

OWCP accepted the claim for a back strain. Appellant returned to work at four hours a day and to a full-time modified position on September 25, 1991.

The record indicates that appellant underwent back surgery on March 26, 1997. The surgeon, Dr. Konrad Barth, described the surgery as bilateral L5-S1 laminotomies, radial discectomy and interbody fusion. OWCP accepted the surgeries as causally related to the employment injury.²

On February 1, 2010 appellant filed a recurrence of disability, Form CA-2a, commencing on that date. She stated that her light-duty job had been withdrawn pursuant to the National Reassessment Process (NRP). The record contains a February 1, 2010 letter from the employing establishment advising appellant that it had determined no work was available within her work restrictions. The employing establishment stated that appellant would be placed on administrative leave and if she presented new medical documentation, it would be reviewed by the Reassessment Team. In a letter dated February 16, 2010, it advised that she had applied the protocols of the NRP and was unable to locate available work.

With respect to medical evidence, appellant submitted a form report from Dr. Linford Stillson, an osteopath, dated December 22, 2009. The form report was an employing establishment form requesting clarification of work restrictions. In response to a request for the work-related diagnosis, Dr. Stillson stated chronic low back pain and provided another diagnosis that is illegible. He checked “no” as to whether residuals had resolved.

By decision dated April 5, 2010, OWCP denied the claim for a recurrence of disability. It stated that medical records “do not demonstrate that you need continued work restrictions and are unable to return to regular duty.” There was no reference to the December 22, 2009 form report.

Appellant requested a hearing, which was held on October 13, 2010. She submitted an April 19, 2010 report from Dr. Stillson, who referred to 1998 carpal tunnel and epicondylitis conditions and the October 6, 1989 injury.³ As to the 1989 back injury, Dr. Stillson stated that appellant had continuing work restrictions since 1991. He stated that the restrictions were employment related.

By decision dated December 30, 2010, OWCP’s hearing representative affirmed the April 5, 2010 decision. The hearing representative found that Dr. Stillson did not establish a change in appellant’s employment-related condition as of February 1, 2010. Regarding the withdrawal of the light-duty position, the hearing representative stated, “While the dismissal acted effectively as a withdrawal of light-duty status, it cannot form the basis for a disability compensation claim because the dismissal had nothing to do with the claimant’s ability to perform the limited-duty requirements of the job assignment. As the withdrawal of the position

² In the December 30, 2011 decision, OWCP’s hearing representative stated that the claim had been accepted for aggravation of L5-S1 degenerative disc disease.

³ Dr. Stillson refers to a separate OWCP claim number for the 1998 injury.

was premised on the [employment establishment] general withdrawal regarding the NRP, the loss of the claimant's position does not constitute a recurrence of disability."

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 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."⁴

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.⁵ 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.⁶

FECA Bulletin No. 09-05 outlines procedures for light-duty positions withdrawn pursuant to the NRP. Regarding claims for total disability when a wage-earning capacity decision has not been issued, the Bulletin provides:

"1. If the claimant has been on light duty due to an injury[-]related condition without an LWEC [loss of wage-earning capacity] rating (or the CE [claims examiner] has set aside the LWEC rating as discussed above), 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;

⁴ 20 C.F.R. § 10.5(x).

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

⁶ *Maurissa Mack* 50 ECAB 498 (1999).

“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.)”⁷ The Bulletin also states that if the medical evidence is not sufficient, the claims examiner should request current medical evidence from the employing establishment and the claimant.”

ANALYSIS

Appellant filed a claim for disability commencing February 1, 2010. The record indicates that her light-duty job was withdrawn pursuant to the NRP process. The guidelines for evaluating a claim for total disability under these circumstances are noted above in FECA Bulletin 09-05,⁸ but in this case OWCP failed to properly consider the evidence presented. OWCP’s hearing representative states that while there was a withdrawal of the position under NRP, the loss of the light-duty position does not constitute a recurrence of disability.

It is well established, as noted above, that a withdrawal of a light-duty position is considered a recurrence of disability under OWCP regulations. The guidance from FECA Bulletin 09-05 indicates that OWCP should consider whether the current medical evidence established that appellant had continuing employment-related residuals at the time of the withdrawal of the light-duty position. If the medical evidence is not sufficient, OWCP should request additional evidence.⁹

In this case, OWCP failed to properly follow the guidelines in FECA Bulletin 09-05. It did not properly review the medical evidence from Dr. Stillson in light of the withdrawal of the light-duty position. Accordingly, the case will be remanded to OWCP for further consideration. After such further development as OWCP deems necessary, it should issue an appropriate decision with proper findings on the issue presented.

CONCLUSION

The Board finds the case must be remanded to OWCP for proper findings on the issue presented.

⁷ FECA Bulletin 09-05 (issued August 18, 2009).

⁸ The Bulletin refers to a Form CA-7, claim for compensation, but the Form CA-2a, claim for a recurrence of disability, also represents a claim for total disability.

⁹ It would be OWCP’s burden of proof to show that employment-related residuals had ceased. *See Joseph Roman*, 55 ECAB 233 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 30, 2010 is set aside and the case remanded for further actions consistent with this decision of the Board.

Issued: February 13, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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