United States Department of Labor
Employees' Compensation Appeals Board

P.E., Appellant	)	
and	)	**Docket No. 12-662**
	)	**Issued: October 10, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Loganport, IN, Employer	)	

Appearances:
Joseph E. Allman, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On January 31, 2012 appellant, through her attorney, filed an appeal of an August 5, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 the claim.

ISSUES

The issues are: (1) whether appellant established that she sustained a recurrence of disability on and after November 2, 2010 due to accepted January 13, 2010 injuries; and (2) whether she established that she sustained complex regional pain syndrome or reflex sympathetic dystrophy syndrome of the left foot and ankle related to accepted January 13, 2010 injuries.

[1] 5 U.S.C. § 8101 *et seq.*

On appeal, counsel asserts that OWCP failed to consider and develop all relevant medical evidence regarding the claimed period of disability and whether appellant sustained reflex sympathetic dystrophy or complex regional pain syndrome.

FACTUAL HISTORY

OWCP accepted that on January 13, 2010 appellant, then a 49-year-old rural mail carrier, sustained bilateral knee and lower leg contusions in the performance of duty when her delivery vehicle was struck by a truck. She received continuation of pay.

On January 13, 2010 appellant received treatment at a hospital emergency room. Bilateral knee x-rays showed meniscal spurs and early joint thinning without indications of traumatic injury. X-rays of the left leg, including the foot and ankle, were unremarkable.

On January 19, 2010 Dr. Michael Mull, an attending Board-certified family practitioner, obtained a venous ultrasound study of the left leg showing normal venous return with no thrombi. On January 19 and 25, 2010 examinations, he found a large area of ecchymosis on the left calf with swelling, "no significant abnormality at the knee or at the ankle." Dr. Mull diagnosed a contusion of the left lower leg.

In a March 24, 2010 report, Dr. Gregory Konrath, an attending orthopedic surgeon, diagnosed a grade 2 medial collateral ligament strain. A magnetic resonance imaging (MRI) scan of the left knee showed some chondromalacia, without a meniscal tear or significant ligamentous tear. On April 1, 2010 Dr. Konrath administered a steroid injection to the left knee and released appellant to full duty.

In a June 1, 2010 report, Dr. Mull found hypersensitivity in the left calf. He limited appellant to working eight hours a day and for no more than three days consecutively. In a June 15, 2010 report, Dr. Mull related that, even on the modified schedule, she had difficulty driving while delivering mail as reaching to the right caused left leg pain when her left leg touched the center console. He diagnosed complex regional pain syndrome.

Appellant stopped work on October 30, 2010, at which time she was restricted to a modified work schedule mandated by Dr. Julian Ungar-Sargon, a Board-certified neurologist and pain management specialist. She filed claims for wage loss beginning November 2, 2010. Appellant did not return to work. OWCP developed her wage-loss claims as a claim for a recurrence of disability while on light duty.

In a December 27, 2010 report, Dr. Ungar-Sargon noted treating appellant for "neurological complications" to the left leg following the January 13, 2010 accident. He stated that her electrodiagnostic test results indicated complex regional pain syndrome, which he treated with a lumbar sympathetic block. Dr. Ungar-Sargon explained that he had differentiated this diagnosis versus peroneal entrapment or a lumbar root lesion. He held appellant off work.

In a December 15, 2010 letter, OWCP advised appellant of the additional evidence needed to establish her claim, including factual evidence establishing a change in her light-duty job requirements or medical evidence supporting a worsening of the accepted injuries such that she was disabled from performing her light-duty job as of November 2, 2010. It also advised her

to submit a report from her attending physician explaining how and why the accepted bilateral knee contusions would progress into a neurologic condition. OWCP afforded appellant 30 days in which to submit such evidence.

In a January 7, 2011 letter,[2] appellant explained that she stopped working due to physical and mental stress. She asserted that she could not wear shoes or socks and had difficulty walking.

By decision dated January 26, 2011, OWCP denied appellant's claim for a recurrence of disability commencing November 2, 2010 on the grounds that the medical evidence did not establish that the accepted injuries worsened or that her light-duty job requirements had changed such that she could no longer perform the position. It additionally denied her claims for complex regional pain syndrome and reflex sympathetic dystrophy syndrome.

In a February 9, 2011 letter, appellant requested a telephonic hearing which was held on June 9, 2011. At the hearing, she described chronic pain and paresthesias in both legs since the January 13, 2010 accident. After she returned to full duty on March 2, 2010, appellant had additional pain and swelling in her left leg. Dr. Mull diagnosed complex regional pain syndrome in June 2010 and referred her to Dr. Ungar-Sargon. Appellant noted experiencing increased pain, swelling and discoloration in her left foot while delivering mail on October 29, 2010. She submitted additional evidence following the hearing.[3]

In a July 1, 2011 statement, appellant contended that her left foot and ankle symptoms remained chronic and unimproved.

In reports from August 4 to September 27, 2010, Dr. Ungar-Sargon diagnosed chronic regional pain syndrome without significant entrapment of the peroneal nerve.

An August 25, 2010 electromyography (EMG) and nerve conduction velocity study of both lower extremities was normal.

Dr. Ungar-Sargon renewed previous work restrictions on October 23, 2010, limiting appellant to working two days on then one day off to reduce her left ankle symptoms. He administered additional lumbar sympathetic blocks on October 25 and November 4, 2010 to address "the nerves that control the leg." Dr. Ungar-Sargon submitted progress reports through January 12, 2011 finding appellant totally disabled for work due to symptoms in the left foot and ankle.

In January 27 and April 6, 2011 reports, Dr. Ungar-Sargon explained that he diagnosed complex regional pain syndrome and reflex sympathetic dystrophy based on appellant's radicular

[2] On its face, the letter is dated January 7, 2010. However, it refers to events in October 2010 and was received by OWCP on January 10, 2011, indicating that it was actually written on January 7, 2011.

[3] Appellant also submitted January 13, 2010 emergency room documents without legible signatures. The record contains an OWCP memorandum stating that she submitted nine photographs of her legs and the motor vehicle accident that could not be imaged into the electronic case record. A November 15, 2010 computized tomography scan of the lumbar spine and pelvis showed mild degeneration at L5-S1 and in both hips.

symptoms, EMG findings, skin temperature changes, discoloration and swelling at the foot and ankle. He noted that it was a "post[-]traumatic disorder." Dr. Ungar-Sargon submitted chart notes through May 20, 2011 finding that appellant remained totally disabled for work.

By decision dated and finalized August 5, 2011, OWCP's hearing representative affirmed OWCP's January 26, 2011 decision, finding that appellant had not established a recurrence of disability on and after November 2, 2010 or that she sustained complex regional pain syndrome or reflex sympathetic dystrophy syndrome as a result of the January 13, 2010 incident.

LEGAL PRECEDENT -- ISSUE 1

OWCP's implementing regulations define a recurrence of disability as "an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness."[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 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 such that the position exceeds the employee's physical limitations.[5] If the disability results from new exposure to work factors, the legal chain of causation from the accepted injury is broken and an appropriate new claim should be filed.[6] An award of compensation may not be based on surmise, conjecture or speculation or on appellant's unsupported belief of causal relation.[7]

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained bilateral knee and lower leg contusions causally related to an accepted January 13, 2010 motor vehicle accident. Appellant returned to full duty in April 2010, and then worked a modified schedule ordered by Dr. Ungar-Sargon, an attending Board-certified neurologist specializing in pain management. She stopped work on October 30, 2010. Appellant claimed total disability wage-loss compensation from November 2, 2010 onward. OWCP developed her claim for compensation as a claim for a recurrence of total disability while on light duty. To meet her burden of proof, appellant needed to establish either a

[4] 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b(a)(1) (May 1997). *See also Philip L. Barnes*, 55 ECAB 426 (2004).

[5] *J.F.*, 58 ECAB 124 (2006); *Carl C. Graci*, 50 ECAB 557 (1999); *Mary G. Allen*, 50 ECAB 103 (1998); *see also Terry R. Hedman*, 38 ECAB 222 (1986).

[6] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3b(a)(1) (March 2011). *See also Donald T. Pippin*, 54 ECAB 631 (2003).

[7] *Alfredo Rodriguez*, 47 ECAB 437 (1996).

change in the nature of her light-duty job or a worsening of the accepted bilateral knee contusions such that she could no longer perform the job.[8] She did not assert a change in her light duty job. Rather, appellant contended that her accepted conditions had worsened. However, the record implicates exposure to new work factors as an intervening cause, severing the legal chain of causal relationship from the accepted January 13, 2010 injuries.

In a June 15, 2010 report, Dr. Mull, an attending Board-certified family practitioner, related that appellant had left leg pain while delivering mail, as reaching across the vehicle caused pain to her leg as it touched the center console. Also, at the June 9, 2011 hearing, appellant stated that delivering mail on October 29, 2010 caused increased pain, swelling and discoloration in her left ankle. She stopped work the next day and did not return. Thus, Dr. Mull and appellant both stated that work factors after the January 13, 2010 accident caused or contributed to the claimed disability for work on and after November 2, 2010. The exposure to work factors broke the chain of causation stemming from the accepted knee contusions. The circumstances did not involve a spontaneous change in the accepted conditions.[9]

Also, medical reports contemporaneous to the work stoppage do not support a spontaneous worsening of the condition. On October 23, 2010 Dr. Ungar-Sargon renewed previous work restrictions but did not find that the accepted injuries had worsened. He administered a lumbar injection on October 25, 2010 but again did not find an objective worsening of the accepted knee contusions.

As appellant and Dr. Mull implicated intervening work factors in causing or worsening appellant's condition, OWCP's August 5, 2011 decision denying the claimed recurrence of disability was proper under the law and facts of the case.[10]

On appeal, counsel asserts that OWCP failed to consider and develop all relevant medical evidence. As stated, appellant did not submit sufficient evidence to establish a worsening of the accepted conditions on October 29, 2010 such that she could no longer perform her modified rural carrier position. Rather, she implicated an intervening cause. Therefore, the Board finds that the August 5, 2011 decision denying appellant's claim for a recurrence of disability commencing October 29, 2010 was proper under the law and facts of this case.

LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under FECA[11] has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of FECA; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the

[8] *J.F., supra* note 5.

[9] *Bryant F. Blackmon*, 56 ECAB 752 (2005).

[10] *Beverly A. Spencer*, 55 ECAB 501 (2004).

[11] 5 U.S.C. §§ 8101-8193.

employment injury.[12] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[13]

In order to determine whether an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.[14] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[15]

ANALYSIS -- ISSUE 2

OWCP accepted that on January 13, 2010 appellant sustained bilateral knee and leg contusions in a motor vehicle accident. January 13, 2010 x-rays of the left foot and ankle were normal. As of January 25, 2010, Dr. Mull found no abnormality of the left ankle. He diagnosed complex regional pain syndrome on June 1, 2010, based on appellant's left foot and ankle symptoms. Dr. Ungar-Sargon opined on December 27, 2010 that the January 13, 2010 accident caused "neurological complications" in the left leg.

In a December 15, 2010 letter, OWCP advised appellant to submit her attending physician's rationalized opinion explaining how and why the January 13, 2010 bilateral knee contusions would have precipitated a neurologic condition in the left foot and ankle. Following the June 9, 2011 hearing, appellant submitted January 27 and April 6, 2011 reports from Dr. Ungar-Sargon explaining that he diagnosed reflex sympathetic dystrophy and complex regional pain syndrome based on swelling, discoloration and temperature changes at the left foot and ankle, along with EMG findings, which were normal as of August 25, 2010. Dr. Ungar-Sargon noted that these were post-traumatic disorders. However, he did not explain how and why the accepted injuries would cause the diagnosed conditions. Dr. Ungar-Sargon did not set forth the pathophysiologic process whereby the accepted traumatic injuries would cause reflex sympathetic dystrophy or complex regional pain syndrome. Without such rationale, his opinion is insufficient to establish causal relationship.[16]

The Board notes that OWCP advised appellant by December 15, 2010 letter of the necessity of submitting rationalized medical evidence supporting a causal relationship between the accepted injuries and the claimed neurologic conditions. However, appellant did not submit such evidence. Therefore, the Board finds that she has not established that she sustained reflex

[12] *Joe D. Cameron*, 41 ECAB 153 (1989).

[13] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

[14] *Gary J. Watling*, 52 ECAB 278 (2001).

[15] *Deborah L. Beatty*, 54 ECAB 340 (2003).

[16] *Id*.

sympathetic dystrophy syndrome or complex regional pain syndrome of the left foot and ankle due to the January 13, 2010 bilateral knee contusions.[17]

On appeal, counsel asserts that OWCP failed to adequately consider or develop the medical evidence. As stated, appellant submitted insufficient medical evidence establishing that the accepted injuries caused complex regional pain syndrome or reflex sympathetic dystrophy. Therefore the August 5, 2011 decision was proper under the law and facts of this case.

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 has not established that she sustained a recurrence of disability on and after November 2, 2010 causally related to the accepted January 13, 2010 injuries. The Board further finds that she did not establish that she sustained reflex sympathetic dystrophy syndrome or complex regional pain syndrome causally related to accepted contusions of the right lower extremity.

[17] *Guiseppe Aversa*, 55 ECAB 164 (2003).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 5, 2011 is affirmed.

Issued: October 10, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board