United States Department of Labor
Employees' Compensation Appeals Board

K.S., Appellant	)	
and	)	**Docket No. 14-55**
	)	**Issued: March 27, 2014**
U.S. POSTAL SERVICE, MAIN POST OFFICE, Cleveland, OH, 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
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 17, 2013 appellant, through her attorney, filed a timely appeal from the June 14, 2013 merit decision of the Office of Workers' Compensation Programs. 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 sustained a recurrence of total disability commencing May 27, 2010 causally related to her accepted employment injuries.

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

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.[2] In a July 10, 2012 decision, the Board affirmed OWCP's December 1, 2011 decision, finding that appellant had not established a recurrence of total disability commencing May 27, 2010 causally related to her accepted employment injuries. The Board found that she failed to provide any evidence to establish a change in the nature and extent of her employment-related conditions or a change in the nature and extent of her limited-duty requirements such that she was unable to perform her modified mail handler position. The facts of the case, as set forth in the Board's prior decision, are incorporated herein by reference. The relevant facts are set forth below.

OWCP accepted that on January 14, 2010 appellant, then a 40-year-old mail handler, sustained employment-related cervical, thoracic and lumbosacral sprains, strains and contusions and disc herniation at T6-7. Appellant stopped work on January 16, 2010. On January 19, 2010 she was released to return to modified work with restrictions that included no lifting, pushing or pulling more than 10 pounds and no stooping, bending or crouching.

Appellant returned to full-time work as a modified mail handler effective January 20, 2010. The duties of the position required her to prepare all classes of flats mail. The physical requirements involved no lifting, pushing or pulling more than 10 pounds.

Appellant stopped work as a modified mail handler and filed Form CA-7 claims requesting compensation for leave without pay (LWOP) commencing May 27, 2010.

By letter dated June 4, 2013, appellant, through her attorney, timely requested reconsideration before OWCP of the December 1, 2011 denial of her recurrence claim. Counsel cited to Board precedent and contended that accompanying evidence was sufficient to establish her claim.

In a July 25, 2012 letter, appellant requested that OWCP accept her claim for a psychological condition. In a statement with an illegible date, she stated that the job assigned under her restrictions was causing increased pain related to her existing injuries in her back between her shoulders, neck, shoulders and both elbows. Appellant submitted the employing establishment's job offers related to her limited-duty modified mail handler position. She also submitted CA-7 forms requesting compensation for LWOP from June 30, 2012 to May 31, 2013.

In progress reports dated July 27, 2012 to May 7, 2013, Janet Ross, a physician's assistant, listed findings on examination. She diagnosed cervical and lumbosacral strains and sprains, thoracic disc displacement and thoracic spine pain. In prescriptions dated July 27 to January 15, 2013, Ms. Ross placed appellant off work from October 1, 2012 through June 1, 2013.

Dr. James P. Bressi, an anesthesiologist, in a July 20, 2012 report, advised that appellant met the criteria to participate in a chronic pain management program. On July 27 and November 11, 2012 he ordered physical therapy and an aquatic treatment for appellant's neck

[2] Docket No. 12-497 (issued July 10, 2012).

sprain and strain, displaced thoracic intervertebral disc and thoracic spine pain. A January 15, 2013 report from Dr. Bressi noted appellant's complaint of cervical, thoracic and lumbar spine pain and that she was employed, but unable to work. Dr. Bressi listed essentially normal findings on physical examination of the cervical, thoracic and lumbar spines with the exception of pain on palpation, muscle tightness and limited range of motion. He reported normal neurological examination findings. Dr. Bressi diagnosed cervical and lumbosacral strains and sprains, thoracic disc displacement and thoracic spine pain. In a May 7, 2013 duty status report, he listed appellant's restrictions which included no lifting, kneeling, bending, stooping, twisting, pulling, pushing, reaching above the shoulder, driving a vehicle and operating machinery. Appellant could intermittently stand one to two hours per day, and walk and perform simple grasping and fine manipulation one hour a day. In a May 30, 2013 prescription, Dr. Bressi placed her off work from June 1 through December 31, 2013.

Duty status reports dated August 21 and October 16, 2012 contained illegible signatures. The reports stated that appellant could not work.

Treatment notes from appellant's physical therapists addressed her treatment from September 6 through October 11, 2012.

In a June 14, 2013 decision, OWCP denied modification of the April 15, 2011 decision. It found that appellant did not submit sufficient rationalized medical evidence to establish total disability from her limited-duty mail handler position.[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 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 (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 limited-duty position or the medical evidence of record establishes that he or she can perform the limited-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 to show that he or she cannot perform such limited-duty work. As part of

[3] Following issuance of OWCP's June 14, 2013 decision, appellant submitted additional evidence. The Board may not consider such evidence for the first time on appeal as its review is limited to the evidence that was before OWCP at the time of its decision. 20 C.F.R. § 501.2(c)(1).

[4] 20 C.F.R. § 10.5(x).

[5] *Id.*

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 limited-duty job requirements.[6]

To show a change in the degree of the work-related injury or condition, the claimant must submit rationalized medical evidence documenting such change and explaining how and why the accepted injury or condition disabled the claimant for work on and after the date of the alleged recurrence of disability.[7]

ANALYSIS

The Board previously found that appellant had not sustained a recurrence of disability as of May 27, 2010 causally related to her accepted employment-related cervical, thoracic and lumbosacral sprains, strains and contusions and disc herniation at T6-7. There was insufficient evidence to establish a change in her employment-related conditions and/or a change in the nature and extent of her limited-duty work assignment. Appellant requested reconsideration before OWCP and submitted additional evidence. She must demonstrate either that her conditions have changed such that she could not perform the activities required by her modified job or that the requirements of the limited light-duty job changed.

The Board finds that the evidence does not establish that the limited light-duty job requirements were changed or withdrawn or that appellant's employment-related conditions changed such that they precluded her from performing limited light-duty work.

Dr. Bressi's January 15, 2013 report diagnosed appellant with cervical and lumbosacral strains and sprains, thoracic disc displacement and thoracic spine pain. On May 30, 2013 he placed appellant off work from June 1 to December 31, 2013. Dr. Bressi did not adequately explain appellant's disability for work due to the accepted cervical, thoracic and lumbosacral strains and sprains. He noted pain on palpation, muscle tightness and limited range of motion. Dr. Bressi did not provide sufficient opinion addressing how appellant's disability was causally related to the accepted employment injuries. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.[8] None of the other reports from Dr. Bressi offer an opinion on whether appellant sustained a recurrence of total disability commencing May 27, 2010 due to the accepted employment injuries. The Board finds, therefore, that Dr. Bressi's reports are insufficient to establish appellant's claim.

The laboratory tests which revealed appellant's medication levels are insufficient to establish appellant's claim for a recurrence of total disability. This evidence does not provide

[6] *Albert C. Brown*, 52 ECAB 152, 154-55 (2000); *Barry C. Peterson*, 52 ECAB 120 (2000); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

[7] *James H. Botts*, 50 ECAB 265 (1999).

[8] *See K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

any opinion addressing her disability for work during the claimed period due to the accepted injuries.[9]

The progress notes and prescriptions of Ms. Ross, a physician's assistant, and the treatment records from appellant's physical therapists have no probative value in establishing her claim. Neither a physician's assistant nor a physical therapist is a physician as defined under FECA.[10] The duty status reports which were signed by a provider with an illegible signature also have no probative medical value as there is no indication that the documents were from a physician.[11]

Appellant has not met her burden of proof to establish a change in the nature and extent of the injury-related conditions or a change in the nature and extent of the limited light-duty requirements which would prohibit her from performing the limited light-duty position she assumed after she returned to work.

On appeal, counsel contended that OWCP's decision was contrary to fact and law. For the reasons stated above, the Board finds that appellant did not submit sufficient evidence in support of her claim.

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 has not met her burden of proof to establish that she sustained a recurrence of total disability commencing May 27, 2010 causally related to her accepted employment injuries.

[9] *Id.*

[10] *See David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law).

[11] *See C.B.*, Docket No. 09-2027 (issued May 12, 2010) (reports lacking proper identification do not constitute probative medical evidence).

ORDER

IT IS HEREBY ORDERED THAT the June 14, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 27, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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