

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

G.B., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Zephyrhills, FL, Employer)

**Docket No. 15-1319
Issued: December 8, 2015**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On May 26, 2015 appellant filed a timely appeal from a December 8, 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 met her burden of proof to establish a recurrence of total disability from June 4 to 17, 2014 causally related to her October 26, 2010 employment injuries.

On appeal, appellant contends that she was disabled for work during the claimed period as a result of the treatment she received for her continuing employment-related residuals. She asserts that she sustains a recurrence of disability every year as a result of this treatment.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted that on October 26, 2010 appellant, then a 44-year-old rural mail carrier, sustained a lumbar strain and sprain, and inflamed lumbar facet joints while in the performance of duty.

On May 1, 2013 OWCP accepted a recurrence of disability on March 25, 2013. It paid compensation benefits for total disability through June 15, 2013 when she returned to full-time full-duty work.

On June 9, 2014 appellant filed a claim for compensation (Form CA-7) for leave without pay (LWOP) from June 4 to 17, 2014.

In a June 6, 2014 medical report, Dr. Ashraf F. Hanna, an attending Board-certified anesthesiologist, noted that appellant presented for a follow-up evaluation of her low back pain and chronic pain. He provided a history of her social background and medical treatment. Dr. Hanna provided findings on physical examination and diagnosed chronic pain, lumbar myofascial pain, sacroilitis, spinal enthesopathy, facet syndrome, and thoracic and lumbosacral neuritis or radiculitis. He addressed appellant's pain management plan and advised that he could not predict with any medical degree of certainty whether her symptoms would progress or worsen over time. In a June 6, 2014 return to work slip, Dr. Hanna advised that appellant could not work from June 4 to 17, 2014.

By letter dated June 20, 2014, OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It requested that she submit rationalized medical evidence explaining why she was totally disabled from work due to her accepted conditions.

In a June 12, 2014 surgical report, Dr. Hanna described appellant's radiofrequency lesioning of the right L2, L3, L4, and L5 median branch nerves and radiofrequency of the right sacral alar notch with fluoroscopic guidance to treat her lumbar facet joint disease and lumbar spondylosis. In a July 11, 2014 report, he noted that she presented for a follow-up evaluation of her low back pain and chronic pain. Dr. Hanna provided findings on physical examination, and diagnosed discogenic syndrome and displacement of lumbar intervertebral disc without myelopathy. In another report dated July 11, 2014, he indicated that appellant received a right sacral tuberosus ligament injection to treat her SI joint pain. On July 24, 2014 Dr. Hanna noted that she was first seen in his office on December 3, 2010 for the October 26, 2010 employment injury.

In an August 5, 2014 decision, OWCP denied appellant's claim for compensation from June 4 to 17 2014, finding that the medical evidence did not establish total disability during the claimed period due to her accepted October 26, 2010 employment injuries.

On November 2, 2014 appellant requested reconsideration.

In a September 2, 2014 report, Dr. Hanna addressed the need for appellant to continue to receive sacroiliac injections to properly address her approved work-related lumbar spine sprain, lumbosacral spondylosis, and lumbar disc displacement. In an October 13, 2014 report, he reiterated that she had accepted diagnoses of sprain of the lumbar region, lumbosacral

spondylosis, and lumbar disc displacement. Dr. Hanna requested that appellant be excused from work from June 4 to 17, 2014 due to severe pain that was and continued to be directly related to her work injury. He indicated that she was scheduled to undergo a radiofrequency ablation at the right L2-5 levels on June 12, 2014. Dr. Hanna advised that it was medically necessary for appellant to have time off work due to increased pain that directly stemmed from her October 26, 2010 work injury. Appellant had to be off work because she was not able to sit, stand, or walk for a prolonged time due to her disabling pain. She also needed time off work to recover from the procedure. Dr. Hanna reviewed imaging test results and noted that a physical examination showed significant tenderness of the lumbar spine, muscle spasms, and decreased range of motion.

In an October 2, 2014 report, Dr. James B. Billys, a Board-certified orthopedic surgeon, noted that appellant was doing quite well following a facet rhizotomy and injections as she had minimal complaints of pain. He provided findings on examination and advised that she could continue with her usual and customary duties at work.

In a December 8, 2014 decision, OWCP denied modification of the August 5, 2014 decision finding the medical evidence submitted was insufficient to establish a material worsening of appellant's accepted October 26, 2010 employment injuries.

LEGAL PRECEDENT

Section 10.5(x) of OWCP's regulations provide that 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.²

OWCP procedures state that a recurrence of disability includes a work stoppage caused by a spontaneous material change in the medical condition demonstrated by objective findings. That change must result from a previous injury or occupational illness rather than an intervening injury or new exposure to factors causing the original illness. It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.³

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and who supports that conclusion with sound medical reasoning.⁴ Where no such rationale is present, the medical evidence is of diminished probative value.⁵

² 20 C.F.R. § 10.5(x); *see S.F.*, 59 ECAB 525 (2008).

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(c)(5) (June 2013).

⁴ *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.104.

⁵ *Mary A. Ceglia*, 55 ECAB 626 (2004); *Albert C. Brown*, 52 ECAB 152 (2000).

ANALYSIS

OWCP accepted that appellant sustained a traumatic lumbar strain and sprain, and inflamed lumbar facet joints while in the performance of duty on October 26, 2010. It subsequently accepted that she sustained a recurrence of disability on March 25, 2013. Appellant returned to full-time regular duty on June 15, 2013.

Appellant filed a Form CA-7 for compensation for LWOP on June 9, 2014, alleging that from June 4 to 17, 2014 she became disabled due to her accepted October 26, 2010 work injuries. The Board finds that she has failed to submit sufficient reasoned medical evidence to establish that her disability in June 2014 was causally related to her October 26, 2014 employment injuries.

Appellant submitted reports from her attending physician, Dr. Hanna. In a June 6, 2014 return to work slip, Dr. Hanna advised that she could not work from June 4 to 17, 2014. In an October 13, 2014 report, he requested that appellant be excused from work from June 4 to 17, 2014 due to severe pain that was and continued to be directly related to her accepted work injury. Dr. Hanna noted that it was medically necessary for her to have time off work as she was not able to sit, stand, or walk for a prolonged time due to her disabling pain and she needed time to recover from a radiofrequency ablation at the right L2-5 levels performed on June 12, 2014. Although he supported that appellant was disabled during the claimed period, his reports did not specifically explain how any continuing disability was directly related to the accepted October 26, 2014 employment injuries or related to the medical procedures. The Board has found that a medical opinion not fortified with medical rationale is of diminished probative value.⁶ Further, the Board notes that contrary to Dr. Hanna's finding in his October 13, 2014 report, appellant's claim has not been accepted for lumbosacral spondylosis and lumbar disc displacement.

Dr. Hanna's June 6 and 12, 2014 reports addressed appellant's lumbar conditions and treatment, but failed to provide a rationalized opinion regarding the causal relationship between the accepted October 26, 2010 work injuries and her claimed disability. Thus, his reports do not support her claim of total disability from June 4 to 17, 2014 due to the accepted employment injuries.⁷ Similarly, the remaining reports from Dr. Hanna do not contain an opinion relating appellant's diagnosed lumbar conditions and claimed disability to the accepted employment injuries. As such, these reports are of diminished probative value on the issue of whether appellant was disabled from June 4 to 17, 2014.⁸

Likewise, Dr. Billys' October 2, 2014 report which addressed appellant's treatment and ability to perform her usual and customary work duties is insufficient to establish her claim for a

⁶ *J.R.*, Docket No. 12-1099 (issued November 7, 2012); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

⁷ *Id.*

⁸ *Id.*

recurrence of disability. He did not provide an opinion stating that she was totally disabled for work from June 4, to 17, 2014 due to her accepted work injuries.⁹

Accordingly, the Board finds that appellant has not met her burden of proof to establish that the period of total disability from June 4 to 17, 2014 was caused by or related to the October 26, 2014 employment injuries.

On appeal, appellant contends that she was disabled for work during the claimed period as a result of the treatment she received for her continuing employment-related residuals. She asserts that she sustains a recurrence of disability every year as a result of this treatment. However, as discussed above, the medical evidence is insufficient to establish that the treatment requiring appellant to be off work is related to the accepted conditions.

Appellant may submit new evidence to OWCP 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 total disability from June 4 to 17, 2014 causally related to her October 26, 2010 employment injuries.

⁹ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the December 8, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 8, 2015
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board