United States Department of Labor
Employees' Compensation Appeals Board

G.K., Appellant	)	
and	)	**Docket No. 14-418**
	)	**Issued: May 12, 2014**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Boston, MA, 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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On December 12, 2013 appellant, through her attorney, filed a timely appeal from the June 14 and September 17, 2013 merit decisions 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 has established a recurrence of disability commencing February 6, 2013 causally related to her September 12, 2012 employment injury.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted that on September 12, 2012 appellant, then a 59-year-old health technician, sustained a back sprain while in the performance of duty. On September 24, 2012 she returned to full-time modified-duty work.

On February 25, 2013 appellant filed a claim (Form CA-2a) alleging that she sustained a recurrence of disability on February 1, 2013 as she continued to experience lower back pain mainly on the left side while standing, bending, pulling and lifting instrument trays after she returned to work. She did not stop work until February 6, 2013.

On February 27, 2013 appellant filed a claim (Form CA-7) requesting leave buy back from February 6 to 24, 2013. On March 19, 2013 she filed a CA-7 form for leave without pay for the same period.

In a February 6, 2013 prescription note, Dr. Catharine M. Mintzer, a Board-certified internist, stated that appellant was seen for back pain. She was status post back surgery.[2] In a February 7, 2013 medical report, Dr. Mintzer advised that appellant had severe lower back muscle strain. She referred appellant to a physical therapist and recommended that she remain out of work from February 6 to 18, 2013. Dr. Mintzer stated that appellant should perform light-duty work with restrictions upon her return to work on February 18, 2013.

In a February 11, 2013 report, Dr. Edward B. Marianacci, a Board-certified radiologist, advised that a computerized tomography (CT) scan of the lumbar spine revealed interval progression of degenerative disc disease at L4-5 with endplate changes, vacuum phenomena and severe spinal stenosis at this level secondary to left paracentral disc protrusion. There were concentric disc bulges at L2-3, L3-4 and L5-S1.

Reports from physical therapists addressed the treatment of appellant's back, thoracic spine and bilateral lower extremity conditions from February 18 to March 12, 2013.

In a February 19, 2013 report, an employing establishment nurse practitioner whose signature is illegible excused appellant from work for two days.

On February 21, 2013 Amanda B. Steinberg, a physician's assistant, reported that appellant could return to light-duty work with temporary restrictions.

Dr. Christopher M. Bono, a Board-certified orthopedic surgeon, noted in a February 21, 2013 report, that appellant was doing very well until a few months ago when she developed back pain that was actually left-sided buttock and inguinal pain. Appellant had a positive Faber test on the left side. A CT scan demonstrated apparent recurrent disc herniation at L4-5 that was not consistent with her symptoms.

Patricia Castillo, an employing establishment physician's assistant, cleared appellant on February 25, 2013 for modified duty.

[2] The record reveals that appellant underwent back surgery on March 14, 2011.

By letter dated March 28, 2013, OWCP advised appellant that the evidence submitted was insufficient to establish her recurrence claim. It further advised that no action could be taken on her CA-7 form claims until adjudication of her recurrence claim.

Unsigned medical records dated October 18, 2012 and March 11 and 18, 2013 contained the printed names of Dr. Doug Davison, a chiropractor, Dr. David R. Janfaza, a Board-certified anesthesiologist and internist, and Dr. Andrew R. Vaclavik, a Board-certified anesthesiologist. The reports stated that appellant had a sacral strain and sacroiliac (SI) joint inflammation for which she received an injection. She was placed off work for one week on October 18, 2012.

Reports from physical therapists addressed the treatment of appellant's back and bilateral lower extremity conditions from March 19 to April 23, 2013.

Dr. Bono released appellant to return to light-duty work with restrictions on March 25, 2013.

In reports dated March 22 and 26, 2013, Ms. Castillo related that appellant was cleared for modified duty.

OWCP by letter dated April 29, 2013 requested additional factual and medical evidence in support of appellant's claim for a recurrence of disability.

An April 25, 2013 report from a physical therapist addressed the treatment of appellant's back and bilateral lower extremity conditions.

In a May 23, 2013 work status report, Dr. Bono again advised that appellant could return to light-duty work with restrictions.

In a May 30, 2013 duty status report, Stephen Kallock, a registered physician's assistant, stated that appellant could return to light-duty work effective that day.

On June 4, 2013 appellant stated that her symptoms never improved and she tried to perform her light-duty work. Her symptoms were always present and worsened as the day progressed. Sitting and resting sometimes helped appellant's condition.

OWCP denied appellant's recurrence claim, by decision dated June 14, 2013, finding that she failed to submit sufficient medical evidence to support her claim.

On July 3, 2013 appellant requested a review of the written record by an OWCP hearing representative.

In a May 23, 2013 report, Dr. Ravi Ramachandran[3] obtained a history of the September 12, 2012 employment injury and appellant's medical treatment. He stated that, since her SI joint injections were not helpful, she was going to receive a trochanteric bursa injection.

[3] The Board notes that the professional qualifications of Dr. Ramachandran are not contained in the case record.

Unsigned medical records dated May 24 and June 3, 2013 contained the printed names of Dr. Calum A. Macrae, an internist, Dr. Janfaza, a Board-certified internist and anesthesiologist, and Dr. David B. Boyce, a Board-certified anesthesiologist. The reports obtained a history of the September 12, 2012 work-related injury and appellant's medical treatment. Appellant was diagnosed as having, among other things, low back pain that was suggestive of SI joint dysfunction. She received a trochanteric bursa injection on two occasions with no relief.

On June 13, 2013 Dr. Bono reported that appellant had a reasonably good response to her trochanteric injection. Appellant still had residuals and continued symptoms that were attributable to her recurrent disc herniation. On June 27, 2013 Dr. Bono stated that a CT scan myelogram demonstrated an L4-5 recurrent disc herniation on the left side. He advised that this was secondary to the September 2012 work injury. Dr. Bono stated that appellant had signs and symptoms that were consistent and concordant with this area with a positive straight leg raise on the left side and some difficulty with bending and extending through the back. He noted her failed medical treatment and concluded that surgery was possible.

Reports dated June 21, 2013 and cosigned by Dr. Liangge Hsu, and Dr. Amma Maurer, Board-certified radiologists, advised that a lumbar CT scan revealed new left-sided disc herniation at L4-5, which caused moderate-to-severe central canal stenosis. Drs. Hsu and Maurer performed a successful fluoroscopy-guided lumbar myelogram.

On June 24, 2013 Dr. Mintzer reported that appellant was under her medical care and treatment for severe spinal stenosis, paracentral disc protrusion and concentric disc bulges at L2-3, L3-4 and L5-S1. Appellant also suffered from cardiomyopathy with associated shortness of breath and significant fatigue. Dr. Mintzer noted appellant's conservative medical treatment and need for surgical intervention. Appellant had missed several days of work due to these medical problems. Dr. Mintzer concluded that appellant required a medical leave of absence from her employer.

In an undated report, Dr. John H. Chi, a Board-certified neurosurgeon, noted that appellant had a history of degenerative L4-5 disc herniation and she was status post uncomplicated right L4-5 discectomy performed in 2011 after which she had complete resolution of her symptoms. He obtained a history of the September 12, 2012 employment injury and appellant's medical treatment. Dr. Chi stated that since then she had developed a sharp radiating pain in her left buttock and leg in the L3-4 distribution. Both appellant's back pain and her radicular pain were worse with standing and walking and improved with sitting and resting. Dr. Chi noted that despite appellant's medical treatment, her symptoms persisted. Appellant underwent left L4-5 laminectomy and discectomy, L4-5 transforaminal lumbar interbody fusion (TLIF), L4-5 placement of intervertebral biomechanical device, anterior arthrodesis L4-5, posterior spinal instrumentation L4-5 and posterior spinal arthrodesis L4-5 on August 30, 2013.

In a report dated August 31, 2013, Dr. Varand Ghazikhanian, a Board-certified radiologist, advised that a lumbar CT scan myelogram revealed status post L4-5 TLIF with intact hardware and disc spacer and nonspecific 20-centimeter tubular density overlying the right abdomen that was likely outside the body.

In a September 17, 2013 decision, an OWCP hearing representative affirmed the June 14, 2013 decision. The hearing representative found that the medical evidence was insufficient to establish that appellant sustained a recurrence of disability commencing February 6, 2013.

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 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 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

OWCP accepted appellant's claim for back strain. On September 24, 2012 appellant returned to full-time modified-duty work at the employing establishment. She claimed a recurrence of disability on February 6, 2013 due to her accepted injury. Appellant does not allege that this disability was a result of a change in the nature and extent of her limited-duty job requirements. Her burden, therefore, is to show a change in the nature and extent of her injury-related condition.

[4] 20 C.F.R. § 10.5(x).

[5] *Id.*

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

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

The Board finds that appellant has not submitted sufficient medical opinion evidence to support the disability claimed. Dr. Mintzer's February 6, 2013 prescription note and February 7, 2013 report found that appellant had severe lower back muscle strain and that she was unable to work from February 6 to 18, 2013. In a June 24, 2013 report, she stated that appellant was being treated for severe spinal stenosis, paracentral disc protrusion and concentric disc bulges at L2-3, L3-4 and L5-S1 and cardiomyopathy with associated shortness of breath and significant fatigue. Dr. Mintzer stated that she had missed several days of work due to her medical problems and concluded that she required a medical leave of absence from her employer. She failed however to provide any opinion on the cause of appellant's back condition and resultant disability or explain how her back condition and disability were causally related to the accepted September 12, 2012 employment injury. The Board has found that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[8] The Board finds, therefore, that Dr. Mintzer's prescription and reports are insufficient to establish appellant's claim.

Similarly, Dr. Bono's February 21, 2013 report found that appellant apparently had recurrent disc herniation at L4-5 as demonstrated by a CT scan, which was not consistent with her symptoms. He has not specified a definitive diagnosis or provided any medical opinion regarding the causal relationship between the diagnosed condition and any resultant disability and the accepted September 12, 2012 employment injury.[9] While Dr. Bono opined in his June 13 and 27, 2013 reports appellant had recurrent disc herniation on the left side at L4-5 secondary to the September 2012 work injury, he did not explain how the diagnosed condition and any resultant disability were caused by the accepted employment injury.[10] The other reports from him failed to provide any opinion on the cause of her lumbar condition and resultant disability or explain how her lumbar condition and disability were causally related to the accepted injury. In his March 25 and May 30, 2013 reports, Dr. Bono released her to return to light-duty work with restrictions, but failed to provide an opinion addressing whether appellant had any disability causally related to the accepted injury.[11] For the stated reasons, the Board finds that his reports are insufficient to establish her claim.

Dr. Chi's undated report noted that appellant's prior lumbar condition had resolved following her 2011 surgery. He advised that, since the accepted employment injury, she had developed a sharp radiating pain in her left buttock and leg in the L3-4 distribution for which she underwent lumbar surgery on August 30, 2013. Dr. Chi did not offer a medical opinion addressing whether appellant's lumbar condition, resultant surgery and any resultant disability were caused by the accepted injury. The Board finds, therefore, that his report is insufficient to meet her burden of proof.

[8] *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Willie M. Miller*, 53 ECAB 697 (2002); *Michael E. Smith*, 50 ECAB 313 (1999).

[9] *Id.*

[10] *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

[11] *See* cases cited, *supra* note 8.

The May 23, 2013 report from Dr. Ramachandran and the diagnostic test results from Drs. Marianacci, Hsu, Maurer and Ghazikhanian addressed appellant's lumbar conditions and treatment, but failed to provide a rationalized opinion regarding the causal relationship between the accepted work injury and her continuing conditions and claimed disability.[12] The Board finds that this evidence is insufficient to establish her claim.

The unsigned reports which contained the typed names of Drs. Davison, Janfaza, Vaclavik, Macrae and Boyce have no probative medical value in establishing that appellant sustained a work-related recurrence of disability commencing February 6, 2013 as the authors cannot be identified as physicians.[13]

The reports from appellant's physical therapists, a nurse practitioner whose signature is illegible, and Ms. Steinberg, Ms. Castillo and Mr. Kallock, physician's assistants, have no probative medical value in establishing appellant's recurrence claim. Neither physical therapists, nurse practitioners nor physician's assistant are defined as physicians under FECA.[14]

Appellant failed to submit sufficiently rationalized medical evidence establishing that her back condition and resultant disability commencing February 6, 2013 resulted from the residuals of her accepted injury.[15] She has not met her burden of proof.[16]

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 sustained a recurrence of disability commencing February 6, 2013 causally related to her September 12, 2012 employment injury.

[12] *Id.*

[13] *See Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004); *Merton J. Sills*, 39 ECAB 572 (1988).

[14] *See* 5 U.S.C. § 8101(2); *A.A.*, Docket No. 13-1425 (issued September 25, 2013) (regarding nurse practitioners); *A.C.*, Docket No. 08-1453 (issued November 18, 2008) (regarding physical therapists); *Allen C. Hundley*, 53 ECAB 551 (2002) (regarding physician's assistants).

[15] *Cecelia M. Corley*, 56 ECAB 662 (2005).

[16] *Tammy L. Medley*, 55 ECAB 182 (2003).

ORDER

IT IS HEREBY ORDERED THAT the September 17 and June 14, 2013 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 12, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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