

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

A.P., Appellant

and

**U.S. POSTAL SERVICE, FLEETWOOD
STATION, Houston, TX, Employer**

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**Docket No. 14-2066
Issued: February 11, 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
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On September 29, 2014 appellant filed a timely appeal from the May 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 to review the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish a recurrence of disability from December 17, 2013 to January 6, 2014 due to a material change in the nature and extent of the accepted medical conditions.

FACTUAL HISTORY

On June 27, 2001 appellant, then a 40-year-old letter carrier, sustained a traumatic injury in the performance of duty while lifting a tub of mail. OWCP accepted her claim for lumbar

¹ 5 U.S.C. § 8101 *et seq.*

strain. It later accepted appellant's claim for thoracic or lumbosacral neuritis or radiculitis not otherwise specified. Appellant received compensation for temporary total disability on the periodic rolls.

In 2013, appellant accepted a modified carrier assignment working six hours a day. On December 30, 2013 she filed a claim for total disability, leave without pay, from December 17, 2013 to January 6, 2014.

Dr. Raul Sepulveda, a Board-certified neurological surgeon, saw appellant on December 5, 2013 and took her off work from November 26 to December 16, 2013. He released her to return to light duty on December 17, 2013.

Dr. Sepulveda saw appellant again on December 19, 2013. He noted her history and complaints. Appellant stated that she was unable to work due to pain. Findings on physical examination included marked difficulty changing from sitting to standing, limited motion of the lumbar spine, evidence of tenderness and spasm on palpation, and right radiculopathy with straight leg raising. Dr. Sepulveda diagnosed lumbar radiculopathy, herniated lumbar disc, and chronic back pain, among other things. Based on appellant's visit, he recommended that she be off work until January 6, 2014 due to lumbar radiculopathy.

Appellant explained that this was not a new injury. It was the same injury she sustained on June 27, 2001. Appellant was constantly taking pain pills, and sometimes the pain was so severe she missed work. She added: "At first they had me working on the inside doing passports, certified mail etc. When I started going back outside on the streets lifting the heavy [flexible spending account] trays, bending getting parcels out of the parcel hamper *etc.*, that's when I started aggravating my back injury more."

Completing a questionnaire for OWCP, appellant explained how the disability occurred: "I was casing a route and pulling it down daily; getting the parcels ready. It was a lot of excessive bending and lifting and loading the truck of the mail that I was carrying." Appellant indicated that the disability she was claiming was due to the original injury in 2001 because her back pain never completely went away. She always had the pain. Appellant just kept taking pain pills.

Dr. Sepulveda saw appellant again on January 29, 2014. Appellant gave him a history of having aggravated the problem in her lumbar spine with radiculopathy, "which occurred without a new injury either at work or outside of work." She advised that she was unable to work from November 26, 2013 until January 13, 2014 due to the 2001 employment injury. Appellant added that there was some sort of paperwork OWCP wanted filled out. "Apparently, they need some information from us." Dr. Sepulveda completed a disability slip indicating that appellant was unable to work from November 26, 2013 through January 13, 2014.

In a decision dated May 8, 2014, OWCP denied appellant's claim of disability for the period December 17, 2013 to January 6, 2014. It found that the medical evidence did not support that the disability claimed was due to the June 27, 2001 work injury.

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of his or her duty.² “Disability” means the incapacity, because of an employment injury,³ to earn the wages the employee was receiving at the time of injury. It may be partial or total.³

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 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.⁴

ANALYSIS

Appellant’s work injury on June 27, 2001 disabled her from her regular letter carrier job. She was able to return to a modified carrier assignment in 2013, but she claimed a return or recurrence of total disability from December 17, 2013 to January 6, 2014.⁵ Appellant therefore has the burden to establish that a material change in the nature and extent of her injury-related condition disabled her for the period claimed.⁶

Dr. Sepulveda, the neurological surgeon, had released appellant to return to limited duty on December 17, 2013. Appellant saw him two days later, however, and advised that she was unable to work due to pain. Dr. Sepulveda examined her and recommended that she be off work until January 6, 2014.

Although Dr. Sepulveda took appellant off work for most, if not all, of the period for which she seeks compensation, he did not make clear why. On examination, Dr. Sepulveda found marked difficulty changing from sitting to standing, limited motion of the lumbar spine, evidence of tenderness and spasm on palpation, and right radiculopathy with straight leg raising. He did not address whether this represented a material change in the accepted lumbar strain or thoracic or lumbosacral neuritis or radiculitis not otherwise specified, nor did he explain how these findings prevented appellant from performing any particular duty at work.

² 5 U.S.C. § 8102(a).

³ 20 C.F.R. § 10.5(f).

⁴ *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁵ Appellant actually claims total disability beginning November 26, 2013, but OWCP’s May 8, 2014 decision adjudicated only the period from December 17, 2013 to January 6, 2014, for which she filed a separate claim. The Board’s decision is limited to the period adjudicated. 20 C.F.R. § 501.2(c).

⁶ Appellant does not argue a change in the nature and extent of the limited-duty job requirements.

Appellant informed OWCP that she had aggravated her back injury after working outside on the streets lifting heavy trays and bending to get parcels out of the parcel hamper. She explained that the total disability for which she claimed compensation occurred because of a lot of excessive bending and lifting and loading the truck with the mail that she was carrying. This suggests that appellant's back condition worsened as the result of a new injury or exposure to recent work factors, and not as the result of a spontaneous material change in the accepted medical conditions.⁷

Notwithstanding these statements, it appears appellant told Dr. Sepulveda something different on January 29, 2014. On that date she gave him a history of having aggravated her lumbar spine "without a new injury either at work or outside of work."

Appellant also informed Dr. Sepulveda that she was unable to work from November 26, 2013 to January 13, 2014 due to her 2001 injury. Her opinion does not matter in this case. It is not enough for appellant to tell Dr. Sepulveda that she hurt too much to work. Dr. Sepulveda must provide his professional opinion and reasons as to what prevented her from performing specific duties at work from December 17, 2013 to January 6, 2014. In the absence of any such discussion, it appears that he is allowing appellant to self-certify her disability for the period claimed, which is not a basis for OWCP to pay compensation for disability.⁸

The Board finds that the medical evidence is insufficient to establish that appellant's total disability for work from December 17, 2013 to January 6, 2014 arose from a material change in the nature and extent of the accepted medical conditions. The Board will therefore affirm OWCP's May 8, 2014 decision.

The Board is in receipt of the documents appellant submitted on appeal. This evidence, however, which was before OWCP at the time of its May 8, 2014 decision, does not present the necessary discussion from Dr. Sepulveda and without that discussion, appellant has not met her burden of proof.

CONCLUSION

The Board finds that appellant has not met her burden to establish that her disability from December 17, 2013 to January 6, 2014 arose from a material change in the nature and extent of the accepted medical conditions.

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b(1)(a) (May 1997) (recurrence of disability includes certain work stoppages).

⁸ See *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

ORDER

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

Issued: February 11, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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