United States Department of Labor
Employees' Compensation Appeals Board

R.H., Appellant	)	
and	)	**Docket No. 13-888**
	)	**Issued: July 8, 2013**
U.S. POSTAL SERVICE, POST OFFICE, Louisville, KY, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 27, 2013 appellant filed a timely appeal from a December 26, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied his disability compensation 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 over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish a recurrence of partial disability from January 14 to February 20, 2012 as a result of his employment-related condition.

FACTUAL HISTORY

On February 26, 2010 appellant, then a 48-year-old city carrier, filed an occupational disease claim alleging that he suffered from hip degeneration as a result of the everyday

[1] 5 U.S.C. § 8101 *et seq.*

functions of walking, climbing and carrying a satchel at work. He first became aware of his condition and realized that it resulted from his employment on July 1, 2007. Appellant stopped work on January 26, 2010 and returned to modified duty on February 16, 2010. OWCP accepted his claim for permanent aggravation of bilateral hip osteoarthritis.

In a February 7, 2012 report, Dr. Marcis Craig, a Board-certified orthopedic surgeon, related appellant's claim for bilateral hip pain and reviewed his history. Upon examination, he observed marked decreased motion, intact sensation and tender to palpation. X-rays of the bilateral hips revealed degenerative joint disease. Dr. Craig included a duty status report authorizing appellant to return to work with restrictions of sitting up to one and a half hours a day, standing, walking, and climbing for seven hours a day, kneeling, bending, stooping, and fine manipulation for three hours a day, and twisting and reaching above the shoulder for two hours a day.

On February 13, 2012 appellant accepted an offer of limited-duty assignment as a modified city carrier. His duties included casing and routing mail for one and a half hours, delivering to the cluster box for one hour, performing mounted deliveries for six hours and performing collection duties for eight hours. The physical requirements of the modified position were one hour of standing and six hours of driving.

Appellant submitted various wage-loss compensation claims for 40.10 hours of partial disability for the period January 14 to February 24, 2012. In the time analysis forms, he indicated that there was no work available, limited duty available or he had a medical appointment.[2] Appellant received four hours of compensation for attending a medical appointment on February 7, 2012 and 2.33 hours for attending another medical appointment on February 13, 2012.

By letter dated February 21, 2012, OWCP advised appellant that the evidence submitted was insufficient to establish that he was partially disabled from January 14 to February 10, 2012 as a result of his employment-related condition. It requested additional evidence to establish his claim.

In a March 1, 2012 statement, appellant reported that on his January 22, 2012 CA-7 form there was no limited-duty work available. He stated that on January 31, 2012 he went to the physician with all his workers' compensation paperwork and scheduled another appointment for February 7, 2012. Appellant noted that his doctor filled out CA-17 forms to turn into the employing establishment's human resources office.

On March 8, 2012 appellant submitted a request for a schedule award and a medical report to support his claim.[3] By letter dated August 23, 2012, appellant, through counsel,

[2] Appellant indicated that on January 20, 25, 27 and 30, and February 6 and 13, 2012 he worked limited duty for part of the day and claimed wage-loss compensation for the rest of the eight-hour day. On January 22 and 31 and February 7, 2012 he had a doctor's appointment and no limited-duty work was available. The employing establishment verified 37.77 hours of leave without pay from January 14 to February 10, 2012 and 2.33 hours of leave without pay from February 11 to 24, 2012.

[3] In a March 5, 2012 report, Dr. Byron V. Hartunian, an orthopedic surgeon, reported that appellant had 30 percent impairment of the right lower extremity.

requested to withdraw his request for a schedule award because he decided to undergo hip surgery and, therefore, was no longer at maximum medical improvement.

In a decision dated April 2, 2012, OWCP denied appellant's disability compensation claim finding insufficient medical evidence to establish that he was unable to perform his limited-duty assignment for the period January 14 to February 20, 2012 as a result of his accepted condition.[4]

In an August 24, 2012 report, Dr. Craig conducted a follow-up examination of appellant's bilateral hip degenerative joint disease. He discussed the risks and benefits of surgery with appellant and scheduled a left hip replacement surgery.

On September 19, 2012 appellant underwent left total hip replacement. He submitted various hospital records and operative reports.

In a September 25, 2012 prescription slip, Dr. Craig stated that appellant was unable to take pain medication seven days prior to surgery and was unable to perform his job duties.

In an October 2, 2012 report, Dr. Craig stated that appellant was doing well following left total hip arthroplasty. Examination revealed intact sensation and x-rays showed good overall alignment and fixation of the left total hip arthroplasty.

In an October 2, 2012 report, Dr. Craig stated that appellant had his left hip replaced on September 19, 2012 and would continue to be off work. He reported that appellant would be unable to perform his job for several months. Dr. Craig noted that appellant was also off work a week prior to surgery because of increasing pain and narcotic pain medication, which made it unable for him to perform his duties.

In a letter dated October 5, 2012, appellant submitted a request for reconsideration. He stated that after his claim was accepted he filled out CA-7 and CA-7a forms for every pay period. Appellant explained that he reported to work every day and his supervisor checked daily for work, such as mounted deliveries, for a complete day or as close to eight hours per day. He noted that he rewrote the CA-7 forms because he was paid eight hours on January 31, 2012 and four hours for February 7, 2012. Appellant reported that he enclosed a letter for no work available on January 23, 2012. He stated that appellant owed him 21.77 hours of compensation and resubmitted time analysis forms for the period January 14 to February 10, 2012.

In a handwritten note, an individual with a signature purporting to be that of Ron R. Bowman stated that on January 23, 2012 appellant reported to work but there was no work available for him.

In an October 10, 2012 report, Dr. Craig stated that he received OWCP's letter requesting more information regarding appellant's treatment for left hip pain and subsequent left total hip arthroplasty. He noted that appellant's current diagnosis was status post left total hip arthroplasty. Dr. Craig reported that by letter dated October 2, 2012 appellant was unable to

[4] OWCP noted that it had authorized payment for four hours for a medical appointment on February 7, 2012.

perform prolonged walking or strenuous type of activity at work, including positions that would require mounting equipment. He explained that this restriction was reasonable given that the procedure was performed on September 19, 2012 and appellant was in a period of recovery. Dr. Craig stated that appellant's work duties would be amended as he progressed with rehabilitation. He included a work capacity evaluation form indicating that appellant was not able to work eight hours per day but could only work zero to one hour. Dr. Craig opined that appellant might be able to work eight hours in three months.

In an October 12, 2012 work capacity evaluation, Dr. Craig noted that appellant underwent left total hip arthroplasty and was able to work zero to one hour per day with restrictions.

Appellant submitted various claims for disability compensation for the period September 8 to October 19 2012. He received wage-loss compensation for the period September 12 to October 19, 2012.

On November 1, 2012 appellant was placed on the periodic rolls.

In a November 20, 2012 report, Dr. Craig noted appellant's medical treatment for severe bilateral hip degenerative joint disease and that he underwent left total hip replacement. He discussed the risks and benefits of right total hip replacement. Dr. Craig also recommended a lift chair to assist with his therapy and activities of daily living.

In a December 6, 2012 statement, appellant reported that he had not received reimbursement for copays and intermittent lost pay for 21 hours.

By decision dated December 26, 2012, OWCP affirmed the April 2, 2012 denial decision. It found that the evidence failed to establish that appellant was partially disabled or that there was no work available for the period January 14 to February 20, 2012 as a result of his accepted employment-related condition.

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 resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[5] This term also means an 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.[6] OWCP's procedure manual provides that a recurrence of disability also includes worsening of disability due to an accepted consequential injury.[7] Moreover, when the claimed recurrence of disability

[5] 20 C.F.R. § 10.5(x).

[6] *Id.*

[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b) (January 1995).

follows a return to light-duty work, the employee may satisfy his or her burden of proof by showing a change in the nature and extent of the injury-related condition such that he or she is no longer able to perform the light-duty assignment.[8]

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 of record 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 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 requirements.[9]

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[10]

ANALYSIS

OWCP accepted appellant's claim for bilateral hip osteoarthritis. Appellant stopped work and returned to limited duty as a modified city carrier. He filed various claims for 40.10 hours of partial disability from January 14 to February 24, 2012. Appellant received disability compensation for 6.33 hours for medical appointments on February 7 and 13, 2012. He has the burden of proof to establish that he was partially disabled from work for the remaining 33.7 hours as a result of his employment-related condition.

Appellant does not allege that there was a change in the nature and extent of his work-related conditions. He alleges that there was no limited-duty work available for the whole day or part of the eight-hour day that he reported to work on January 20, 25, 27 and 30 and February 6 and 13, 2012. Appellant also asserted that he had a doctor's appointment on January 22 and 31, 2012. The Board finds that there is no evidence which establishes that there was no limited duty available or that he had a medical appointment on the above-mentioned dates.

Appellant accepted an offer for a modified city carrier position effective February 13, 2012 with the following restrictions: one hour of standing and six hours of driving. His duties included casing and routing mail for one and a half hours, delivering to the cluster box for one hour, performing mounted deliveries for six hours, and performing collection duties for eight hours. Appellant alleges that on January 20, 25, 27 and 30 and February 6 and 13, 2012 he did not work for part of the day because there was no work available within his limited-duty restrictions. He also alleges that on January 22 and 31, 2012 he had a medical appointment and there was no limited-duty work available. The evidence of record does not establish that the employing establishment had taken any formal action to cause any change in the nature and

[8] *Theresa L. Andrews*, 55 ECAB 719, 722 (2004).

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

[10] *Gary L. Fowler*, 45 ECAB 365 (1994); *Mary J. Briggs*, 37 ECAB 578 (1986).

extent of appellant's light-duty job requirements or that the employing establishment was unable to accommodate his light-duty restrictions.

Appellant submitted various reports from Dr. Craig dated February 7 to November 20, 2012 who related appellant's complaints of bilateral hip pain. Dr. Craig reviewed appellant's history and noted that x-rays revealed degenerative joint disease of the bilateral hips. In a February 7, 2012 duty status report, he authorized appellant to return to limited duty with the following restrictions: one and a half hours of sitting, two hours of twisting and reaching above the shoulder, three hours of kneeling, bending, stooping, and fine manipulation of the shoulders, and seven hours of standing, walking and climbing. The Board notes that there is no evidence on the record establishing that any particular duty that appellant actually performed exceeded his work restrictions or that the employing establishment did not provide him with appropriate work within his restrictions. Appellant did not submit any evidence to establish that on January 20, 22, 25, 27, 30 and 31 and February 6 and 13, 2012 his employing establishment was not available to provide him with limited-duty work within his restrictions for all or part of the eight-hour workday. He submitted a handwritten statement stating that there was no work available on January 23, 2012, but the Board notes that he did not claim any wage-loss compensation for that date. In addition, appellant did not submit any evidence to establish that he had a medical appointment on January 22 and 31, 2012.

The Board finds that appellant did not submit any evidence to show a change in the nature and extent of his limited-duty requirements or a change in the nature and extent of his accepted condition. Therefore, appellant did not meet his burden of proof to establish that he was partially disabled from January 14 to February 24, 2012.

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 his burden of proof to establish a recurrence of partial disability from January 14 to February 24, 2012 as a result of his accepted hip condition.[11]

[11] The Board notes that appellant submitted additional evidence following the December 26, 2012 decision. Since the Board's jurisdiction is limited to evidence that was before OWCP at the time it issued its final decision, the Board may not consider this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c); *Sandra D. Pruitt*, 57 ECAB 126 (2005). Appellant may submit that evidence to OWCP along with a request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the December 26, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 8, 2013
Washington, DC

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

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

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