the case is not in posture for decision.

[16] *William B. Webb*, 56 ECAB 156 (2004); *John J. Carlone*, 41 ECAB 354 (1989).

[17] *Peter C .Belkind*, 56 ECAB 580 (2005); *Dorothy L. Sidwell*, 36 ECAB 699 (1985).

[18] *R.E.*, 59 ECAB (2008); *Rebecca O. Bolte*, 57 ECAB 687 (2006).

[19] *See Phillip L. Barnes*, 55 ECAB 426 (2004).

ORDER

IT IS HEREBY ORDERED THAT the May 3, 2011 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: April 12, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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