

FACTUAL HISTORY

On January 13, 2011 appellant, then a 51-year-old rural carrier, filed a traumatic injury claim alleging that on January 12, 2011 she suffered an injury to her skull/head when she slipped on snow and ice and fell and hit the back of her head on the ground. On February 17, 2011 OWCP accepted her claim for contusion of the left hip and concussion without loss of consciousness.

In a note dated May 31, 2011, Dr. Aaron C. Bornstein released appellant to part-time work as of June 3, 2011. In a duty status report of the same date, he indicated that she could work three hours a day lifting and carrying 5 pounds continuously and 20 pounds intermittently. Dr. Bornstein also indicated that appellant was limited to three hours a day of standing, simple grasping, fine manipulation and reaching above the shoulder. He limited her to one hour a day of sitting, walking and driving a vehicle. In a letter dated June 1, 2011, Dr. Bornstein indicated that appellant's chronic lower back pain and sciatica were due to a work injury in January 2011, resulting in her being unable to work. He also noted that this has resulted in increased anxiety and has caused severe abdominal pains and nausea.

On June 3, 2011 the employing establishment made an offer of modified assignment (limited duty). The assignment was for four hours a day with restrictions of a daily average of one hour each of sitting, walking and grasping/fine manipulation and five hours standing. Appellant accepted the position on the same date.

In a June 30, 2011 report, Dr. Nathan C. Avery, a Board-certified neurologist, noted that appellant appeared to have mild cognitive deficits and a significant right occipital neuralgia after her recent fall. He recommended that she have a complete evaluation for neurocognitive evaluation after her closed-head injury and concussion.

In a note dated July 1, 2011, Dr. Bornstein placed appellant off work for seven days. He noted concussion syndrome and neuropathy in the right posterior scalp and neck, mental haziness and stress and anxiety. In a July 12, 2011 note, Dr. Bornstein continued to indicate that appellant was off work.

On June 22, 2011 OWCP referred appellant to Dr. Ronald M. Lampert, an orthopedic surgeon and Dr. Bronislava Shafran, a Board-certified neurologist, for second opinions.

In a July 11, 2011 report, Dr. Lampert noted that the diagnosis of painful left hip by history was essentially a subjective complaint of left hip pain with no true objective signs of difficulty regarding the left hip. He opined that there was no evidence to indicate that appellant was suffering from a lumbar condition, since nothing was mentioned regarding the low back for some time subsequent to the initial injury. Dr. Lampert stated that from an orthopedic standpoint she can return to her regular duty with no limitations. He deferred comment on appellant's dizziness, vertigo headaches and concussion to the neurologist.

On July 11, 2011 Dr. Bronislava Shafran, a Board-certified neurologist, listed her impression as cerebral concussion with postconcussive syndrome left hip contusion and low back pain. She attributed these conditions directly to the January 11, 2011 work injury.

Dr. Shafran indicated that appellant's left hip contusion had completely resolved. She opined that appellant's headache and depression need to be treated more aggressively and that she would benefit from additional Depakote and/or Amitriptyline to her regimen. Dr. Shafran opined that appellant may return to work on a part-time basis (four hours a day for two to three weeks), simultaneously with accelerated treatment. In an August 11, 2011 addendum, she noted that the August 2, 2011 magnetic resonance imaging (MRI) scan of appellant's lumbar spine showed right paracentral T11-12 disc protrusion posteriorly displacing the thoracic cord and narrowing of the spinal canal. Dr. Shafran opined that this may be responsible for her back pain and may be related to the employment injury.

On July 28, 2011 appellant filed a claim for compensation for total disability commencing July 2, 2011. The employing establishment controverted her claim, alleging that there was no medical justification for total disability and that limited-duty work was available. In an August 12, 2011 letter, it informed OWCP that the duties of the modified job offer of June 3, 2011 have remained consistent, noting that the position was sedentary. The employing establishment noted that, when appellant had reported for duty, she had been capable of performing the duties of the modified assignment satisfactorily.

In a September 1, 2011 report, Dr. Bornstein indicated that appellant tried to return to work on two occasions but was unsuccessful in the attempts due to increased pain and anxiety, intolerable headaches, dizziness and continued inability to drive. He noted that she appeared well motivated to return to her activities but has continued failure with multiple medication and referrals.

In a November 7, 2011 duty status report, Dr. Bornstein indicated that appellant was unable to work, noting chronic post-trauma, neuropathy and pain. He noted that she has made multiple attempts to return to work but that these attempts had failed.

On November 9, 2011 the employing establishment challenged the payment of any additional compensation, contending that appellant was able to work full duty no later than August 1, 2011 as per Dr. Shafran. It stated that she returned to work four-hour days of limited duty from June 11 through July 1, 2011 and has been completely off work since that time. The employing establishment argued that appellant's physician has not indicated what materially changed in her condition that would preclude her from performing the limited duty. It continued to challenge the payment of any compensation because it believed that she should have been working full duty.

The employing establishment continued to challenge payment of compensation.

In a December 6, 2011 note, Dr. Bornstein continued to indicate that appellant was disabled from the duties of her work due to the employment-related fall.

By decision dated April 25, 2012, OWCP denied appellant's claim for a recurrence of total disability as of June 30, 2011.

On May 21, 2012 appellant requested review of the written record by an OWCP hearing representative. In her letter, she appealed the April 27, 2012 decision denying her 40 hours of compensation. Appellant noted that she has been in constant pain since January 12, 2011.

By letter dated April 27, 2012, OWCP referred appellant to Dr. Scott C. Forrer, a Board-certified neurologist, for a second opinion. In a May 21, 2012 opinion, Dr. Forrer diagnosed concussion without loss of consciousness and contusion of the left hip. He opined that appellant was capable of returning to her position as a rural carrier without restrictions.

In a May 2, 2012 note, Dr. Bornstein indicated that appellant's medical status with regards to her January 12, 2011 employment injury had changed significantly and that she was unable to work.

In a March 24, 2011 note, Dr. Panna Shah, a Board-certified neurologist, indicated that appellant's postconcussion syndrome, neck and head pain were improving, but that she should stay off work until she gets better. He opined that all of her symptoms are causally related to the fall at work.

On August 15, 2011 appellant filed a notice, alleging a recurrence as of June 30, 2011, noting that she stopped work on July 2, 2011. She indicated that she never recovered from her original injury. Appellant noted that she has headaches every day and that they have never stopped. She also noted symptoms of dizziness and pain in the right side of her head that runs down neck and into right arm. Appellant also noted that her left hip and left upper leg are continuously numb.

By decision dated August 29, 2012, OWCP's shearing representative affirmed the April 25, 2012 decision.

LEGAL PRECEDENT

OWCP's definition of 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. The term also means the 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.²

When an employee who is disabled from the job he or she held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence establishes that he or she can perform the limited-duty position, the employee has the burden of proof to establish a recurrence of total disability and that he or she cannot perform such limited-duty work. As part of this burden, the employee must show a change in the nature or extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.³ 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 rationalized

²See *John I. Echols*, 53 ECAB 481 (2002); *Terry R. Hedman*, 38 ECAB 222 (1986).

³P.A., Docket No. 10-1225 (issued April 20, 2011); *Maurissa Mack*, 50 ECAB 498 (1999).

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.⁴

ANALYSIS

The Board finds that appellant did not establish that she had a recurrence of total disability on and after June 30, 2011. On May 31, 2011 Dr. Bornstein released her to return to work part time as of June 3, 2011. The employing establishment made an offer of limited duty within the restrictions set by Dr. Bornstein, and appellant returned to work on June 3, 2011 for four hours a day. Appellant was paid compensation for the remaining four hours a day. However, on July 1, 2011 Dr. Bornstein placed her off work for seven days, noting concussion syndrome and neuropathy in her right posterior scalp and neck, mental haziness, stress and anxiety. Subsequently, he indicated that appellant was totally disabled from work. However, Dr. Bornstein merely stated that she had certain residuals from her employment-related injury. He did not explain why appellant could no longer perform her limited, part-time duties.

Similarly, the other physicians of record do not explain why appellant could not continue her part-time duties as of July 2, 2012. Dr. Shah indicated in a March 24, 2011 note that appellant should stay off work until she was better, but this note preceded Dr. Bornstein's return to work note of May 31, 2011. Dr. Lambert noted in his July 11, 2011 report that she could return to her regular duty from an orthopedic standpoint. Dr. Shafran opined that appellant may work on a part-time basis. Dr. Forrer opined in his May 21, 2012 report that appellant was capable of returning to her rural carrier position without restrictions. Dr. Avery did not reach a conclusion with regards to her ability to perform her modified job. Accordingly, the Board finds that appellant did not submit rationalized medical evidence indicating that she had sustained a recurrence such that she could not do her part-time work.

The Board notes that, in an August 12, 2011 letter, the employing establishment notified OWCP that the duties of appellant's modified job have remained consistent and were largely sedentary. There is no evidence of a change in appellant's light-duty assignment. Appellant did not establish a recurrence of total disability effective July 2, 2011.

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 that she sustained a recurrence of disability on or after June 30, 2011 causally related to her January 12, 2011 employment injury.

⁴*Vanessa Young*, 55 ECAB 575 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 29, 2012 is affirmed.

Issued: August 28, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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