

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

A.T., Appellant)	
)	
and)	Docket No. 14-1362
)	Issued: October 17, 2014
U.S. POSTAL SERVICE, POST OFFICE,)	
Laguna Hills, CA, Employer)	
)	

Appearances:
Sally LaMacchia, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 28, 2014 appellant filed a timely appeal from a May 16, 2014 merit decision 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.

ISSUE

The issue is whether appellant has established an employment-related disability for the period November 20, 2009 to February 25, 2010 and the period commencing March 13, 2010.

FACTUAL HISTORY

On February 20, 2001 appellant, then a 59-year-old distribution clerk, filed a traumatic injury claim (Form CA-1) alleging a back injury on that date while unloading mail from a truck. OWCP accepted the claim for a lumbar sprain. Appellant returned to work in a light-duty

¹ 5 U.S.C. § 8101 *et seq.*

position. He continued to receive some treatment for a lumbar condition. In a report dated May 18, 2006, Dr. Archie Mays, an orthopedic surgeon, diagnosed cervical and lumbar sprain/strain, with upper and lower extremity radiculopathy.

On November 9, 2009 appellant submitted an October 27, 2009 letter from the employing establishment advising appellant that following the guidelines of the National Reassessment Process (NRP), no light duty was available. He filed a Form CA-2a claim for a recurrence of disability commencing October 27, 2009.² Appellant submitted a duty status report (Form CA-17) dated October 15, 2009 from Dr. Mays indicating that appellant was disabled for work. In a November 18, 2009 Form CA-17, Dr. Mays diagnosed a bilateral upper extremity strain/sprain and checked a box “yes” that appellant was able to perform regular work. By Form CA-17 dated December 17, 2009, Dr. Mays indicated that appellant could work with lifting restrictions of 10 to 15 pounds, with no bending, pulling or pushing. He diagnosed cervical and lumbar sprain/strains.

By decision dated December 9, 2009, OWCP accepted a recurrence of disability on October 15, 2009. Appellant filed CA-7 claims for compensation commencing November 20, 2009 through April 23, 2010. The record indicates that appellant was paid compensation from October 15 to November 17, 2009, and February 27 to March 12, 2010. There is no indication OWCP issued a final decision denying any period of claimed compensation.

In a letter dated January 28, 2013, appellant, through his representative, requested reconsideration. He referred to a claim for carpal tunnel syndrome as well as the current file, and argued that he was entitled to compensation as of April 22, 2009. Appellant noted that he was sent home in 2009 pursuant to NRP.

By letter dated April 8, 2014, OWCP advised appellant to submit additional evidence with respect to claims for compensation commencing November 20, 2009. In a decision dated May 16, 2014, appellant denied claims for compensation from November 20, 2009 to February 25, 2010, and from March 13, 2010 and continuing. With respect to the period November 20, 2009 to February 25, 2010, OWCP stated that the employing establishment “did not certify the CA-7a form for this period because you were released to full duty as of November 18, 2009. Second, there was no contemporaneous evidence from your agency certifying that work was not made available to you due to your work restrictions related to the February 10, 2001 work injury.” As to the period commencing March 13, 2010, OWCP found there was no narrative medical report showing disability related to the employment injury. It did not discuss any specific medical evidence of record.

LEGAL PRECEDENT

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 of record establishes that he or she can perform the light-duty position, the employee has the burden

² The Board notes that appellant had filed a claim for a finger injury on March 17, 2008 that was accepted for trigger finger of the right ring finger. As the Board noted in that claim, appellant underwent surgery on August 19, 2009 that included a trigger finger release and carpal tunnel release. Docket No. 14-880 (issued June 24, 2014).

to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he or she cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.³ To establish a change in the nature and extent of the injury-related condition, there must be probative medical evidence of record. The evidence must include a medical opinion, based on a complete and accurate factual and medical history, and supported by sound medical reasoning, that the disabling condition is causally related to employment factors.⁴

ANALYSIS

In the present case, OWCP issued a May 16, 2014 decision with respect to claims for compensation from November 20, 2009 to February 25, 2010 and continuing from March 13, 2010. The Board finds that OWCP did not make adequate findings and issues remain that require clarification.

The record indicates that appellant's light-duty job was withdrawn pursuant to NRP as of October 27, 2009. OWCP does not discuss that in its May 16, 2014 decision. There appear to be other claims that were filed prior to October 27, 2009,⁵ and it is not clear what evidence from these claims may be relevant to the issue. For example, as the Board noted in an appeal regarding the March 17, 2008 claim for a finger injury, appellant had undergone surgery on August 19, 2009. If OWCP has determined that there were no residuals of the accepted lumbar injury and the light-duty job appellant was performing as of October 27, 2009 had no relationship with the February 20, 2001 employment injury, then they must make such a finding and address the relevant evidence on the issue. In the May 16, 2014 decision, OWCP does not refer to any specific medical reports of record or discuss other claims.

If the light-duty job was related to the February 20, 2001 employment injury, and was withdrawn pursuant to NRP, then OWCP should follow the guidelines under FECA Bulletin No. 09-05, which was issued on August 18, 2009. The Board has consistently held that, when a light-duty job is withdrawn due to NRP and a claim for a recurrence of disability is filed, OWCP should follow the provisions of FECA Bulletin No. 09-05.⁶ This bulletin provides guidelines regarding the development of the medical evidence on the issue.

The case will accordingly be remanded to OWCP for further findings and discussion of the evidence. After such further development as OWCP deems necessary, it should issue an appropriate decision.

³ *Albert C. Brown*, 52 ECAB 152 (2000); *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222 (1986).

⁴ *Maurissa Mack*, 50 ECAB 498 (1999).

⁵ There was an accepted finger injury based on a March 2008 claim. According to the case record, there were five other claims filed from May 2002 to February 2009.

⁶ *See C.R.*, Docket No. 12-1757 (issued April 2, 2013).

CONCLUSION

The Board finds the case is not in posture for decision as OWCP did not properly address the issues raised.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 16, 2014 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: October 17, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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