United States Department of Labor
Employees' Compensation Appeals Board

S.M., Appellant	)	
and	)	**Docket No. 12-561**
	)	**Issued: October 24, 2012**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Fort Lauderdale, FL, Employer	)	

Appearances:
Martin Kaplan, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 17, 2012 appellant, through her attorney, filed a timely appeal of a December 1, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her recurrence of disability claim. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she developed a recurrence of disability on May 1, 2011 causally related to her November 7, 2002 employment injury.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 14, 2002 appellant, then a 44-year-old mail processing clerk, filed an occupational disease claim alleging that she developed a disc herniation due to factors of her federal employment. On March 26, 2003 OWCP accepted her claim for aggravation of bilateral carpal tunnel syndrome, aggravation of left shoulder bursa and tendon disorder and aggravation of neck sprain or strain. In status reports dated May 20, 2003 through August 7, 2008, it was noted that appellant was not to reach above the shoulder or to reach above the shoulder for up to one hour in an eight-hour day.

Appellant returned to work on February 17, 2010 as a mail processing clerk working eight hours a day performing all duties of the box section and allied duties including postage due as well as relief expeditor. She was required to lift and carry up to 50 pounds, to stand, kneel, bend, stoop, twist and perform simple grasping for up to eight hours a day, to reach above the shoulder (with no time specified), to push and pull as well as walk six hours a day. A duty status report dated February 10, 2010 supported appellant's ability to lift up to 50 pounds, stand six to eight hours a day and walk for six hours a day. This report lists two or eight hours in an eight-hour day for reaching above the shoulder.

Dr. Douglas R. Stringham, a Board-certified orthopedic surgeon, completed reports on February 10 and 24, 2010 and stated that appellant's work restrictions did not change. He diagnosed cervical disc herniation, left shoulder impingement syndrome, cervical degenerative disc disease with bilateral neuroforaminal narrowing as well as left shoulder bursitis and tendinitis. Appellant continued to work without need for further restrictions through February 14, 2011.

On April 7, 2011 the employing establishment offered appellant a position as a mail processing clerk performing all the duties of the box section and allied duties including postage due as well as relief expeditor, automation. The position required her to lift and carry up to 50 pounds, to stand, kneel, bend, stoop, twist, push, pull and reach above the shoulder for up to eight hours. Appellant was also required to walk for up to six hours a day. In a note dated April 26, 2011, Dr. Stringham stated that appellant reported pain that was aggravated with repetitive activities, "especially machine-related activities with reaching above the shoulder." He diagnosed chronic cervical strain/sprain with underlying degenerative disc disease. Appellant refused the offered position on April 30, 2011.

The employing establishment informed appellant, by letter dated April 30, 2011, that under the guidelines of the National Reassessment Process (NRP) a limited-duty position was offered to her which she refused to accept. On May 5, 2011 appellant filed a claim for wage-loss compensation as of April 30, 2011.

On May 5, 2011 appellant alleged that on May 1, 2011 she sustained a recurrence of disability causally related to her November 7, 2002 employment injury. She had performed all the bid job duties of her current and previous bid assignments, but could not work automation. Appellant noted on April 30, 2011 that her supervisor provided her with a new modified job offer which included automation. She stated, "I cannot work automation and it is not part of my

manual bid job or related allied duties." Appellant's supervisor stated that appellant refused to accept an offer made within her work restrictions.

In a letter dated May 20, 2011, OWCP requested that appellant provide additional factual and medical evidence in support of her claimed recurrence of disability. Dr. Stringham examined appellant on May 6, 2011 and diagnosed chronic cervical spondylosis/chronic cervical strain/sprain, chronic rotator cuff tendinitis, left shoulder and opined that she had reached maximum medical improvement. He rated a whole person impairment of six percent. Dr. Stringham stated, "No machinery operation and no reaching above the shoulder and no continuous reaching above the shoulder with the left upper extremity." On June 2, 2011 he repeated his findings and diagnoses.

On June 3, 2011 appellant stated that the employing establishment was aware of her restriction of no automation machines. She alleged that her work activities exacerbated her left shoulder rotator cuff injury, herniated cervical discs and aggravated her carpal tunnel syndrome in her right wrist.

Dr. Stringham completed a report on June 13, 2011 noting appellant's history of injury on November 7, 2002. He diagnosed chronic cervical spondylosis and chronic rotator cuff tendinosis. Dr. Stringham stated that appellant's pain was aggravated by varying activities especially machine-related activities when reaching above the shoulder. He opined that she had not experienced a new work injury, but that her condition was expected to recur when she performed "medically contraindicated activities" such as performing "repetitive overhead reaching with the left upper extremity or … looking up."

Appellant submitted a June 29, 2010 mutual agreement, which stated that she was limited under the modified job offer under NRP from working on the automated flat sorting machine.

By decision dated July 8, 2011, OWCP denied appellant's claim for a recurrence of disability. It found that Dr. Stringham's reports did not attribute her disability for work due to a spontaneous worsening of her accepted employment-related conditions.

Appellant requested an oral hearing before an OWCP hearing representative. In a report dated July 8, 2011, Dr. Stringham stated that appellant's initial diagnosis on March 23, 2003 was disorder of the left shoulder, bursa and tendons and strain/sprain of the neck. He opined that these conditions were chronic. Dr. Stringham stated:

> "I do not have any documentation that [appellant's] previously diagnosed left shoulder disorder of bursa and tendons or neck strain/sprain was ever completely resolved. In other words, in the absence of contradictory information, [she] has a permanent partial impairment of her neck and left shoulder subsequent to the injury of November 7, 2002 unless there is documentation indicating otherwise. If documentation can be produced indicating [that appellant] was placed at maximum medical improvement with no permanent partial impairment subsequent to the injury of November 7, 2001, then other causes for [her] current condition could be investigated. However, at the present time there is no other indication of any other trauma or injury or surgery that would be the proximate

cause for [appellant's] current chronic condition other than the inciting trauma of November 7, 2002."

On August 9, 2011 Dr. Stringham limited appellant to no use of automation in the workplace and no repetitive reaching or overhead activities. He submitted similar follow-up notes from August 11 to October 11, 2011.

Appellant testified at the October 17, 2011 oral hearing. Counsel argued that her recurrence was due to the removal of a light-duty position as the employing establishment offered her work outside her restrictions. Appellant testified that the employing establishment provided her with a new job on April 30, 2010 which required that she work on an automated machine. She noted that working on an automated machine required repetitive reaching overhead, pulling and lifting heavy trays of mail overhead for an extended time as well as turning her neck.

By decision dated December 1, 2011, an OWCP hearing representative found that appellant had not claimed a recurrence as she and Dr. Stringham discussed the fear of new causative actions. The hearing representative found that appellant attributed her current condition to work exposure to duties involving automated machines rather than a spontaneous worsening of her symptoms.

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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that cause the illness. The term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate and 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.[2]

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 of record 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 requirements.[3]

FECA Bulletin No. 09-05 outlines procedures when light-duty positions are withdrawn under NRP. If the claimant has been on light duty due to an injury-related condition without a wage-earning capacity rating, or OWCP has set aside the wage-earning capacity rating, payment for total wage loss should be made based on the CA-7 form as long as the following criteria are

[2] 20 C.F.R. § 10.5(x).

[3] *Terry R. Hedman*, 38 ECAB 222 (1986).

met: (1) the current medical evidence in the file (within the last six months) establishes that the injury-related residuals continue; (2) the evidence of file supports that light duty is no longer available; and (3) there is no indication that a retroactive wage-earning capacity determination should be made. Retroactive wage-earning capacity determinations should not be made in NRP cases without approval from the district Director. FECA Bulletin No. 09-05 states that, if the medical evidence is not sufficient, OWCP should request current medical evidence from the employing establishment and the claimant.[4]

ANALYSIS

The Board finds this case is not in posture for a decision. The record reveals that the employing establishment withdrew appellant's light-duty position pursuant to NRP on April 30, 2011. She claimed wage-loss compensation as the employing establishment could not accommodate her work restrictions.

Generally, a withdrawal of a light-duty position is considered a recurrence of disability under OWCP's regulations. As there is no wage-earning capacity determination in place, OWCP should consider whether the medical evidence established that appellant had continuing injury-related residuals at the time of the withdrawal.[5] FECA Bulletin No. 09-05 was issued specifically to provide guidance when a claimant is sent home through NRP because light duty is no longer available. The May 1 and December 1, 2011 decisions denying the claim for compensation do not refer to FECA Bulletin No. 09-05 or attempt to follow its provisions. The case will therefore be remanded to OWCP for a proper adjudication of the claim in accord with FECA Bulletin No. 09-05's guidance. After such further development as OWCP deems necessary, it shall issue a *de novo* decision on appellant's entitlement to wage-loss compensation beginning April 30, 2011.

CONCLUSION

The Board finds this case is not in posture for a decision regarding OWCP's denial of appellant's claimed recurrence beginning April 30, 2011.

[4] FECA Bulletin No. 09-05 (issued August 18, 2009). *See M.B.*, Docket No. 12-435 (issued July 3, 2012); *T.W.*, Docket No. 12-458 (issued September 13, 2012).

[5] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the December 1, 2011 decision of the Office of Workers' Compensation Programs is set aside and remanded for further development consistent with this opinion of the Board.

Issued: October 24, 2012
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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