

**United States Department of Labor
Employees' Compensation Appeals Board**

C.G., Appellant)

and)

U.S. POSTAL SERVICE, FAYETTEVILLE)
MAIN POST OFFICE, Fayetteville, GA,)
Employer)

Docket No. 13-1172
Issued: May 20, 2014

Appearances:
Martin Kaplan, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 17, 2013 appellant, through her attorney, filed a timely appeal from the December 6, 2012 and March 7, 2013 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant established that she was totally disabled from August 23, 2006 to January 24, 2012 due to her December 10, 2001 employment injuries; and (2) whether appellant established that she sustained a recurrence of disability on November 18, 2004 causally related to the same accepted employment injuries.

¹ 5 U.S.C. § 8101 *et seq.*

On appeal, counsel cites *V.N.*,² in support of his contention that the December 6, 2012 decision incorrectly denied appellant's claim for compensation based on her disabling psychiatric conditions, which have not been accepted by OWCP, and ignored her physical injury, which prevents her from performing her preinjury position. He states that the permanent employment-related restrictions set forth by Dr. Harold H. Alexander, a Board-certified orthopedic surgeon and an OWCP referral physician, and Dr. David P. Fieseler, an attending Board-certified family practitioner, prevent her from performing her preinjury position. Counsel contends that appellant stopped work because the employing establishment, by its own admission, did not offer her a suitable modified job and required her to work outside her employment-related medical restrictions.

FACTUAL HISTORY

This case has previously been before the Board with respect to the denial of appellant's Form CA-7 claims for wage-loss compensation from September 17, 2005 to June 25, 2006.³ In a December 13, 2010 decision, the Board affirmed OWCP's December 15, 2009 decision denying appellant's November 16, 2009 request for reconsideration because it was not timely filed and did not establish clear evidence of error. The Board found that the newly submitted medical reports of Dr. Brian Teliho, a Board-certified psychiatrist and OWCP referral physician, and Dr. Alexander did not raise a substantial question as to the correctness of OWCP's determination that appellant's total disability during the claimed period was not causally related to her accepted December 10, 2001 employment injuries. The facts and the circumstances as set forth in the prior decision are hereby incorporated by reference. The relevant facts are as follows.

OWCP accepted that on December 10, 2001 appellant, then a 43-year-old rural carrier associate, sustained a right wrist sprain and strain, and temporary aggravation of a right carpal tunnel fracture while pushing a loaded mail buggy that fell off the side of a ramp. Following these injuries, she returned to work in a modified clerk position on July 8, 2004. On September 14, 2004 appellant stopped work.

In a November 2, 2004 report, Steven Marrison, Ph.D., a clinical psychologist, advised that appellant could return to light-duty work four hours a day, three days a week, as of November 8, 2004. On November 15, 2004 appellant accepted the employing establishment's job offer of a modified clerk position and returned to work on that date. The duties of the position involved answering the telephone, monitoring the call window, accountable, return to sender and scanner input up to two hours per day. The physical requirements of the position involved sitting and standing four hours a day, walking three hours a day, and intermittent lifting of three to five pounds and intermittent bending one-half hour a day. Appellant stopped work on November 18, 2004.

In a September 3, 2008 decision, OWCP granted appellant a schedule award for 19 percent impairment of the right arm for the period July 4, 2005 to August 22, 2006.

² Docket No. 12-687 (issued August 16, 2012).

³ Docket No. 10-896 (issued December 13, 2010).

On February 1, 2012 appellant filed a Form CA-7 compensation claim requesting leave without pay from August 23, 2006 to January 24, 2012. In duty status reports dated October 13 through December 16, 2010, Dr. Marrison advised that appellant had a severe depressive reaction to her accepted December 10, 2011 right wrist injury and that she was unable to return to work.

By letter dated February 14, 2012, OWCP advised appellant that the medical evidence of record indicated that she was disabled due to a condition not directly caused or related to her accepted employment injuries. It requested that she submit medical evidence establishing that her disability for work during the entire claimed period was due to her accepted work-related injuries.

In a February 22, 2012 letter, appellant's attorney requested that OWCP expand appellant's claim to include an exacerbation of her preexisting psychiatric condition by the accepted employment injuries. In a separate letter also dated February 22, 2012, counsel contended that the employing establishment failed to provide a modified job to appellant within the permanent employment-related physical restrictions set forth in Dr. Alexander's June 18, 2007 report.⁴

On April 18, 2012 appellant filed a Form CA-2a claim alleging that she stopped work on November 4, 2004 due to a recurrence of disability. She stated that, following her December 10, 2001 employment injuries, she was unable to perform her usual work duties due to her physical injuries. Appellant claimed that her depression was exacerbated by her compensable physical injury.

In a May 8, 2012 decision, OWCP denied appellant's claim for leave without pay from August 23, 2006 to January 24, 2012 as she had failed to submit any medical evidence establishing total disability during the claimed period was due to her accepted December 10, 2001 employment injuries.

By letter dated May 11, 2012, OWCP advised appellant that the evidence submitted on behalf of her November 18, 2004 recurrence claim was insufficient. It requested that she submit factual and medical evidence within 30 days of the date of the letter, including a medical report from her physician describing objective findings and providing a rationalized opinion on the causal relationship between the accepted work injuries and the claimed disability. Appellant did not respond.

In a May 12, 2012 letter, appellant, through her attorney, requested a telephone hearing with an OWCP hearing representative regarding the May 8, 2012 decision. Counsel contended that appellant was entitled to compensation because the employing establishment had not offered

⁴ In the June 18, 2007 work capacity evaluation (Form OWCP-5c), Dr. Alexander stated that appellant could not perform her usual job, but she could work eight hours a day with restrictions based on the results of a functional capacity evaluation. She could sit, stand and walk six to eight hours, reach two to four hours, twist, bend, stoop, operate a motor vehicle at work and to and from work one to two hours, perform repetitive movements of the wrists and elbows four to six hours, push, pull or lift up to 10 pounds one hour and squat, kneel and climb one hour. Appellant required two 15-minute breaks, one in the morning and another in the afternoon.

her a suitable modified position, no loss of wage-earning capacity determination had been made and there was evidence establishing her continuing employment-related disability.

By decision dated July 2, 2012, OWCP denied appellant's claim for a recurrence of disability on November 4, 2004 because appellant had not submitted any medical evidence to establish a material change or worsening of her accepted employment conditions. OWCP stated that this decision did not affect appellant's continuing entitlement to medical benefits.

In a July 10, 2012 letter, appellant's attorney requested a telephone hearing with an OWCP hearing representative regarding the recurrence claim. He contended that appellant was entitled to compensation through the present as the employing establishment failed to provide her with the limited-duty job it offered in November 2004 and required her to work outside Dr. Alexander's permanent employment-related restrictions. Counsel noted that a report issued by the employing establishment's inspector general's office and received on September 19, 2005 acknowledged that the November 2004 modified job assignment was not enforced nor was a subsequent modified job offer made to appellant. As there was no suitable job offer or loss of wage-earning capacity determination made by OWCP and there was evidence of continuing disability due to appellant's compensable injury, she was entitled to compensation.

During a November 16, 2012 telephone hearing, appellant's attorney contended that the November 2004 modified-duty position was not suitable as it involved repetitive use of the right hand. He further contended that appellant's fractured carpal of the right wrist was not considered in determining whether she could perform the offered modified-duty position. Appellant testified that she could not perform the intense writing required by the position. She stated that she actually stopped work on November 18, 2004 and not on November 4, 2004 as previously claimed. Appellant further stated that the employing establishment did not offer her another modified position.

In a December 6, 2012 decision, an OWCP hearing representative affirmed the May 8, 2012 decision denying appellant's claim for compensation from August 23, 2006 to January 24, 2012. The hearing representative found that while her physicians stated that she had been totally disabled since November 2004 due to her diagnosed psychiatric conditions, the weight of the medical evidence established that these conditions were not causally related to her accepted December 10, 2001 work injuries.⁵

Appellant submitted a March 5, 2012 report from Dr. Olufemi A. Taiwo, an attending Board-certified psychiatrist, who advised that she had a severe depressive episode of bipolar disorder with psychosis and a generalized anxiety disorder on Axis I. Dr. Taiwo stated that she had a long history of psychiatric illness, but her current chronic and severe emotional problems were triggered by her December 2001 work-related physical injuries and affected her family, occupational and social functioning. Appellant required intensive psychiatric, psychological, family and social services to function appropriately. Dr. Taiwo stated that she could not perform any work-related activity as this would cause her conditions to decompensate. He further stated

⁵ In a December 18, 2012 decision, OWCP found that the medical evidence was insufficient to establish that appellant's emotional condition was caused or contributed to by her December 10, 2001 work injuries. The Board notes that this consequential injury claim will be addressed separately under Docket No. 14-453.

that appellant was emotionally fragile, had significant cognitive difficulties and lacked appropriate job-related coping skills to perform any work related activity.

In a March 7, 2013 decision, an OWCP hearing representative affirmed the July 2, 2012 decision denying appellant's recurrence of disability claim. She failed to submit rationalized medical evidence to establish that she could not perform the duties of her modified-duty position subsequent to November 18, 2004 as a result of her accepted injuries.

LEGAL PRECEDENT -- ISSUE 1

With respect to a claimed period of disability, an employee has the burden of establishing that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁶ The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.⁷

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.⁸ The medical evidence required to establish a period of employment-related disability is rationalized medical evidence.⁹ Rationalized medical evidence is medical evidence based on a complete factual and medical background of the claimant, of reasonable medical certainty, with an opinion supported by medical rationale.¹⁰ The Board, however, will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed.¹¹ To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.¹²

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained a right wrist sprain and strain and temporary aggravation of a right carpal tunnel fracture while working as a rural carrier associate. Appellant claimed compensation for disability from August 23, 2006 to January 24, 2012. OWCP denied her claim finding the medical evidence insufficient to establish that the claimed disability was due to her accepted employment injuries. Appellant has the burden of establishing by the weight

⁶ *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ 20 C.F.R. § 10.5(f); *see e.g.*, *Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury but no loss of wage-earning capacity).

⁸ *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁹ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁰ *Leslie C. Moore*, 52 ECAB 132 (2000).

¹¹ *Sandra D. Pruitt*, 57 ECAB 126 (2005).

¹² *See William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, *supra* note 8.

of the substantial, reliable and probative evidence, a causal relationship between her claimed disability and the accepted condition.¹³ The Board finds that she did not submit sufficient medical evidence to establish employment-related disability for the period claimed due to her accepted injuries.

The reports of Dr. Marrison and Dr. Taiwo found that appellant had a severe depressive reaction and an episode of bipolar disorder with psychosis, and a generalized anxiety disorder due to her accepted December 10, 2001 employment injuries resulting in her total disability for work. Dr. Marrison, however, did not provide any medical rationale explaining how the diagnosed emotional conditions and resultant disability during the claimed period were causally related to the accepted work injuries. The Board has held that a medical opinion not supported by medical rationale is of little probative value.¹⁴ Dr. Taiwo advised that appellant was emotionally fragile, had significant cognitive difficulties and lacked appropriate job-related coping skills to perform any work-related activity. He did not adequately explain how these work-related residuals prevented her from performing any work. As for Dr. Taiwo's explanation that appellant could not work to prevent further injury, it is well established that fear of future injury does not constitute a basis for the payment of compensation.¹⁵ For the stated reasons, the Board finds that the reports of Drs. Marrison and Taiwo are insufficient to establish appellant's claim.

Appellant failed to submit rationalized medical evidence to establish that her total disability from August 23, 2006 to January 24, 2012 resulted from residuals of her accepted employment-related right wrist conditions.

On appeal, appellant's attorney cited *V.N.* in support of his contention that OWCP's December 6, 2012 decision was based solely on appellant's disabling psychiatric conditions which had not been accepted as employment-related and ignored her physical injury, which prevented her from performing her preinjury position. He stated that the employment-related restrictions set forth by Drs. Alexander and Fieseler prevented her from performing her preinjury position. In a February 20, 2007 report, Dr. Alexander found that appellant's subjective complaints of pain outweighed the objective findings. He advised that she had continuing residuals of her December 10, 2001 employment injuries. Dr. Alexander opined that appellant could not perform her usual work duties as a mail carrier, but could perform sedentary light-duty work with restrictions based on a functional capacity evaluation. In reports dated July 23, 2004 and April 6, 2005, Dr. Fieseler noted that appellant had chronic right wrist problems and was unable to drive due to anxiety related to her December 10, 2001 injuries with anxiety and severe paranoia. He opined that she was permanently disabled to work as a rural carrier. Appellant was also unable to drive even short distances for fear of injury and paranoia. In a Form OWCP-5c dated April 6, 2005, Dr. Fieseler noted appellant's accepted conditions of wrist and hand sprain and strain. He advised that she could not perform her usual job or work eight hours a day. Dr. Fieseler further advised that appellant was permanently restricted from reaching, reaching

¹³ *Alfredo Rodriguez*, 47 ECAB 437 (1996).

¹⁴ *Caroline Thomas*, 51 ECAB 451 (2000).

¹⁵ *E.g., D.S.*, Docket No. 12-1042 (issued December 7, 2012).

above the shoulder, twisting, bending, stooping, operating a motor vehicle at work and to and from work, repetitive movements using the wrists and elbows, pushing, pulling, lifting and climbing. She could sit four hours, walk and stand one hour, squat and kneel with up to 10 pounds one-half hour.

The Board finds that the facts of the present case are distinguishable from those of *V.N.* In *V.N.*, the Board found that OWCP failed to consider the aspect of the medical report which attributed her disability to the increased pain of her accepted condition that rendered her incapable of performing her job duties. In the present case, the reports and findings of Drs. Alexander and Fieseler failed to provide a definitive diagnosis or rationalized medical opinion finding causal relationship between the accepted conditions and any resulting disability during the relevant time period. For the stated reasons, the Board finds that counsel's contention has not been established and the medical evidence is insufficient to establish that appellant was totally disabled from August 23, 2006 to January 24, 2012 due to the accepted December 10, 2001 work injuries.

Counsel further contended on appeal that appellant stopped work because the employing establishment, by its own admission, did not offer her a suitable modified job and required her to work outside her employment-related medical restrictions. Contrary to counsel's contention, the record contains the employing establishment's December 9, 2010 offer for a modified clerk position that falls within the physical restrictions set forth in Dr. Alexander's June 18, 2007 Form OWCP-5c. Appellant rejected the job offer on January 11, 2011. There is no medical evidence to support her argument that she was required to work outside her medical restrictions during the claimed period of disability. Further, there is nothing to substantiate appellant's allegation that the report of the inspector general verified the failure to provide a suitable modified job or assignment.

LEGAL PRECEDENT -- ISSUE 2

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.¹⁶ 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.¹⁷

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

¹⁶ 20 C.F.R. § 10.5(x).

¹⁷ *Id.*

of total disability and to show that he or she cannot perform such limited-duty work. 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 limited-duty job requirements.¹⁸

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.¹⁹

ANALYSIS -- ISSUE 2

As stated, OWCP accepted that on December 10, 2001 appellant sustained a right wrist sprain and strain and temporary aggravation of a right carpal tunnel fracture while working as a rural carrier associate. Following this injury, appellant returned to light-duty work. She claimed a recurrence of disability on November 18, 2004. Appellant 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.

Appellant claimed that she sustained a recurrence of disability on November 18, 2004 because the duties of the modified-duty position required repetitive use of her right wrist to perform intense writing which was outside her physical restrictions. She did not submit any evidence to establish that the limited-duty position involved duties in excess of her physical restrictions.²⁰ The Board finds that the modified position was within appellant's work restrictions. The evidence of record shows that when she stopped work on November 18, 2004 she had limited-duty work within her work restrictions available to her. Therefore, appellant did not show that she sustained a recurrence of total disability on November 18, 2004 due to a change in the nature and extent of her limited-duty requirements.

The Board finds that the medical evidence submitted by appellant is insufficient to establish that she sustained a recurrence of total disability commencing November 18, 2004 due to her accepted employment injuries. The reports of Dr. Marrison and Dr. Taiwo found that appellant had a severe depressive reaction and an episode of bipolar disorder with psychosis, and a generalized anxiety disorder due to the December 10, 2001 employment injuries resulting in her total disability for work, but failed to either explain or adequately explain how the diagnosed conditions and disability were caused by the accepted injuries.²¹

¹⁸ *Albert C. Brown*, 52 ECAB 152, 154-155 (2000); *Barry C. Petterson*, 52 ECAB 120 (2000); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

¹⁹ *James H. Botts*, 50 ECAB 265 (1999).

²⁰ See *Kim Kilts*, 51 ECAB 349 (2000) (finding that only changes that cause the light-duty assignment to exceed the employee's work tolerance limitation result in a compensable recurrence of disability).

²¹ *Caroline Thomas*, *supra* note 14.

Appellant has failed to submit rationalized medical evidence establishing that her alleged recurrence of disability commencing November 18, 2004 resulted from the residuals of her accepted right wrist conditions. She has not met her burden of proof.

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 failed to establish that she was totally disabled from August 23, 2006 to January 24, 2012 due to her December 10, 2001 employment injuries. The Board further finds that appellant has failed to establish that she sustained a recurrence of disability commencing November 18, 2004 causally related to her accepted employment injuries.

ORDER

IT IS HEREBY ORDERED THAT the March 7, 2013 and December 6, 2012 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 20, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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