United States Department of Labor
Employees' Compensation Appeals Board

B.W., Appellant	)	
and	)	**Docket No. 12-1723**
	)	**Issued: February 1, 2013**
U.S. POSTAL SERVICE, POST OFFICE, Chicago, IL, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 15, 2012 appellant filed an appeal from a May 10, 2012 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 this case.

ISSUE

The issue is whether appellant established that she sustained a recurrence of disability on September 6, 2008.

On appeal, appellant's attorney contends that OWCP's decision is contrary to fact and law.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

This case has previously been before the Board. In a May 4, 2011 decision, the Board found that appellant did not establish that she sustained a recurrence of disability on September 6, 2008 and that OWCP properly refused to reopen her case for further consideration of the merits pursuant to 5 U.S.C. § 8128(a).[2] The law and facts of the previous Board decision are incorporated by reference.

On February 9, 2012 appellant, through her attorney, requested reconsideration and submitted an October 24, 2011 report from Dr. Jay M. Brooker, an attending Board-certified orthopedic surgeon. Dr. Brooker advised that she was seen in follow-up for her knees with excellent alignment of total right knee replacement and excellent range of motion. He noted that appellant complained of radicular low back symptoms and left knee pain due to degenerative arthritis on that side. Dr. Brooker added, "Her original knee problem was caused by repetitive sprain and strain to her left knee over time for all the repetitive activities done at her work place."

In a May 10, 2012 decision, OWCP denied modification of its prior decision on the grounds that Dr. Brooker's October 24, 2011 report was insufficient to establish that the claimed recurrent was connected to the accepted February 6, 2006 employment injury.[3]

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 caused the illness.[4] 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 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 so that they exceed his or her established physical limitations.[5]

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

[2] Docket No. 10-1823 (issued May 4, 2011). On February 6, 2006 appellant, a letter carrier, filed a traumatic injury claim, alleging that she injured her left knee when she slipped and fell on February 3, 2006. OWCP accepted that she sustained employment-related sprains and strains of the left knee and leg and a left leg contusion. Appellant returned to modified duty on February 17, 2006 and stopped work on September 6, 2008 when she underwent right knee surgery. On October 24, 2008 she submitted claims for compensation, for the period September 6 to October 24, 2008.

[3] OWCP also noted that appellant had filed an occupational disease claim for a knee condition in October 2010 that had been denied.

[4] 20 C.F.R. § 10.5(x); *see Theresa L. Andrews*, 55 ECAB 719 (2004).

[5] *Id.*

establishes that light duty can be performed, the employee has the burden to establish by the weight of reliable, probative and substantial evidence a recurrence of total disability. As part of this burden of proof, the employee must show either 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.[6]

ANALYSIS

The Board finds that appellant has not established a recurrence of total disability on September 6, 2008 causally related to the accepted sprains and strains of the left knee and leg and a left leg contusion because she did not establish that the nature and extent of her injury-related condition changed on September 6, 2008 so as to prevent her from continuing to perform her limited-duty assignment. Appellant stopped work on September 6, 2008 to undergo a total knee replacement on her right knee. As noted by the Board in its May 4, 2011 decision,[7] a right knee condition has not been accepted as employment related. Dr. Brooker's October 24, 2011 report is insufficient to establish that appellant's September 6, 2008 disability from work was caused by the February 3, 2006 traumatic injury that occurred when appellant slipped and fell at work that day.[8] He stated that her knee problem was caused by repetitive sprain and strain to her knee overtime due to repetitive work activities. Dr. Brooker provided no explanation as to how the mechanics of the February 3, 2006 employment injury, accepted for left knee conditions, caused her to stop work on September 6, 2008.

A partially disabled claimant who returns to a light-duty job has the burden of proving that he or she cannot perform the light duty, if a recurrence of total disability is claimed.[9] The issue of whether an employee has disability from performing a modified position is primarily a medical question and must be resolved by probative medical evidence.[10] A claimant's burden includes the necessity of furnishing 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. Where no such rationale is present, the medical evidence is of diminished probative value.[11]

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[6] *Shelly A. Paolinetti*, 52 ECAB 391 (2001); *Terry R. Hedman*, 38 ECAB 222 (1986).

[7] *Supra* note 2.

[8] In discussing the range of compensable consequences, once the primary injury is causally connected with the employment, Larson notes that, when the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury, the rules that come into play are essentially based upon the concepts of direct and natural results and of claimant's own conduct as an independent intervening cause. The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury. Larson, *The Law of Workers' Compensation* § 1300; *see Charles W. Downey*, 54 ECAB 421 (2003).

[9] *See William M. Bailey*, 51 ECAB 197 (1999).

[10] *Cecelia M. Corley*, 56 ECAB 662 (2005).

[11] *Mary A. Ceglia*, 55 ECAB 626 (2004).

It is appellant's burden of proof to submit the necessary medical evidence to establish a claim for a recurrence.[12] The record does not contain a medical report providing a reasoned medical opinion that her claimed recurrence of disability was caused by the February 3, 2006 employment injury.[13] Furthermore, appellant has not shown a change in her light-duty requirements. She therefore did not meet her burden of proof to establish disability as a result of a recurrence.

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 establish that she sustained a recurrence of disability on September 6, 2008.

ORDER

IT IS HEREBY ORDERED THAT the May 10, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 1, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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

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

[13] *Cecelia M. Corley*, *supra* note 10.