United States Department of Labor
Employees' Compensation Appeals Board

D.C., Appellant	)	
and	)	**Docket No. 11-1865**
	)	**Issued: April 4, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Little Rock, AR, Employer	)	

Appearances:
William C. Frye, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 5, 2011 appellant, through her attorney, filed a timely appeal of a February 9, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP), which affirmed a June 4, 2010 decision that denied her claim for wage-loss compensation. 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.

ISSUE

The issue is whether appellant met her burden of proof to establish that she was disabled commencing March 12, 2010 as a result of her employment-related conditions.

FACTUAL HISTORY

On December 22, 2008 appellant, then a 59-year-old rural letter carrier, filed an occupational disease claim alleging that the daily use of her left arm to lift, sort and transfer mail

[1] 5 U.S.C. § 8101 *et seq.*

caused a left shoulder condition. She first became aware of the injury and its relation to her work on August 1, 2008. On November 4, 2008 Dr. Kyle R. Blickenstaff, a Board-certified orthopedic surgeon, diagnosed rotator cuff tendinitis and bursitis of the left shoulder and a double full thickness tear. On March 5, 2009 OWCP accepted the claim for left rotator cuff tear. It authorized a left shoulder arthroscopy with debridement of the rotator cuff tendon tear and subacromial decompression, which was performed on May 21, 2009. Appellant received wage-loss compensation after the surgery.

In a May 28, 2009 treatment note, Dr. Blickenstaff advised that appellant could return to work with restrictions on left arm use. Appellant returned to light duty on June 8, 2009. On June 11, 2009 the employing establishment provided her with a modified rural carrier assignment based upon Dr. Blickenstaff's restrictions. Appellant accepted the position on June 11, 2009. On July 22, 2009 Dr. Blickenstaff provided updated restrictions for her and on September 15, 2009 she signed a new modified-duty agreement.

In an October 2, 2009 duty status report, Dr. Blickenstaff noted that appellant's left shoulder remained weak and provided restrictions which included: a three-pound lifting limit; sitting for zero to six hours per day; continuous standing and intermittent walking for no more than zero to three hours per day; kneeling and bending from zero to one hour per day; twisting on an intermittent basis from zero to six hours per day; no pulling or pushing; simple grasping from zero to eight hours per day; fine manipulation from zero to one hour per day, no climbing or reaching above the shoulder and driving a vehicle from zero to six hours per day.

On December 21, 2009 Dr. Blickenstaff advised that appellant had no improvement or digression of her left shoulder symptoms. He opined that she reached maximum medical improvement and provided an opinion on impairment. Dr. Blickenstaff advised that appellant could continue working modified duty with permanent restrictions. He stated that she could drive a vehicle and operate machinery. Dr. Blickenstaff noted that appellant was unable to reach with her left arm above shoulder level, she could not reach from the waist with more than five pounds, and could not lift or carry more than a maximum of 20 pounds. On January 7, 2010 he revised her restrictions to include no lifting over 15 pounds; no pushing, or pulling of more than 10 pounds and no reaching above the shoulder.

On March 5, 2010 the employing establishment provided appellant with a light-duty assignment as a modified rural carrier based upon Dr. Blickenstaff's restrictions. The duties of the position included casing mail, driving a vehicle and sorting mail on a route. The physical requirements included: sitting and riding while distributing mail, for one to six hours daily; reaching with left arm above shoulder/pushing or pulling for zero hours, lifting over 15 pounds, pushing and pulling over 10 pounds for zero hours.[2]

In a report dated March 5, 2010, Dr. Blickenstaff noted that appellant was unable to externally rotate her left arm. He noted that the employer tried to return her to her full duties. Dr. Blickenstaff explained that appellant had a "massive left shoulder rotator cuff" which was inoperable and irreparable. He advised that she was unable to perform the duties of a rural mail

[2] Appellant refused to sign the offer based on her physician's advice.

carrier because it required her to use her left arm with her upper extremity and lift items and manipulate heavy objects, which she was unable to do.

The employer confirmed that appellant refused to sign the job offer. On March 19, 2010 appellant claimed wage-loss compensation beginning March 12, 2010.

In a letter dated March 29, 2010, OWCP advised appellant that it received her claim for total disability compensation for the period March 12 to 19, 2010.[3] Appellant was advised that the new position only required her to do the work that she did prior to her injury with her uninjured arm. She was also advised that it was not a regular-duty position as the job had restricted duties based on Dr. Blickenstaff's restrictions. Appellant was allotted 30 days to submit documentation to support that she was unable to work during the period claimed.

In an April 7, 2010 report, Dr. Blickenstaff noted that appellant was working at a modified work capacity. He advised that she was concerned about her left shoulder and had done well with the modified light duty until recently. Dr. Blickenstaff noted that appellant's restrictions had been misinterpreted such that she was requested to commence performing rural mail delivery. He examined her and determined that she had slight infraspinatus atrophy, supple to range of motion. Appellant continued to have weakness with active abduction, forward flexion and pain with rotator cuff resistance. Dr. Blickenstaff tried to explain her limitations to the employer and stated that, while she could function in a modified capacity, she could not perform repetitive reaching and handling of mail required by a rural mail carrier due to her permanent left shoulder situation. He noted that he was never provided with a formal job description; however, he had "a pretty good understanding of what would be required of [appellant] utilizing her left upper extremity to repetitively reach and deliver the mail."

In an April 18, 2010 work capacity evaluation, Dr. Blickenstaff prescribed permanent restrictions which included to repetitive reaching, lifting to the waist of no more than 20 pounds for one hour, and no pushing or pulling of more than five pounds for zero hours. He specified that appellant was unable to reach above the shoulder with her left arm. Appellant continued to claim wage-loss compensation.

In a letter dated May 27, 2010, appellant's representative contended that the medical evidence supported that appellant could not perform the modified position. He provided OWCP with a copy of Dr. Blickenstaff's April 18, 2010 report.

By decision dated June 4, 2010, OWCP denied appellant's claim for compensation beginning March 12, 2010. It found that the medical evidence failed to establish that she was totally disabled and unable to work as a result of the accepted work-related condition. OWCP found that appellant was capable of full-time light-duty work with restrictions.

On June 16, 2010 appellant's representative requested a telephonic hearing, which was held on November 4, 2010. During the hearing, appellant argued that the job offer was not suitable because it was not based on the medical restrictions provided by the attending physician. She stopped work in March 2010 when she received a new job offer that involved driving and

[3] The letter indicated 2009; however, this is a typographical error.

delivering a mail route. Appellant explained that her physician advised her that she could not lift above her left shoulder or reach to her left and provided the updated restrictions on April 7, 2010. She stated that she was required to sort, case, move, and bundle mail, push carts, put mail into her vehicle and place mail in mailboxes. Appellant was unable to reach above her head or move her left arm to the left and was unable to complete her route in the time allotted by the employer. Her physician informed her that she would never be able to resume working as a rural carrier. Appellant stated that she was forced to retire on July 30, 2010 because there was not enough mail at the facility to justify her continued employment.

In a July 22, 2010 letter, Devin Cassidy, a union official, asserted that the modified position was not suitable. He contended that Dr. Blickenstaff's April 7, 2010 restrictions were not consistent with a rural carrier position. Mr. Cassidy argued that the offer of modified assignment did not represent the position that appellant was offered.

After the hearing, OWCP received a copy of Dr. Blickenstaff's April 7, 2010 report and appointment slips from a chiropractor. It also received nursing reports.

In a December 6, 2010 letter, Lynette Jackson, the employer's manager of health and resource management, stated that appellant was provided reasonable accommodations within the medical restrictions recommended by her physician. Appellant's first limited-duty assignment was accepted on June 11, 2009 and was largely sedentary and performed inside the postal facility. She worked in this position until a new modified-duty assignment was offered in March 2010. The new assignment included rural route carrier duties with modifications that would take appellant outside of the facility but to be performed within her physical restrictions. Ms. Jackson indicated that management informed appellant how she could perform her modified carrier job safely without aggravating her injury. Furthermore, she was not required to reach above her left shoulder or head to case mail. Appellant had the ability to modify her carrier case as she saw fit by only casing mail in slots at chest level, using the wings of the case. She also noted that there were no driving restrictions. Ms. Jackson advised that appellant was right-handed and drove a right-hand drive vehicle that was equipped to allow her to use her right hand to place the mail in mailboxes. Appellant informed the employer that she sold the vehicle as she had no intention of returning to delivering mail. The employing establishment confirmed that she retired on July 31, 2010. Ms. Jackson reiterated that the modified rural carrier duties complied with appellant's medical restrictions and that the position did not require reaching above the shoulder or any overhead activities. Appellant was placed off work as of March 6, 2010, and was provided with the modified job offer and allowed two weeks to make a decision on the assignment.

In a February 9, 2011 decision, an OWCP hearing representative affirmed the July 9, 2009 decision.

LEGAL PRECEDENT

The term disability as used in FECA means the incapacity because of an employment injury to earn the wages that the employee was receiving at the time of injury.[4] Whether a

[4] *Paul E. Thams*, 56 ECAB 503 (2005). *See* 20 C.F.R. § 10.5(f).

particular injury caused an employee disability for employment is a medical issue which must be resolved by competent medical evidence.[5] When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in the employment held when injured, the employee is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.[6] 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.[7]

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.[8]

ANALYSIS

OWCP accepted the claim for left rotator cuff tear and authorized a left shoulder arthroscopy with debridement of rotator cuff tendon tear and subacromial decompression, which was performed on May 21, 2009. Following her surgery, appellant returned to modified duty. In an October 2, 2009 duty status report, Dr. Blickenstaff updated her restrictions and on December 21, 2009 he indicated that she could drive a vehicle and operate machinery. In a January 7, 2010 report, he revised the restrictions to include: no lifting over 15 pounds; no pushing, or pulling of more than 10 pounds and no reaching above the left shoulder. On March 5, 2010 the employer provided appellant with a light-duty assignment as a modified rural carrier based upon Dr. Blickenstaff's restrictions. Job duties included casing mail, sorting mail and driving a vehicle. The physical requirements included sitting and riding while distributing mail, for one to six hours daily; reaching with left arm above shoulder/pushing or pulling for zero hours, lifting over 15 pounds, pushing and pulling over 10 pounds for zero hours. Appellant refused to accept the job and filed claims for wage-loss compensation.

Appellant provided a March 5, 2010 report from Dr. Blickenstaff who noted that she was unable to externally rotate her left arm and that the employer tried to return her to her full duties. Dr. Blickenstaff advised that she was unable to perform the duties of a rural mail carrier because it required her to use her left arm, lift items and manipulate heavy objects, which she was unable to do. In an April 7, 2010 report, he noted that appellant's restrictions had been misinterpreted such that she was requested to commence performing rural mail delivery. Dr. Blickenstaff noted

[5] *W.D.*, Docket No. 09-658 (issued October 22, 2009); *Paul E. Thams, id.*

[6] *Id.*

[7] *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

[8] *Conard Hightower*, 54 ECAB 796 (2003).

that he tried to explain her limitations to the employer and explained that, while she could function at a modified capacity, the repetitive reaching and handling of mail required by a rural mail carrier was not an activity that she could perform due to her left shoulder condition. He acknowledged that he had not seen a formal job description but stated that he had "a pretty good understanding of what would be required of her utilizing her left upper extremity to repetitively reach and deliver the mail." In an April 18, 2010 work capacity evaluation, Dr. Blickenstaff prescribed permanent restrictions which included no repetitive reaching, lifting to the waist of no more than 20 pounds for one hour, and no pushing or pulling of more than five pounds for zero hours. He specified that appellant was unable to reach above the shoulder with her left arm.

The Board finds that these reports do not show that appellant was unable to perform the duties of the modified carrier position offered to appellant on March 5, 2010. They also do not otherwise show that she was totally disabled from all work beginning March 5, 2010. The offered assignment does not require appellant to use her left arm for any activity contrary to Dr. Blickenstaff's restrictions. The restrictions provided by Dr. Blickenstaff were utilized by the employer in offering her a modified assignment. While Dr. Blickenstaff indicated that appellant could not use her left arm for various activities, he did not explain why she would not be able to use her right hand or a right-sided vehicle. He also acknowledged that he had not reviewed the formal description of duties.[9] The Board notes that Dr. Blickenstaff did not provide any restrictions which were not accounted for in the modified rural carrier position. Despite appellant's assertions, and those arguing on her behalf, that the modified assignment did not represent the position that she was offered, there is no evidence to support this argument. The employer explained that the offered assignment was fully consistent with Dr. Blickenstaff's restrictions. Although Dr. Blickenstaff indicated that appellant was returning to her regular duty, the employer disputed this. Ms. Jackson of the employing establishment noted that the assignment included appellant's rural route carrier duties with modifications that would take her outside of the facility but which could be performed within her restrictions. She explained how various job functions could be performed within appellant's restrictions.

The Board finds that the job assignment offered on March 5, 2010 complies with the restrictions provided by Dr. Blickenstaff. Appellant has not met her burden of proof to establish a change in the nature and extent of the light-duty job requirements such that she could not perform the new modified position. There is no other medical evidence of record indicating that appellant was either totally disabled or unable to perform the duties of the modified assignment beginning March 12, 2010. Appellant has not submitted rationalized medical evidence, based upon an accurate factual background, explaining how she was unable to perform her limited-duty assignment beginning March 12, 2010, or how she was disabled from all work as of that date, was causally related to her accepted employment injury.

[9] *See K.W.*, 59 ECAB 271 (2007) (in assessing the weight of medical evidence, OWCP must consider the accuracy and completeness of the physician's knowledge of the facts).

Although appellant submitted records from a nurse, nurses are not physicians under FECA and are not competent to render a medical opinion.[10] She also submitted chiropractic appointment slips. Section 8101(2) of FECA[11] provides that the term physician, as used therein, includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary.[12] Without a diagnosis of a subluxation from x-ray, a chiropractor is not a physician under FECA and his or her opinion on causal relationship does not constitute competent medical evidence.[13] Furthermore, the Board notes that the accepted condition pertains to the left shoulder and a chiropractor is not competent to treat such a condition under FECA.[14]

On appeal, appellant's representative argues that the position is contrary to the restrictions imposed by appellant's physician. However, as noted above, the position is not contrary to the requirements provided by Dr. Blickenstaff.[15]

CONCLUSION

The Board finds that appellant failed to establish that she was disabled for the period commencing March 12, 2010 as a result of her employment-related conditions.

[10] *G.G.*, 58 ECAB 389 (2007). *See* 5 U.S.C. § 8101(2); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board has held that a medical opinion, in general, can only be given by a qualified physician).

[11] 5 U.S.C. § 8101(2).

[12] *See* 20 C.F.R. § 10.311.

[13] *Jay K. Tomokiyo*, 51 ECAB 361 (2000).

[14] *See George E. Williams*, 44 ECAB 530 (1993).

[15] Appellant may submit evidence or argument with a written request for reconsideration 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.

ORDER

IT IS HEREBY ORDERED THAT the February 9, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 4, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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