United States Department of Labor
Employees' Compensation Appeals Board

W.J., Appellant	)	
and	)	**Docket No. 14-856**
	)	**Issued: March 27, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Alexandria, VA, Employer	)	

Appearances:
Kimberly A. Vertolli, Esq., for the appellant
Office of Solicitor, for the Director

Oral Argument January 20, 2015

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 5, 2014 appellant, through his attorney, filed a timely appeal from a September 6, 2013 merit decision 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 the claim.[2]

ISSUE

The issue is whether appellant established a recurrence of total disability beginning February 27, 2013 causally related to his January 12, 2012 employment injury.

[1] 5 U.S.C. §§ 8101-8193.

[2] Appellant's attorney submitted several pleadings following oral argument and indicated that additional evidence would be submitted. However, the Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On January 13, 2012 appellant, then a 66-year-old city letter carrier, filed a traumatic injury claim alleging that he slipped on wet grass and mud on January 12, 2012 while delivering mail. He claimed injury to his left thigh/upper leg. In a January 13, 2012 statement, appellant provided details of his slip and fall, which occurred at approximately 11:00 a.m. He noted that he had called his supervisor from his truck and was advised that someone would come out to check on him, but that did not happen until 3:30 p.m. In the meantime, appellant continued his route. OWCP accepted the claim for a sprain of the left hip and thigh, a sprain of the sacrum, and a contusion of the buttock.

In a January 13, 2012 report, Dr. Jerry W. McConnell, a Board-certified internist, advised that appellant was unable to work for seven days as he had great difficulty walking due to sprain of the left thigh. He also indicated that appellant had also bruised his sacrum. X-rays of both areas revealed no fractures. Appellant was released to work with restrictions on January 19, 2012 and he accepted a modified-duty job for four hours a day on January 21, 2012. On December 19, 2012 Dr. McConnell advised that appellant was able to return to full duty on his route.

On January 30, 2013 Dr. McConnell noted appellant's complaints that his left lower back and left thigh pain were worse since he started working extra hours about three weeks ago. He requested that appellant reduce his work schedule, preferably to only his regular mail route. No examination findings were provided.

On February 27, 2013 appellant filed a Form CA-2a, notice of recurrence, claiming disability as of that day because his leg pain had increased while casing mail that morning. In a February 28, 2013 verification of treatment report, Dr. McConnell advised that appellant had been ill and unable to work from February 28, 2013, indefinitely, until seen and evaluated in rheumatology.

In a March 7, 2013 verification of treatment report, Dr. Vrishali M. Dalvi, a Board-certified internist and rheumatologist, advised that appellant was evaluated for back and knee pain and would be off work until March 22, 2013.

By letter dated March 25, 2013, OWCP advised appellant of the factual and medical evidence needed to establish his recurrence claim.

Appellant provided statements dated March 1 and 12, and April 19, 2013. In his March 12 and April 19, 2013 statements, he asserted that the employing establishment would not accept his doctor's forms without a return to work date. Appellant indicated that he provided verification of treatment forms to his station manager regarding his doctor's instructions, but his supervisor made him carry his route and part of another carrier's route for approximately one hour during specific dates, which he listed, in December 2012, January and February 2013.[3] He

[3] The dates listed, which appellant asserted were not all inclusive, were: December 28 and 29, 2012; January 7 through 10; January 15; January 17 through 19; January 23 through 25; January 29 through 31; February 1, 12 and 13, 2013.

alleged that the extra workload violated his doctor's restrictions. The extra walking and heavy load caused excessive pressure on his leg and back resulting in his inability to walk on February 27, 2013. Appellant further alleged that the CA-17 forms he provided to his supervisor clearly indicated that he was to only carry his route. In his April 19, 2013 statement, he stated that he stopped work at 2:00 p.m. on February 27, 2013 and he received medical attention the next day. Appellant stated that his leg was swollen, he could not walk without tremendous pain, and that he was ordered to end his tour. He noted that Dr. Daniel R. Glor, a Board-certified neurologist, diagnosed left lumbar radiculopathy and opined that he was unable to work. Appellant stated that he believed the disability was due to the original injury as his pain was in the same areas he experienced following the original injury. He alleged that as his workload increased, the pain and physical symptoms, such as swelling, also increased in the areas which were originally impacted by his original injury. Appellant stated that his doctors confirmed that his disability was directly related to his original work injury.

Appellant submitted a March 20, 2013 note from Dr. McConnell, which stated that appellant was disabled for work for illness from February 28 through March 30, 2013; work excuse notes dated March 7 and 27 and April 3, 2013 from Dr. Glor that indicated that appellant was unable to work as a letter carrier due to left lumbar radiculopathy; duty status reports from Dr. McConnell dated March 7 and August 31, 2012; a March 16, 2013 magnetic resonance imaging (MRI) scan of the left knee.

In a February 28, 2013 report, Dr. McConnell noted that appellant's thigh had been weak since the January 12, 2012 fall and that he was seen for increased leg pain. Appellant stated that his supervisor required him to work more than eight hours and that, with the increased work, his left lower back flared up. His wife reported that appellant was unable to work without limping and he was not sleeping well because of the left leg pain. Appellant requested that the doctor provide a letter to help him reduce his hours and to only carry his route. No examination findings for appellant's back or legs were provided. The lumbar and leg x-rays showed arthritic changes with no fractures or acute changes. An assessment of knee pain/thigh pain/leg pain was provided.

In his report of March 7, 2013, Dr. Dalvi noted that appellant worked as a mailman and, for the past year, had low back pain and knee pain. He noted that appellant had an abnormally high stepping gait with the left knee, which he suspected originated in the lumbar spine (radiculopathy/stenosis) which caused downstream neuropathic effects on the left leg, affecting his gait and putting unusual stress on the left knee. Dr. Dalvi noted that the knee examination was normal, but that appellant had a Bakers' cyst in the left knee which had resolved with steroid therapy. The left femur x-rays were compared and did not show any significant arthritic change in the left knee over the past year. Dr. Dalvi noted that appellant requested time off from work until the workup yielded some answers, so Dr. Dalvi agreed.

In his April 3, 2013 report, Dr. Glor noted that appellant had a neurology consultation on March 22, 2013. Appellant reported that he fell in January 2012 while on the job as a letter carrier. Prior to the fall he had no back/leg pain symptoms, but after the fall he developed low back and left leg pain. The pain went as far as the lateral calf and there was also tightness in the left knee. Appellant would drag the left leg when going up stairs. After the injury, the primary care physician recommended limited duty which helped and symptoms improved. Appellant

was returned to his full usual route. Appellant stated that his supervisor made him do more than his usual route, even though the primary care physician had advised doing no more than his usual route. This extra work aggravated his symptoms and, because of this, appellant has not been to work since February 27, 2013. Dr. Glor reviewed the March 16, 2013 lumbosacral MRI scan which showed degenerative facet arthropathy with some encroachment on the nerve root foramen, and the March 16, 2013 left knee MRI scan which showed joint effusion with small popliteal cyst and degenerative changes. He diagnosed left lumbar radiculopathy and stated that appellant remained off work as a letter carrier due to his symptoms. Trigger point injections were given.

By decision dated May 15, 2013, OWCP denied the claimed recurrence as the medical evidence did not establish that any of appellant's current conditions were causally related to the January 12, 2012 employment injury. It noted that to the extent appellant claimed his conditions resulted from a violation of his work restrictions, this may be a basis for filing a new occupational disease claim.

On May 22, 2013 appellant requested a review of the written record by an OWCP hearing representative. He resubmitted the case file already of record and additional evidence.

In an April 16, 2013 form, Dr. Glor advised that appellant could not perform any of his job duties due to pain. He diagnosed lumbar radiculopathy and that the period of incapacity indefinitely began on February 28, 2013. In reports dated March 22, April 3, and May 22, 2013, Dr. Glor diagnosed left lumbar radiculopathy and provided trigger point injections. He opined that appellant was still disabled.

In a March 28, 2014 note, Dr. McConnell advised that lumbar and leg x-rays showed arthritic changes with no fractures or acute changes.

In June 17, 24, and July 15, 2013 reports, Dr. Yvette C. Ross Hebron, a Board-certified physiatrist, indicated that appellant began a course of acupuncture for his condition on June 17, 2013 and that a return to work date was unknown. In the July 16, 2013 report, she indicated that on July 1, 2013 appellant underwent electrodiagnostic studies. Dr. Hebron stated that continued treatment was planned to control and reduce appellant's low back pain.

In her April 22, 2013 letter, appellant's attorney argued that appellant's work stoppage was a spontaneous change in his medical condition, which resulted from his original injury of January 12, 2012, without an intervening injury, or new exposure to factors.

Appellant advised that he stopped work on February 27, 2013 because his leg was swollen, he could barely walk without tremendous pain, and he was ordered to end tour. He argued that, between December 2012 and the February recurrence, his level of pain increased with the loads he carried, particularly over the Christmas holidays. Appellant stated that, as his manager increased his loads, he felt the areas of his body that were hurt in the original injury becoming more and more stressed. He argued that his physicians validated the likelihood that his February 27, 2013 recurrence was a continuation of his original injury, and they also corroborated that the recurrence was likely due, at least in part, to his manager's failure to follow his doctor's instructions.

By decision dated September 6, 2013, an OWCP hearing representative affirmed the May 15, 2013 denial of the recurrence claim. She noted that appellant consistently claimed his recurrence was due to his supervisor forcing him to work beyond his eight-hour-a-day work restrictions by making him carry other carrier's routes, which were intervening work factors. The hearing representative found no credible evidence substantiating appellant's allegation that he was required to exceed his medical restrictions. She found that appellant had failed to establish a recurrence of disability on February 27, 2013 causally related to his January 12, 2012 employment injury.

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.[4] 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 light duty can be performed, the employee has the burden to establish by the weight of reliable, probative and substantial evidence a recurrence of total disability. As part of this burden of proof, 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.[5]

The term disability as used in FECA means the incapacity because of an employment injury to earn the wages that the employee was receiving at the time of injury.[6] For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.[7] Whether a particular injury caused an employee disability for employment is a medical issue which must be resolved by competent medical evidence.[8] The fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[9]

The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify their disability and entitlement to compensation.[10]

---

[4] 20 C.F.R. § 10.5(x).

[5] *Terry R. Hedman*, 38 ECAB 222 (1986).

[6] *Paul E. Thams*, 56 ECAB 503 (2005).

[7] *Sandra D. Pruitt*, 57 ECAB 126 (2005); *Dennis J. Balogh*, 52 ECAB 232 (2001).

[8] *G.T.*, 59 ECAB 447 (2008); *Gary J. Watling*, 52 ECAB 278 (2001).

[9] *D.I.*, 59 ECAB 158 (2007).

[10] *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291 (2001)

Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work.[11] Appellant's burden of proving he was disabled on particular dates requires that he furnish 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 supports that conclusion with medical reasoning.[12] Where no such rationale is present, the medical evidence is of diminished probative value.[13]

ANALYSIS

OWCP accepted that appellant sustained a sprain of the left hip and thigh, a sprain of the sacrum, and a contusion of the buttock during the performance of duty on January 12, 2012. Appellant accepted a modified-duty job assignment for four hours a day on January 21, 2012. Dr. McConnell released appellant to return to full duty on his route on December 19, 2012. On January 30, 2013 he requested that appellant reduce his work schedule, preferably to only his regular route. Dr. McConnell noted that appellant told him that his left lower back and left thigh pain worsened, after he started working extra hours three weeks prior. On February 27, 2013 appellant filed a recurrence claiming time loss from work beginning that day.

Before OWCP and at oral argument, appellant's attorney argued that appellant sustained a spontaneous worsening of his original injury, without intervening injury or exposure to work factors causing the original injury. Appellant, however, consistently claimed that his supervisor forced him to work beyond his eight-hour-a-day route by making him carry other carrier's routes for approximately one hour each day. These are intervening work factors. While appellant provided specific dates and times as to when he was forced to work beyond his work restrictions of eight hours a day, he did not provide any independent corroborative evidence, such as witness statements or time records, to support his allegation. While he asserted during oral argument that the data performance sheets and daily activity reports support that he was forced to work beyond his work restrictions, those reports were not in the record. Accordingly, appellant has not established that the employing establishment altered his assignment so as to require him to exceed his physical restrictions before he stopped work.

The Board further finds that the medical record lacks a well-reasoned narrative from appellant's physicians relating his claimed recurrent disability to his accepted employment injuries of January 12, 2012.

Appellant submitted work excuse slips from Dr. McConnell, Dr. Glor, and Dr. Dalvi advising that he was unable to work. However, those reports fail to establish how appellant's claimed recurrent disability on or after February 27, 2013 resulted from his accepted employment injuries. While Dr. McConnell noted in his February 27, 2013 report that appellant's leg pain had worsened, he did not describe any examination findings for appellant's

[11] *S.F.*, 59 ECAB 525 (2008).

[12] *Ronald A. Eldridge*, 53 ECAB 218 (2001).

[13] *Mary A. Ceglia*, 55 ECAB 626 (2004).

back or legs or document any objective worsening in appellant's medical condition. Thus, his report is insufficient to establish appellant's claim.

In his March 7, 2013 report, Dr. Dalvi mentioned the January 12, 2012 fall and noted that, for the past year, appellant has had low back pain and knee pain. He noted that appellant had an abnormal high stepping gait with the left knee, which he suspected originated in the lumbar spine (radiculopathy/stenosis) causing downstream neuropathic effects on the left leg, affecting his gait, and putting unusual stress on the left knee. Dr. Dalvi noted that the knee examination was normal, with a resolved Bakers' cyst. He did not provide an opinion on how appellant's current conditions resulted from the accepted work injury.

Dr. Glor noted the history of injury, the chronology of treatment, provided examination findings and diagnosed lumbar radiculopathy. He also noted findings on MRI scan, which included lumbar stenosis, popliteal cyst and degenerative changes of the left knee. Dr. Glor noted the extra work aggravated appellant's symptoms and, because of this, appellant had not been able to work since February 27, 2013. However, he did not provide an opinion based on an accurate history and supported by sound medical reasoning establishing causal relationship between the diagnosed lumbar radiculopathy or findings on MRI scan and the accepted conditions. While appellant had sustained a back injury on January 12, 2012, that fact does not establish that all subsequent back treatment and diagnoses are related to that employment injury. Dr. Glor does not provide any further detail or explanation as to causation for the nonaccepted work conditions.

The other medical evidence, including the MRI scan reports and reports from Dr. Hebron, fail to offer an opinion supporting a spontaneous change in appellant's medical condition due to the accepted work injury.

The Board finds that the evidence of record, while documenting a continuing back condition, does not establish that the condition is employment related. Accordingly, the Board finds that appellant has not met his burden of proof.

Appellant may submit new evidence or argument as part of a formal 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 failed to establish a recurrence of disability on or after February 27, 2013 causally related to his January 12, 2012 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated September 6, 2013 is affirmed.

Issued: March 27, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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