United States Department of Labor
Employees' Compensation Appeals Board

J.E., Appellant	)	
and	)	**Docket No. 14-217**
	)	**Issued: December 12, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Charleston, WV, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 12, 2013 appellant, through counsel, filed a timely appeal from a September 27, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied his 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 established a recurrence of total disability commencing October 13, 2012 causally related to his accepted emotional conditions.

On appeal, appellant's attorney argues that the September 27, 2013 OWCP decision is contrary to fact and law.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On October 26, 2007 appellant, then a 53-year-old distribution clerk, filed an occupational disease claim alleging an emotional condition due to factors of his employment. OWCP accepted the claim for aggravation of anxiety and depression secondary to employment factors. Since March 2, 2009 appellant worked four hours per day in accordance with his medical restrictions. OWCP paid wage-loss benefits for four hours per day. Appellant previously sustained a nonwork-related stroke in 2000.

Appellant suffered a nonwork-related cardiovascular accident (CVA) on June 13, 2012. He stopped all work on October 9, 2012. OWCP continued to compensate appellant for four hours of wage loss. Appellant filed wage-loss claims for total disability commencing October 13, 2012. He also filed a recurrence claim for total disability commencing October 13, 2012.

In a November 19, 2012 letter, OWCP advised appellant that the medical evidence did not support that his work stoppage was related to his accepted conditions. It requested that he provide additional medical evidence within 30 days to support that his disability on or after October 13, 2012 was a result of his accepted emotional conditions.

In a July 16, 2012 chart note, Dr. Khalid Razzaq, a Board-certified psychiatrist, documented complaints in the right hemisphere and left face since June 13, 2012. Appellant was scheduled for an electrocardiogram (EEG) due to shortness of breath symptoms. He noted that he did not feel ready to return to work, and he would let Dr. Razzaq know if he was ready in approximately two weeks. A copy of a July 27, 2012 echocardiogram and June 13, 2012 computerized tomography (CT) scan of the brain were provided. On August 3, 2012 Dr. Razzaq advised appellant to stop work until August 12, 2012 due to the June 13, 2012 stroke. He stated that appellant could resume work without restrictions on August 13, 2012. In an October 9, 2012 chart note, Dr. Razzaq documented complaints of hemiparalysis since the June stroke. He noted that appellant had applied for disability, and displayed a mild facial weakness, but no significant left arm or leg weakness. Appellant was to return in six months.

In a September 11, 2012 attending physician's report (Form CA-20), Dr. Philip Robertson, a Board-certified psychiatrist, provided a history of recent CVA (stroke) on August 1, 2012; a stroke in 2000; migraine headaches, and chronic psychiatric impairment. He presented findings of depression/anxiety with intolerance to work, generalized anxiety recurrent; and major depression in moderate severity. Dr. Robertson noted that appellant was tripping on his left foot and could not hold things with his left hand. He stated that appellant suffered cognitive and memory problems. Dr. Robertson opined that appellant was not totally disabled.

In an October 31, 2012 attending physician's report (Form CA-20), Steve Ferris, Ph.D., a clinical psychologist, noted that appellant attempted light-duty work since December 2007 and October 2012 and that his symptoms of anxiety and depression were exacerbated after his second CVA in July 2012. On December 3, 2012 he reported that appellant was more anxious, nervous, irritable, labile, and had cognitive and physical impairments. Dr. Ferris diagnosed major depressive disorder, general anxiety disorder, exacerbated by stroke. He stated that appellant was unable to do active work since conditions were exacerbated by CVA in July 2012.

By decision dated March 7, 2013, OWCP denied appellant's recurrence claim. It found that the medical evidence of record identified his July 2012 stroke as responsible for his work stoppage.

On March 18, 2013 appellant, through his attorney, requested a telephonic hearing before an OWCP representative, which was held July 18, 2013. Appellant testified that he returned to full-duty work after his stroke in 2000. He denied any residuals from the second stroke he suffered in June 2012. Appellant testified that he started crying at work, feeling pressure to complete his tasks and feeling nervous. He testified that his frustration regarding his performance was his own and denied any harassment by the employing establishment regarding his job performance or work. Appellant submitted a March 13, 2013 narrative statement and a June 12, 2013 Form CA-20 from Carol Felts, a nurse practitioner.

In an August 13, 2013 letter, Dr. Robertson noted that Dr. Ferris had documented appellant's work-related problems and acknowledged that he had been performing part-time work prior to the recent stroke. He noted that the second CVA on August 1, 2012 further exacerbated appellant's psychiatric impairment and caused neurologic residuals, including decreased grip strength in the left hand and left foot weakness. Dr. Robertson stated that the stroke exacerbated appellant's preexisting work-related psychiatric impairments including anxiety, agitation, irritability, emotional lability, impaired concentration and a worsening of his cognitive and memory impairments to the point that appellant felt that he could no longer perform his job. Appellant last worked on November 1, 2012. Dr. Robertson opined that appellant's chronic work-related impairments were exacerbated by the CVA in 2012 so that he was no longer to continue occupational light duty.

By decision dated September 27, 2013, an OWCP hearing representative affirmed the March 7, 2013 decision. He found that appellant's work stoppage as of October 13, 2012 was not due to residuals of his accepted emotional conditions.

LEGAL PRECEDENT

Under FECA the term disability is defined as incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.[2] Disability is not synonymous with a physical impairment which may or may not result in an incapacity to earn the wages. An employee who has a physical impairment causally related to a federal employment injury but who nonetheless has the capacity to earn wages he or she was receiving at the time of injury has no disability as that term is used in FECA.[3]

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

[2] *See Prince E. Wallace*, 52 ECAB 357, 358 (2001).

[3] *Cheryl L. Decavitch*, 50 ECAB 397, 401 n.5 (1999); *Maxine J. Sanders*, 46 ECAB 835, 840 (1995).

compensable injury or illness and without an intervening injury or new exposure in the work environment.[4]

OWCP's procedures state that a recurrence of disability includes a work stoppage caused by a spontaneous material change in the medical condition demonstrated by objective findings. That change must result from a previous injury or occupational illness rather than an intervening injury or new exposure to factors causing the original illness. It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.[5]

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which he or she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that, for each period of disability claimed, the disabling condition is causally related to the employment injury and supports that conclusion with medical reasoning.[6] Where no such rationale is present, the medical evidence is of diminished probative value.[7]

ANALYSIS

In the September 27, 2013 decision, OWCP's hearing representative found that appellant failed to establish that his disability commencing October 13, 2012 was related to his accepted emotional conditions. Appellant contended that his accepted emotional conditions worsened such that he was unable to perform his work duties. The Board finds that the medical evidence of record, however, fails to establish that he sustained a recurrence of total disability due to his accepted emotional conditions.

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 resulting from a previous injury or illness without a new or intervening injury.[8] Appellant did not submit sufficient medical evidence to establish that he became totally disabled as of October 9, 2012 due to his accepted conditions. Rather, the record reflects that he sustained an intervening injury: a series of CVA commencing on June 13, 2012 with neurologic and cognitive residuals.

The record reflects that appellant was working four hours a day prior to the CVA on June 13, 2012. In an August 3, 2012 note, Dr. Razzaq advised that appellant was totally disabled due to the June 13, 2012 stroke until August 12, 2012. While he released appellant to

[4] 20 C.F.R. § 10.5(x); *see S.F.*, 59 ECAB 525, 531 (2008). *See* 20 C.F.R. § 10.5(y) (defines recurrence of a medical condition as a documented need for medical treatment after release from treatment for the accepted condition).

[5] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(c)(5) (October 2009).

[6] *Ronald A. Eldridge*, 53 ECAB 218, 221 (2001).

[7] *Mary A. Ceglia*, Docket No. 04-113 (issued July 22, 2004).

[8] *Id.*

unrestricted work beginning August 13, 2012, Dr. Razzaq continued to report that appellant had documented complaints of hemiparalysis, a mild facial weakness, but no significant left arm or leg weakness. He offered no opinion on whether appellant was disabled on or after October 13, 2012.

In reports dated October 31 and December 3, 2012, Dr. Ferris opined that appellant was unable to do light-duty work as his symptoms of anxiety and depression were exacerbated by the July 2012 stroke. These reports do not support a recurrence of disability due to a spontaneous recurrence of the accepted emotional conditions, but rather identify the intervening nonemployment event, the July 2012 stroke as the cause of his current conditions and total disability.

In a September 11, 2012 report, Dr. Robertson noted appellant's recent CVA and reported he was able to work despite the fact he was tripping on his left foot; he could not hold things with his left hand and that he suffered cognitive and memory problems. In an August 13, 2013 letter, he reported that appellant last worked on November 1, 2012. Dr. Robertson opined that the 2012 CVA had exacerbated appellant's chronic work-related impairments and caused neurologic sequela, including decreased grip strength in the left hand and left foot weakness, so that he was no longer able to continue light-duty work. This report does not support a recurrence of disability due to the accepted emotional conditions, but rather to the intervening stroke.

Appellant submitted a June 12, 2013 Form CA-20 from Carol Felts, a nurse. A nurse practitioner is not a physician as defined under FECA. Ms. Felts' reports do not constitute probative medical evidence.[9] No reports from Ms. Felts were countersigned by a physician. Therefore, her reports do not constitute probative medical evidence.

The medical evidence of record does not support a finding of a spontaneous recurrence of disability. There is no evidence that appellant's inability to work since October 13, 2012 is predicated upon residuals of his accepted emotional conditions. In this case, the medical reports referred to the July 2012 stroke as being responsible for the work stoppage. Appellant has failed to submit sufficient rationalized medical opinion evidence to establish that he was unable to work due to his accepted emotional conditions worsening without an intervening cause. Thus, he is not entitled to wage-loss compensation for the period commencing October 13, 2012.

On appeal appellant's counsel argues that OWCP's decision is contrary to fact and law. As noted, the medical evidence of record reflects that appellant's accepted conditions were aggravated by an intervening cause, the July 2012 stroke.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish a recurrence of disability from October 9, 2012.

[9] *See* 5 U.S.C. § 8101(2); *Lyle E. Dayberry*, 49 ECAB 369, 372 (1998) (regarding physicians assistants); *Vickey C. Randall*, 51 ECAB 357, 360 n.4 (2000) (regarding physical therapists).

ORDER

IT IS HEREBY ORDERED THAT the September 27, 2013 decision of the Office of Workers' Compensation Programs is affirmed.[10]

Issued: December 12, 2014
Washington, DC

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

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

[10] Richard J. Daschbach, Chief Judge, who participated in the preparation of the opinion, was no longer a member of the Board after May 16, 2014.