United States Department of Labor
Employees' Compensation Appeals Board

D.E., Appellant	)	
and	)	**Docket No. 13-2104**
	)	**Issued: March 7, 2014**
DEPARTMENT OF THE NAVY, U.S. NAVAL ACADEMY, Annapolis, MD, 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
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 12, 2013 appellant filed a timely appeal from an April 1, 2013 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 met her burden of proof to establish that she sustained a recurrence of disability on September 5, 2009 caused by the accepted right wrist fracture of December 5, 2000.

On appeal appellant asserts that she is entitled to leave buyback for periods of leave used following the claimed September 5, 2009 recurrence.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On December 5, 2000 appellant, then a 44-year-old administrative support assistant, fractured her right wrist when she fell down steps at work. On December 12, 2000 Dr. Bryan R. Herron, a Board-certified orthopedic surgeon, performed an open reduction internal fixation of a distal radius fracture on the right. Plates with screws were inserted intraoperatively. Appellant returned to full-time work on January 22, 2001 with a lifting restriction of 10 pounds. OWCP thereafter closed her case.[2] Appellant changed employment to a different federal agency.

On September 14, 2009 appellant notified OWCP that she needed emergency surgery to remove the plates in her wrist related to the accepted claim. OWCP advised her to submit a request for surgery and to file a recurrence of medical condition claim.

Appellant submitted a September 8, 2009 report from Lisa Knisley, a physician's assistant with Chesapeake Orthopedics and Sports Medicine. She provided a history that, on September 5, 2009, while lifting a heavy bag of dog food, appellant felt immediate pain in the back of her right hand and her index finger went numb. Since that time, appellant had been unable to extend her right index finger. Ms. Knisley noted that appellant had previous wrist surgery and that an x-ray demonstrated a well-healed fracture and hardware in good position. She diagnosed tenosynovitis and advised that appellant had an acute rupture of the extensor tendon of her index finger. Ms. Knisley recommended surgical repair with removal of the hardware.

On October 2, 2009 appellant filed a recurrence of disability claim as of September 5, 2009. She stopped work on September 17, 2009 and noted that she was unable to use her right hand because she had torn two tendons.[3] By letter dated March 28, 2010, OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It requested a statement describing her work activities since her return to work and explain why she was incapable of work following the claimed recurrence. Appellant was also asked to provide medical records since the 2000 employment injury and to submit a narrative medical report, including a physician's opinion regarding the causal relationship between her inability to work and the accepted right wrist condition. The development letter was returned to OWCP, which asked her by telephone to submit a change-of-address in writing.

Appellant submitted an April 28, 2010 letter addressed to Senator Barbara Mikulski.[4] She had surgery on September 17, 2009 to remove hardware and took time off from work for physical therapy and would perhaps require further surgery. In an undated statement received by OWCP on July 21, 2010, appellant indicated that she had missed time from work and used advanced sick leave. She stated that she had constant pain in her right hand and could not work at the computer on some days due to hand pain.

[2] The record indicates that appellant received a schedule award in 2002. The award decision is not found in the record before the Board.

[3] Only the first page of the CA-2a claim form is found in the record before the Board.

[4] The record does not contain correspondence from Senator Mikulski to OWCP.

In a May 19, 2009 letter, Dr. Terrence M. O'Donovan, a Board-certified orthopedic surgeon, advised that appellant had been followed by his practice for some time. He noted a history that she had an open reduction internal fixation of the right distal radius in December 2000 and did well until around September 2009 when she had an acute rupture of the extensor tendon in her right index finger "from the hardware that had been placed back in 2000." Dr. O'Donovan advised that appellant had the tendon surgically repaired, which required a graft. He noted that she required time off from work for surgery and rehabilitation and could require further surgery.

On May 26, 2010 OWCP sent appellant a second development letter, to a new address. The letter indicated that a medical report mentioned that she injured her hand on September 5, 2009 when she was lifting a heavy bag of dog food. OWCP asked appellant to clarify what happened on that day and to indicate whether she had sustained additional upper extremity injuries. Appellant was asked whether the injury occurred at home or at work. OWCP also requested that her attending physician provide further explanation regarding the cause of the September 5, 2009 problems with her right hand and right index finger, including whether they were caused by or related to the accepted December 5, 2000 employment injury or the surgery of December 12, 2000.

In a June 9, 2010 statement, appellant indicated that she saw Ms. Knisley and that on that day Dr. O'Donovan told her that the plate had slipped and torn the tendon in her right index finger and that she needed surgery. She missed work due to the surgery and subsequent treatment and therapy.

In a June 14, 2010 report, Dr. O'Donovan stated that appellant's right index finger tendon rupture was caused by a weakening of the tendon due to movement over the hardware placed during the 2000 surgery. On September 28, 2010 he noted appellant's complaint of continued dorsal pain and slight extensor lag. Dr. O'Donovan diagnosed sprain of metacarpophalangeal joint and tenosynovitis and noted that in September 2009 appellant had a tendon repair with graft. He advised that she had normal tendon function and distal sensation with some extensor lag but full range of motion and excellent range of motion at the wrist.

On August 23, 2011 an OWCP claims examiner indicated that the case was open for medical care. On December 13, 2011 appellant filed a claim for leave buyback beginning September 14, 2009. On March 14, 2011 she filed a CA-7 claim for compensation for the period September 14, 2009 to February 23, 2011 and for a schedule award. On August 14, 2012 appellant filed a second leave buyback claim.

By decision dated April 1, 2013, OWCP found that appellant did not establish a recurrence of disability on September 5, 2009. Appellant did not adequately respond to the request for a detailed description of the claimed September 5, 2009 event or submit a rationalized medical report from her physician addressing how her right hand condition on September 5, 2009 was causally related to the December 12, 2000 employment injury.

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."[5] An individual person 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 an employee furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.[6] Where no such rationale is present, medical evidence is of diminished probative value.[7]

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.[8]

Under FECA, the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.[9] Furthermore, whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.[10]

In situations where compensation is claimed for periods when leave was used, OWCP has the authority to determine whether the employee was disabled during the period for which compensation is claimed. It determines whether the medical evidence establishes that an employee is disabled by an employment-related condition during the period claimed for leave

[5] 20 C.F.R. § 10.5(x); *R.S.*, 58 ECAB 362 (2007).

[6] *S.S.*, 59 ECAB 315 (2008).

[7] *See Ronald C. Hand*, 49 ECAB 113 (1997).

[8] Larson, *The Law of Workers' Compensation* § 1300; *see Charles W. Downey*, 54 ECAB 421 (2003).

[9] 20 C.F.R. § 10.5(f); *Cheryl Decavitch*, 50 ECAB 397 (1999).

[10] *Fereidoon Kharabi*, 52 ECAB 291 (2001).

buyback, after which the employing establishment will determine whether it will allow the employee to buy back the leave used.[11]

ANALYSIS

OWCP accepted that on December 5, 2000 appellant sustained an employment-related right wrist fracture for which she had surgery with hardware placement on December 12, 2000. On October 2, 2009 appellant filed a recurrence of disability claim as of September 5, 2009. The Board finds that she has not submitted sufficient factual or medical evidence to support her recurrence claim. Appellant also filed leave buyback claims for periods when she took leave after the 2009 injury.

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."[12] The Board notes that the record establishes an intervening injury. In the initial treatment note dated September 8, 2009, Ms. Knisley, a physician's assistant, listed a history that on September 5, 2009 appellant was lifting a heavy bag of dog food when she felt immediate pain in the back of her hand and her index finger went numb. In a May 26, 2010 development letter, OWCP specifically asked appellant to clarify what happened on September 5, 2009, including whether the event happened at work. Although appellant submitted several statements, she did not further address the incident of September 5, 2009. This casts doubt as to whether the September 5, 2009 incident was causally related to the December 5, 2000 employment injury.

OWCP also requested that appellant have her physician explain how the September 5, 2009 tendon rupture was caused by or related to the December 5, 2000 injury or surgery of December 12, 2000. If the work-connected character of any condition is established, any subsequent progression or aggravation of an employment injury remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause.[13]

Dr. O'Donovan, the attending orthopedist, submitted brief reports stating that appellant had an acute rupture of the extensor tendon in her right index finger from the hardware that was placed there in 2000. The rupture was caused by weakening of the tendon due to movement over the hardware. Dr. O'Donovan did not adequately explain the mechanism of the September 5, 2009 incident or whether the weakening he described occurred acutely due to the incident that day by normal wear and tear, or whether it represented a spontaneous change in the work-related condition due to appellant's current job duties. The record indicates that Dr. O'Donovan repaired the tendon surgically, but the surgical report is not of record. Based on the medical evidence of record, the Board finds that he did not sufficiently address causal relation.

[11] *M.C.*, Docket No. 10-1196 (issued March 4, 2011).

[12] 20 C.F.R. § 10.5(x); *R.S.*, 58 ECAB 362 (2007).

[13] *See J.G.*, Docket No. 13-965 (issued December 11, 2013).

An individual person 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.[14] Appellant did not submit sufficient evidence to show that the claimed recurrence and disability were causally related to the December 2000 employment injury.[15]

As to appellant's argument that she is entitled to leave buyback, in a typical leave buyback case, an injured employee uses sick or annual leave to prevent wage loss after an employment injury. In situations where compensation is claimed for periods when leave was used, OWCP has the authority to determine whether the employee was disabled during the period for which compensation is claimed based on the medical evidence that an employee was disabled by an employment-related condition during the period claimed for leave buyback. Thereafter, the employing establishment will determine whether it will allow the employee to buy back the leave used.[16] In this case, the issue of causal relationship is not established.

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 causally related to the accepted December 5, 2000 employment injury.

[14] *Ronald C. Hand*, *supra* note 7.

[15] *Id*.

[16] 20 C.F.R. § 10.425 (2011); *see R.P.*, Docket No. 12-1455 (issued January 10, 2013).

ORDER

IT IS HEREBY ORDERED THAT the April 1, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 7, 2014
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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