

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

A.C., Appellant)
and) Docket No. 14-1547
U. S. POSTAL SERVICE, POST OFFICE,) Issued: November 19, 2014
Edison, NJ, Employer)

)

Appearances:

James D. Muirhead, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 30, 2014 appellant, through her attorney, filed a timely appeal from the May 28, 2014 merit decision of the Office of Workers' Compensation Programs' (OWCP) decision. 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.

ISSUE

The issue is whether appellant met her burden of proof to establish a recurrence of disability commencing November 1, 2010 causally related to her August 7, 2000 employment injury.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

This case has previously been before the Board.² In a July 16, 2013 decision, the Board found that the case was not in posture for decision with regard to appellant's claim for a recurrence of disability. The Board found that the record contained evidence which suggested that the employing establishment changed appellant's limited-duty job requirements. Appellant alleged that she worked successfully in her modified position until her supervisor insisted that she use a mailbag on her route. The record contained a November 13, 2010 routing slip, in which the officer-in-charge, Emad Attaalla, noted that she had requested light duty and could not carry mail in her satchel or push mail in a pushcart. He advised that the employing establishment did not have limited duty for street time available within her medical restrictions. The Board remanded to OWCP to adjudicate the issue of whether there was a change in her light-duty assignment that caused a recurrence of total disability commencing November 1, 2010. The Board also noted that OWCP relied upon evidence under File No. xxxxxx361 in reaching its September 19, 2012 decision. On remand OWCP was directed to combine the case records. The facts of the claim as contained in the prior decision are incorporated by reference.

Appellant's claim was accepted for a lumbosacral sprain. In 2004, she returned to limited duty as a modified letter carrier. Appellant indicated that she was able to perform her duties without the use of a mailbag. She subsequently claimed a recurrence of total disability on November 1, 2010, as a result of her change in the nature and extent of her limited-duty position.

By letter dated July 30, 2013, OWCP requested that the employing establishment address whether the physical requirements of appellant's limited-duty position assignment as a modified carrier were changed. If her duties were changed, the employing establishment was asked to provide a description of the changes.

In a letter dated August 20, 2013, Edgar R. Brown, a health and resource management specialist, stated that the physical requirements of appellant's limited-duty assignment had not changed.

By decision dated September 4, 2013, OWCP denied appellant's claim for a recurrence of disability due to material change or worsening of her accepted work-related conditions. It found that the medical evidence did not relate her inability to carry a mailbag to her injury of August 7, 2000. OWCP found that the employing establishment confirmed that it did not change the physical requirements of her limited-duty assignment.

By letter dated September 19, 2013, appellant, through her representative, requested a telephonic hearing, which was held on March 13, 2014. She testified that her recurrence occurred because the employing establishment took away the limited-duty position she had been performing for almost 10 years. Appellant stated that she was on limited duty from 2000 to 2010, with the limitation that she not carry a mailbag. She was able to perform her duties until Mr. Attaalla, "pulled the rug out from under" her. Appellant noted that he was trying to get overtime down and the use of a new flat machine meant she had to carry more bundles.

² Docket No. 13-711 (issued July 16, 2013).

Mr. Attaalla advised her that every carrier had to use a bag. Appellant explained that she used to have to carry two bundles and “now there were three.” She stated that Mr. Attaalla could not accommodate her work restrictions. Appellant related that he stated “[n]o mailbag, no job.” Mr. Attaalla gave her a routing slip dated November 13, 2010 that he could not give her light or limited duty.

In a decision dated May 28, 2014, OWCP’s hearing representative affirmed the September 4, 2013 decision.

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 has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.³ The term “disability” means incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury.⁴ The term also means the 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 for when such withdrawal occurs for reasons of misconduct, nonperformance of the job duties or a reduction-in-force.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 light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantive evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the light-duty job requirements.⁶

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship, generally, is rationalized medical evidence.⁷ This consists of a physician’s rationalized medical opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors.⁸ The physician’s opinion must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the

³ 20 C.F.R. § 10.5(x).

⁴ *Id.* at § 10.5(f).

⁵ *Id.* at § 10.5(x).

⁶ *Richard E. Konnen*, 47 ECAB 388 (1996); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁷ *Elizabeth Stanislav*, 49 ECAB 540, 541 (1998).

⁸ *Duane B. Harris*, 49 ECAB 170, 173 (1997).

nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁹

ANALYSIS

Appellant's claim was accepted for a lumbosacral sprain and in 2004 she returned to limited duty as a modified letter carrier. She indicated that she was able to perform her duties without the use of a mailbag. Appellant subsequently alleged a recurrence of total disability on November 1, 2010, as a result of a change in the nature and extent of her limited-duty position. In the prior appeal, the Board determined that the evidence was unclear as to whether the physical requirements of appellant's limited-duty assignment were changed such that they exceeded her medical restrictions. The Board remanded the case for OWCP to properly adjudicate the issue of whether there was a change in her light-duty assignment that caused her to have a recurrence of total disability commencing November 1, 2010.

On July 30, 2013 OWCP contacted the employing establishment to determine whether the physical requirements of appellant's limited-duty position assignment as a modified carrier were changed. It requested that if they were changed, the employing establishment should provide a breakdown of the changes. The employing establishment responded in a letter dated August 20, 2013. It confirmed that the physical requirements of appellant's limited-duty assignment had not changed. While appellant has alleged a change in the nature and extent of the light-duty job requirements, the employing establishment stated that her limited-duty assignment had not changed. She did not submit sufficient evidence to support her claim that the employing establishment changed her job requirements as to exceed the October 6, 2004 restrictions provided by Dr. Mazella.¹⁰

The Board also notes that appellant did not submit any medical reports which contained a rationalized opinion from a physician who, on the basis of a complete and accurate factual and medical history, concluded that appellant's disability during the aforementioned periods was causally related to the employment injury and supported that conclusion with sound medical reasoning.¹¹ Appellant also did not submit sufficient evidence to show that any increased work restrictions beginning November 1, 2010 were attributable to her accepted conditions.

As there is no evidence showing a change in the nature and extent of the light-duty job requirements, appellant did not meet her burden of proof to establish a recurrence of disability for the claimed period.

On appeal, appellant's representative argued that from 2005 to 2010, five postmasters and at least half a dozen managers, allowed her to be accommodated by delivering mail by not using a mailbag. He also referred to a July 7, 2011 statement from a coworker, who indicated that appellant was accommodated with regard to not having to use a mailbag. The Board notes that

⁹ *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

¹⁰ The Board notes that Dr. Mazella's October 6, 2004 report which released appellant to work did not contain any restriction against carrying a mailbag.

¹¹ See *Helen K. Holt*, 50 ECAB 279 (1999).

this statement does not indicate that appellant's limited-duty position changed on or after November 1, 2010 such that she sustained a recurrence of disability. Appellant may submit evidence or argument with a written request for reconsideration 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 a recurrence of disability commencing November 1, 2010 causally related to her August 7, 2000 employment injury.

ORDER

IT IS HEREBY ORDERD THAT the May 28, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 19, 2014
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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