United States Department of Labor
Employees' Compensation Appeals Board

B.W., Appellant	)	
and	)	**Docket No. 13-793**
	)	**Issued: August 26, 2013**
U.S. POSTAL SERVICE, POST OFFICE, Glenside, PA,Employer	)	

Appearances:
Appellant,pro se — *Case submitted on the record*
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

OnFebruary 19, 2013appellant filed a timely appeal of a December 13, 2012 merit decision of the Office of Workers' Compensation Programs' (OWCP),which deniedher claim for a recurrence. 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 a recurrence of disability beginning September 1, 2012 causally related to herFebruary 22, 2003 employment injury.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been on appeal before the Board.[2] In a March 16, 2007 decision, the Board found that OWCP properly suspended appellant's compensation benefits pursuant to 5 U.S.C. § 8123(d) effective May 17, 2006 because of her failure to establish good cause for her failure to report to the scheduled examination. The facts and history contained in the prior appeal are incorporated by reference.

The facts germane to the present claiminclude that appellant's claim was accepted for lumbosacral sprain/strain, lumbar intervertebral disc displacement without myelopathy, herniated disc at L5-S1. OWCP also authorized two lumbar spine surgeries. Appellant returned to work fulltime in a light-duty capacity on January 7, 2008.Her return to work occurred following an October 9, 2007 second opinion examination from Dr. Steven Valentino, a Board-certified orthopedic surgeon, who found that she could work full time within restrictions.[3]

On September 19, 2012 appellant claimed a recurrence of disability on September 1, 2012 causally related to the February 22, 2003 employment injury. She alleged that she engaged in continuous bending and was forced to collect mail everyday of the week, engaged in heavy lifting and carrying several hours of deliveries. Appellant noted that upon her return to work she was placed on restrictions, which included a four-hour limitation on carrying, limited to bending and stooping during an eight-hour workday. The employing establishment indicated that upon her return to work she was given duties which complied with her restrictions. It noted that appellant's work included: lifting and carrying continuously 5 to 10 pounds; sitting up to 4 hours intermittently up to 8 hours a day; pushing and pulling continuously up to 8 hours per day; standing and walking up to 2 hours intermittently and up to 4 hours per day; simple grasping and fine manipulation continuously 8 hours per day, driving a vehicle and reaching above shoulder occasionally 8 hours per day; routing and casing mail 2.5 hours and delivering mail 5.5 hours per day.

A September 4, 2012 disability certificate, from an individual of unknown specialty, advised that appellant could return to work in two days. She indicated that appellant's work restrictions included no prolonged standing/walking, no overhead reaching/liftingand no lifting from floor level.

In a September 19, 2012 report, Dr. Valentino noted that appellant related that, over the summer,her symptoms were aggravated by her work activities,which included bending and lifting. He noted that she"continues to be symptomatic." Dr. Valentino recommended additional diagnostic testing and therapy. He advised that appellant was released to work in a sedentary position:however, she indicated that her employer was "unable to make such accommodations." Dr. Valentino diagnosed history of lumbar strain with residuals of lumbar disc herniation at L5-S1.

[2] Docket No. 07-03 (issued March 16, 2007).

[3] The restrictions included four hours of sitting, walking and standing, as well as no bending or stooping.

By letter dated October 3, 2012, OWCP informed appellant of the type of evidence needed to support her claim for a recurrence and requested that she submit such evidence within 30 days.

An October 16, 2012 magnetic resonance imaging scan of the lumbar spine read by Dr. Mohammed H. Manasawala, aBoard-certified diagnostic radiologist, revealed L4-5 and L5-S1 with left L5-S1 neuroforaminal stenosis and possible impingement of the existing bilateral L5.

In an October 17, 2012 statement, appellant explained that she believed that her recurrence was due to continuously carrying "40RT and collections." She also indicated that her supervisor informed her that she should file a recurrence. Appellant explained that she was carrying five hours or more each day and doing collections. She also advised that she was doing heavy lifting and too much stooping and bending. Appellant indicated that her pain was in the same area and other spots as well. She explained that her duties included four hours carrying and four hours in the office. Appellant also noted that she twisted her ankles on several occasions when she stepped into grass holes.

In reports dated October 17 and November 27, 2012, Dr. Valentino noted that appellant's diagnoses included: sciatic; degenerative joint disease lumbar; facet mediated pain; injury to lumbar nerve root; postlaminectomy syndrome; lumbar regions; and sciatica injury to the lumbar nerve root.ANovember 19, 2012 electromyography scan of the bilateral extremities read by Dr. Joseph Moeller, a Board-certified neurologist, revealed evidence of chronic L5 radiculopathy on the right. OWCP also received physical therapy notes.

By decision dated December 13, 2012, OWCP denied appellant's claim for a recurrence of disability beginningSeptember 1, 2012. It found that she had not established that she was disabled due to a material change or worsening of her accepted work-related conditions.

LEGAL PRECEDENT

Section 10.5(x) of OWCP's regulations define "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 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 when a light-duty assignment specifically made to accommodate an employee's physical limitations due to his or her 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 such that they exceed the employee's 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 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

[4]20 C.F.R. § 10.5(x).*SeeCarlos A. Marrero*, 50 ECAB 117 (1998).

disability and 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.[5]

Appellant has the burden of establishing that she sustained a recurrence of a medical condition[6] that is causally related to his accepted employment injury. To meet her burden, she must furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical rationale.[7] Where no such rationale is present, the medical evidence is of diminished probative value.[8]

ANALYSIS

OWCP accepted that appellant sustained a lumbosacral sprain/strain, lumbar intervertebral disc displacement and a herniated disc at L5-S1.The record reflects that shereturned to work full time in a light-duty capacity on January 7, 2008.Appellant filed a notice of recurrence of disability onSeptember 19, 2012 alleging disability beginning September 1, 2012.

Regarding a change in the nature and extent of the light-duty job requirements, the Board finds that there is no evidence showing a change in the nature and extent of the light-duty job requirements. The Board notes that appellant alleged in her October 17, 2012 statement, that she believed that her recurrence was due to continuously carrying "40RT and collections."Appellant further explained that she did this work for five hours or more each day, doing collections, heavy lifting and stooping and bending. She advised that her duties included four hours carrying and four hours in the office. However, the employing establishment indicated that,upon her return to work, appellant was given duties which complied with her restrictions. It noted that the restrictions included: lifting and carrying continuously 5 to 10 pounds; sitting up to 4 hours intermittently up to 8 hours a day; pushing and pulling continuously up to 8 hours per day; standing and walking up to 2 hours intermittently and up to 4 hours per day; simple grasping and fine manipulation continuously 8 hours per day, driving a vehicle and reaching above shoulder occasionally 8 hours per day; routing and casing mail 2.5 hours and delivering mail 5.5 hours per day. The Board notes that appellant's allegations by themselves do not establish that she was working outside these restrictions and she has not submitted corroborating evidence that she was assigned work outside of her restrictions. Appellant has not shown that her light-duty requirements changed.

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

[6] "Recurrence of medical condition" means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a need for further medical treatment after release from treatment nor is an examination without treatment. 20 C.F.R. § 10.5(y).

[7] *Ronald A. Eldridge*, 53 ECAB 218 (2001).

[8] *Albert C. Brown*, 52 ECAB 152 (2000).

The Board also finds that appellant did not submit sufficient reasoned medical evidence to establish why a disability beginningSeptember 1, 2012relates to the accepted conditions. Appellant submitted several reports from Dr. Valentino. They included a September 19, 2012 report in which Dr. Valentino noted that she related that, over the summer, her symptoms were aggravated by bending and lifting at work. He noted that she "continues to be symptomatic."The Board finds that Dr. Valentino merely expressed or respected appellant's belief about her condition. Hedid not offer an opinion regarding the cause of her alleged recurrence.

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.The existence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship. While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.[9]

The Board also notes that Dr. Valentino stated that appellant was released to a sedentary position and that her employer was "unable to make such accommodations."However, this report is not based on a correct factual history. The record fromthe employing establishment indicates that appellant was given duties within her restrictions.It is well established that medical reports must be based on a complete and accurate factual and medical background and medical opinions based on an incomplete or inaccurate history are of little probative value.[10] In reports dated October 17 and November 27, 2012, Dr. Valentino provided several diagnoseswithout providing any opinion on how the conditions were employmentrelated and disabling.These reportsare of limited probative value on the point at issue as they do not contain an opinion on causal relationship.[11]

Appellant also submitted diagnostic reports dated October 16 and November 19, 2012. However, these reports merely reported findings and did not contain an opinion regarding the cause of the reported condition. Other reports also did not specifically address whether appellant's claimed recurrence of disability beginning September 1, 2012 was causally related to her accepted employment injury.

OWCP also received physical therapy notes and a September 4, 2012 disability certificate from an unidentified provider. Physical therapists are not considered physicians as defined under FECA and thus their reports do not constitute competent medical evidence.[12] Furthermore, the

[9] *Ricky S. Storms*, 52 ECAB 349 (2001).

[10] *Douglas M. McQuaid*, 52 ECAB 382 (2001).

[11] *See Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[12] 5 U.S.C. § 8101(2).*J.M.*, 58 ECAB 448 (2007); *G.G.*, 58 ECAB 389 (2007); *David P. Sawchuck*, 57 ECAB 316 (2006); *Allen C. Hundley*, 53 ECAB 551 (2002).

Board has held that reports lacking proper identification do not constitute probative medical evidence.[13] Consequently, these reports are insufficient to establish appellant's claim.

In the instant case, none of the medical reports submitted by appellant contained a rationalized opinion to explain why she could no longer perform the duties of her light-duty position and why any such disability or continuing condition would be due to the accepted condition. As appellant has not submitted any medical evidence establishing that she sustained a recurrence of disability due to her accepted employment injury, she has not met her burden of proof.

On appeal, appellant argued that her recurrence was caused by a material change or worsened by work conditions. She alleged that her recurrence occurred because her work did not fall within her restrictions and her job description had changed "severely" over the past few years. Appellant indicated that she complained many times to her supervisor about her workload "being too much for me and it was causing my back to ache more and more. They continued to work me with no concern." As explained, however, the record contains insufficient evidence to show that appellant's work exceeded her restrictions.

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 beginning September 1, 2012 causally related to the February 22, 2003 employment injury.

[13] *C.B.*, Docket No. 09-2027 (issued May 12, 2010).

ORDER

IT IS HEREBY ORDERED THATthe December 13, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 26, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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