

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

C.D., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,
Atlanta, GA, Employer

)
)
)
)
)
)
)
)
)

**Docket No. 11-1779
Issued: March 6, 2012**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 18, 2011 appellant filed a timely appeal from the March 22 and June 28, 2011 merit decisions of the Office of Workers' Compensation Programs (OWCP) denying her claim for disability compensation. Pursuant to the Federal Employees' Compensation Act¹ (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 sustained a recurrence of disability from February 12 to March 13, 2010 as a result of her accepted back condition.

FACTUAL HISTORY

OWCP accepted that on July 26, 2006 appellant, then a 32-year-old rural carrier, sustained a ruptured disc in her lower back when she lifted a tray of mail back onto a shelf. Her

¹ 5 U.S.C. § 8101 *et seq.*

claim was accepted for herniated disc and lumbar sprain. Appellant stopped work that day. She returned to light duty on September 11, 2006 but stopped again on September 15, 2006. Appellant was placed on the periodic rolls for disability compensation. She returned to work on January 30, 2010 without restrictions.²

On January 7, 2011 OWCP received appellant's claim for disability compensation for the period February 12 to April 13, 2010. In an accompanying time analysis, Form CA-7a, appellant noted that on February 12, 13 and 16 and March 12 and 23, 2010 she used a total of 12 hours of leave without pay (LWOP) for therapy. From March 27 to April 3, 2010 she did not work and used eight hours of LWOP each day due to back pain. On April 5, 8, 9, 12 and 13, 2010 appellant used a total of 10 hours of LWOP to undergo therapy.

Treatment notes signed by physical therapists Jessica Babcock and Michelle Cokely advised that appellant underwent manual therapy treatments on March 30, April 1, 2, 5, 8, 9 and 16, 2010.

In a February 17, 2010 report, Dr. Woodley Mardy-Davis, a pain medicine specialist, noted appellant's complaints of chronic lower back pain for the past three years as a result of a work injury. He reported that her treatment modalities included chiropractic, steroid injections, joint injections, massage therapy, medication, physical therapy and spinal cord stimulation. Examination of appellant's spine revealed paraspinous tenderness to palpation and pain with extension or flexion. Her Spurling's test was positive, but her straight leg raise test was negative for elicitation of pain. Dr. Mardy-Davis diagnosed intervertebral disc disorder with myelopathy in the lumbar region, lumbar facet joint arthropathy, displacement of lumbar intervertebral disc and degeneration of lumbar or lumbosacral intervertebral disc. He recommended that appellant continue following neuromuscular therapy and her home exercise program.

In a February 25, 2010 note, Dr. Mardy-Davis prescribed neuromuscular therapy two to three times a week.

In a March 26, 2010 low back disability questionnaire, appellant stated that her pain decreased with massage therapy. She reported that massage therapy and medication kept her available to work, but she had not worked until Tuesday.

In an April 13, 2010 report, Dr. Mardy-Davis noted appellant's complaints of back pain and provided an accurate history of injury. He related that she experienced more pain over the past month and had to miss two full weeks of work. Appellant stated that massage therapy helped, but she needed to attend more often. Dr. Mardy-Davis conducted a physical examination and recommended that she continue her home exercise program, physical therapy and neuromuscular stimulation.

² On February 22, 2010 OWCP issued a preliminary decision that appellant received an overpayment in the amount of \$1,336.11 because she continued to receive compensation for temporary total disability through February 13, 2010 after she returned to work full duty on January 30, 2010. The decision was finalized on March 22, 2010. By letter dated June 10, 2011, OWCP informed appellant that her overpayment had been satisfied.

In an April 14, 2010 attending physician's report, Dr. Mardy-Davis noted that appellant sustained a back injury when she lifted a heavy tub of mail at work. He indicated that she was unable to return to regular duty but was capable of light duty. Dr. Mardy-Davis restricted appellant to moderate work and lifting up to 20 pounds.

In a December 3, 2010 injured workers' status report, an OWCP counselor, noted that appellant returned to full-time employment on January 20, 2010 as a modified rural carrier. Appellant began taking time off from work and did not work consistently for 60 days by March 21, 2010. She was ultimately terminated from her employment for cause in June 2010.

In letters dated February 18, 2011, OWCP requested additional information regarding appellant's compensation claim for the period February 12 to April 3, 2010. It requested she provide a statement identifying the activities she had performed since the date of injury that caused an increase in her lumbar pain or affected her low back. OWCP also asked for medical evidence showing that she was examined on or immediately prior to her stopping work. It also informed her that it was unable to authorize physical therapy and requested a physician's report explaining why she needed physical therapy for her July 26, 2006 employment injury.

In a March 3, 2011 statement, appellant noted that she returned to light duty in January 2010. She explained that she underwent physical therapy and massage after returning to work because she still experienced pain. Appellant reported that returning to work aggravated her injury and caused her pain to the point that she had to stay home from work on March 23, 2010 and from April 3 to 5, 2010. She explained that everything she does aggravated her injury and it did not matter what it is or what she did, but she would always be in pain. Appellant related that she was out of work from March 23 to April 3, 2010, left early or came in late from April 9 to 12, 2010 and underwent physical therapy treatments from April 5 to 12, 2010. She was placed on administrative leave on April 15, 2010, but she continued to go to physical and massage therapy until June 2010. Appellant noted that she had not worked since April 15, 2010.

In a decision dated March 22, 2011, OWCP denied appellant's claim finding insufficient medical evidence establishing that she was disabled during this period as a result of her July 26, 2006 employment injury.

On April 11, 2011 appellant requested a review of the written record and submitted additional medical evidence, most of which was previously submitted.

In a May 7, 2011 statement, appellant explained that she returned to modified duty in January 2010. Her duties included cleaning machines and bathrooms, delivering express mail, answering telephones and laminating parcel markers which required her to stretch, squat, stoop, bend, sit, stand and drive a vehicle. Appellant explained that these activities caused her back pain. She stated that the physical and massage therapy was necessary to help her endure the pain of returning to work for eight hours a day. Appellant noted that after she worked for a few weeks, she missed work for over a week because of her back pain. She concluded that returning to work aggravated her condition and that physical and massage therapy was necessary to help ease her pain.

By decision dated June 28, 2011, OWCP's hearing representative affirmed the March 22, 2011 decision denying appellant's claim for disability compensation on the grounds of insufficient medical evidence.

LEGAL PRECEDENT

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 resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.³ This term also means an inability to work when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his 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 her established physical limitations.⁴ Moreover, when the claimed recurrence of disability follows a return to light-duty work, the employee may satisfy her burden of proof by showing a change in the nature and extent of the injury-related condition such that she is no longer able to perform the light-duty assignment.⁵

Where an employee claims a recurrence of disability due to an accepted employment-related injury, she has the burden of establishing that the recurrence of disability is causally related to the original injury.⁶ This burden includes the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history, that the condition is causally related to the employment injury.⁷ The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.⁸

Section 8103 of FECA provides for the payment of expenses incidental to the securing of medical services, which encompasses compensation for any time missed from work due to medical treatment for an employment-related condition.⁹ However, OWCP's obligation to pay for medical expenses and expenses incidental to obtaining medical care, such as loss of wages, extends only to expenses incurred for treatment of the effects of any employment-related condition.¹⁰ Appellant has the burden of proof to submit rationalized medical evidence

³ 20 C.F.R. § 10.5(x).

⁴ *Id.*

⁵ *Theresa L. Andrews*, 55 ECAB 719, 722 (2004).

⁶ 20 C.F.R. § 10.104(b); *Carmen Gould*, 50 ECAB 504 (1999); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

⁷ *Helen K. Holt*, 50 ECAB 279 (1999).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (March 2011).

⁹ 5 U.S.C. § 8103; *Vincent E. Washington*, 40 ECAB 1242 (1989).

¹⁰ *Daniel Hollars*, 51 ECAB 355 (2000); *Antonio Mestres*, 48 ECAB 139 (1996); *supra* note 8 at *Computing Compensation*, Chapter 2.901.16(a) (December 1995).

establishing that the medical services were for a condition causally related to the employment injury and that the services were medically warranted.¹¹

ANALYSIS

OWCP accepted that appellant sustained a back condition as a result of a July 26, 2006 employment injury and placed her on the periodic rolls. She returned to work on January 30, 2010. On January 7, 2011 OWCP received appellant's claim for intermittent disability compensation for the period February 12 to April 13, 2010. It denied her claim finding insufficient medical evidence to establish that she was disabled during the claimed period as a result of her accepted injury.

Appellant submitted CA-7a forms for 22 hours of wage-loss compensation from February 12 to April 13, 2010 to undergo therapy. In subsequent statements, she explained that physical and massage therapy were necessary to help her endure her back pain after she returned to work. The Board finds, however, that the medical evidence is insufficient to establish that physical and massage therapy were medically necessary to treat her accepted back condition and therefore appellant has not established that she is entitled to wage-loss compensation incidental to this therapy.

Appellant submitted medical reports from Dr. Mardy-Davis who noted complaints of chronic back pain for the past three years and conducted a physical examination. Dr. Mardy-Davis listed her diagnoses of intervertebral disc disorder with myelopathy in the lumbar region, lumbar facet joint arthropathy, displacement of lumbar intervertebral disc and degeneration of lumbosacral intervertebral disc. He did not explain how appellant's current physical examination findings supported the need for physical or massage therapy. In February 17 and 25, 2010 reports, Dr. Mardy-Davis recommended that she continue with neuromuscular therapy. In an April 13, 2010 medical report, he generally commented that massage therapy helped appellant with her pain and recommended she continue her physical and neuromuscular therapy. Dr. Mardy-Davis did not, however, provide adequate medical rationale explaining how the treatments were necessary to treat her accepted back condition or would aid in lessening the period of disability. Without such rationalized medical opinion, the Board finds that appellant is not entitled to wage-loss compensation during the claimed period.¹²

Appellant claimed disability compensation for the period March 23 to April 3, 2010 as she was unable to work due to back pain. In an April 13, 2010 medical report, Dr. Mardy-Davis stated that she experienced more pain after she returned to work and had to miss two full weeks of work. He did not, however, provide sufficient opinion explaining how and why appellant was unable to work. The Board has held that medical reports that do not provide any opinion regarding the cause of appellant's current condition and inability to work are of little probative value on the issue of causal relationship.¹³ Furthermore, Dr. Mardy-Davis did not state the dates

¹¹ *David P. Sawchuk*, 57 ECAB 316 (2005); *R.L.*, Docket No. 08-855 (issued October 6, 2008).

¹² *See G.W.*, Docket No. 11-1159 (issued January 12, 2012).

¹³ *S.S.*, 59 ECAB 315 (2008); *Elizabeth H. Kramm*, 57 ECAB 117 (2008); *C.S.*, Docket No. 11-81 (issued August 22, 2011).

when appellant did not work but only stated generally that she was unable to work for two weeks. Because OWCP has no obligation to pay disability compensation in the absence of any medical evidence addressing the specific dates of disability for which compensation would claim, the Board finds that it properly denied appellant's claim for disability compensation.¹⁴

On appeal, appellant contends that she suffers from chronic back pain and that sometimes the pain prevents her from working, such as on the dates she listed. She further alleged that she has provided medical documents and written statements regarding why she missed work during those dates. The issue of causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.¹⁵ In this case, the Board finds that the record does not contain a well-rationalized opinion from a physician that establishes that appellant was unable to work from March 27 to April 3, 2010 as a result of her July 26, 2006 employment injury. Appellant, therefore, did not meet her burden of proof to establish that her claimed disability was causally related to her original injury.

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 did not meet her burden of proof to establish a recurrence of disability for the period February 12 to April 13, 2010.

¹⁴ *Amelia S. Jefferson*, 57 ECAB 183 (2005); see *William A. Archer*, 55 ECAB 674 (2004).

¹⁵ *G.T.*, 59 ECAB 447 (2008); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

ORDER

IT IS HEREBY ORDERED THAT the June 28 and March 22, 2011 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 6, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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