

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

R.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Bellmawr, NJ, Employer**

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**Docket No. 15-70
Issued: March 26, 2015**

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 14, 2014 appellant, through her attorney, filed a timely appeal of a July 8, 2014 Office of Workers' Compensation Programs' (OWCP) merit decision. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether appellant has met her burden of proof in establishing a recurrence of total disability beginning December 12, 2011, causally related to her accepted employment injuries.

On appeal, counsel argued that appellant was not provided light-duty work within her restrictions on or after December 12, 2011 and that she sustained a recurrence of total disability.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board on appeal. The pertinent facts follow. On June 21, 2011 appellant, then a 44-year-old city carrier, filed an occupational disease claim alleging that, she developed pain in her neck and shoulders, left arm and numbness in her left hand on April 1, 2011. She first attributed her condition to her employment duties of carrying a heavy mailbag on her left shoulder and carrying mail in her arm on May 3, 2011. The employing establishment noted that appellant did not work a full 40-hour workweek averaging 25 to 30 hours a week.

Appellant's attending physician, Dr. William L. Chollak, a Board-certified orthopedic surgeon, examined appellant on July 26, 2011 due to numbness and tingling in her left hand. He diagnosed left cervical radiculopathy. Dr. Chollak found that appellant's magnetic resonance imaging (MRI) scan demonstrated herniated disc at T1-2 with cervical arthritis. He stated that she could not perform her duties as a letter carrier. On August 17, 2011 Dr. Chollak stated that appellant was totally disabled.

Dr. Shahla Vakili, a Board-certified neurologist, examined appellant on May 25, 2011 and diagnosed pain and numbness of the left shoulder, neck, arm, and hand. He opined that her condition was most likely cervical radiculopathy. On October 5, 2011 Dr. Vakili attributed appellant's cervical radiculopathy to carrying mail at work.

On June 28, 2011 the employing establishment informed appellant that there was no light-duty available.

Dr. Chollak indicated on October 19, 2011 that appellant could only perform desk work without reaching or lifting with her left arm. He completed a duty status report on November 15, 2011 and indicated that she could lift or carry less than five pounds for eight hours a day. Dr. Chollak also found that appellant could sit for eight hours a day stand and walk for one to two hours at a time in an eight-hour day. He was capable of climbing stairs, kneeling, bending, stooping, and twisting for one-hour a day. Appellant could not work outdoors, climb ladders, reach above the shoulder, or drive anything other than a passenger car. Dr. Chollak stated that she could drive a passenger car for one-hour at a time up to two hours a day. He indicated that appellant could use her hands for grasping, fine manipulation, and keying for one to two hours a day. Dr. Chollak restricted her to desk work with no reaching or lifting with her dominant left arm.

On December 7, 2011 the employing establishment directed appellant to report for duty on Saturday, December 10, 2011. Appellant was to be provided a light-duty work assignment and official duties by her supervisor. The employing establishment approved her request for a temporary light-duty assignment on December 10, 2011. On December 12, 2011 it provided appellant a light-duty position which entailed casing mail using her right arm, no lifting more than five pounds and standing walking, performing simple grasping, and fine manipulation for one hour. Appellant was also required to perform curbside delivery in a postal vehicle for one hour not to exceed two hours driving. She was required to perform Express Mail delivery, sweep the floors and empty small containers of paper trash not to exceed five pounds. Appellant

refused this position stating that the job duties exceeded her medical restrictions on December 12, 2011.

Dr. Vakili completed a duty status report on December 14, 2011 and indicated that appellant could lift and carry less than five pounds for one hour. He found that she could sit for six hours, stand and walk for one to two hours, climb stairs for one hour, kneel, bend, and stoop for one hour and could not twist, grasp, type, key, or reach above the shoulder. Dr. Vakili found that appellant could not drive, case or sort.

On December 17, 2011 Dr. Chollak stated that appellant could not drive, could not perform outside work, and could not case mail. He indicated that she should not perform overhead work or lifting. Dr. Vakili completed a report on July 4, 2012 and stated that appellant could sit, stand, walk, stoop, climb stairs, and perform simple grasping as well as desk work up to four hours a day with intermittent walking every 30 minutes.

On June 6, 2012 the postmaster informed appellant that there was no light-duty work available within her restrictions.

Dr. Kenneth P. Heist, an osteopath and a Board-certified orthopedic surgeon, performed a second opinion evaluation on behalf of OWCP on October 24, 2012. He diagnosed cervical, dorsal, and lumbar sprains. Dr. Heist opined that appellant's diagnosed conditions had resolved and that she could return to full duty with no restrictions.

Dr. Megha Mendiratta, a Board-certified family practitioner, completed a note on October 2, 2012 and stated that appellant could not hold more than 10 pounds with her left arm and needed to perform limited lifting, carrying overhead, or loading and unloading. She stated that he could not drive a heavy vehicle such as a mail truck as she did not have the appropriate range of motion to turn the steering wheel. Dr. Mendiratta completed a duty status report on October 15 and November 1, 2012 and indicated that appellant could lift and carry up to 10 pounds. She also found that he could push, pull, sit, stand, climb stairs, knee bend, and stoop for eight hours. Appellant was capable of walking and driving a passenger car for six hours a day. Dr. Mendiratta stated that he could perform simple grasping, typing, and keying for eight hours a day. Appellant could not reach above the shoulder, climb ladders, or work outside.

On November 19, 2012 OWCP accepted appellant's claim for left shoulder sprain, thoracic sprain, lumbar sprain, and neck sprain. Appellant then filed claims for compensation requesting wage-loss compensation from July 23, 2011 through November 16, 2012 and November 17 through 30, 2012. In a letter dated November 28, 2012, the employing establishment stated that she had consistently refused any job offers provided to her. Appellant responded on November 30, 2012 and stated that she had requested light duty and had been told that there was no light duty available.

Appellant filed an additional claim on December 18, 2012 requesting compensation for leave without pay from December 1 through 14, 2012. She informed OWCP that she worked until June 28, 2011 when the employing establishment no longer had work within her restrictions. Appellant reported to work on December 12 and 14, 2011 but the offered positions were not within her restrictions. She did not return to work after December 14, 2011.

By decision dated December 27, 2012, OWCP terminated appellant's compensation benefits effective that date.

Counsel requested an oral hearing before an OWCP hearing representative. By decision dated June 26, 2013, the hearing representative found that OWCP met its burden of proof to terminate appellant's entitlement to wage-loss compensation effective December 27, 2012. He found that Dr. Heist's report represented the weight of the medical evidence and established that there was no clinical or diagnostic findings of cervical radiculopathy and that appellant's restricted range of motion was caused by preexisting degenerative changes. The hearing representative concluded that appellant was not disabled from work due to her accepted conditions.

Appellant appealed the June 26, 2013 decision, the hearing representative's decision to the Board. By decision dated July 28, 2014, the Board found that it had failed to meet its burden of proof to terminate appellant's wage-loss compensation benefits effective December 27, 2012 due to an unresolved conflict of medical opinion evidence between appellant's physician, Dr. Vakili and OWCP's referral physician, Dr. Heist.² The facts and circumstances of the case as it involves the termination of appellant's compensation benefits are set out in the Board's prior decision and adopted herein by reference.

Appellant filed additional claims for compensation for the period December 15 through March 8, 2013. On December 27, 2012 the employing establishment informed her that part-time flexible clerk positions were available within her restrictions. On July 22, 2013 it stated that there was no "light-duty" work available for appellant.

On July 23, 2013 appellant filed a notice of recurrence alleging a recurrence of disability on December 12, 2011 due to her employment injury. She stated that she was sent home by the employing establishment because there was no work available within her work restrictions.

OWCP contacted the employing establishment which stated that appellant stopped work on June 28, 2011 and used sick leave through July 27, 2011. Appellant returned to work on December 10, 2011 for two hours and was not scheduled on December 11, 2011. She returned to work on December 12, 2011 for 3.6 hours.

In a letter dated September 18, 2013, OWCP requested that appellant provide additional factual and medical evidence regarding her alleged recurrence of disability. Appellant responded on October 15, 2013 and stated that the position offered on December 10, 2011 exceeded her work restrictions as she could not deliver mail. She stated that she was required to case mail for Route 9 and deliver part of that route in a postal truck. Appellant informed her supervisor that she could not deliver mail. She filed a leave form and went home. On December 12, 2011 appellant reported to work and was directed to case mail. She was then provided with the December 12, 2011 light-duty position description which she felt exceeded her work restrictions.

Appellant completed an OWCP questionnaire on October 15, 2013 and stated that her light-duty position was withdrawn because the assignment exceeded her restrictions. She listed

² Docket No. 13-2117 (issued July 28, 2014).

her accepted work conditions as cervical radiculopathy and stated that use of her left arm made her condition worse.

By decision dated October 23, 2013, OWCP denied appellant's claim for recurrence of disability finding that she had not established the withdrawal of a light-duty assignment. Appellant requested an oral hearing on October 29, 2013.

Counsel appeared at the oral hearing on April 22, 2014. He stated that appellant was currently retired on disability. Counsel stated that the period of the recurrence was from December 12, 2011 through December 27, 2012. He noted that the job description on December 12, 2011 required appellant to drive a mail truck which exceeded her medical restrictions.

By decision dated July 8, 2014, the hearing representative denied appellant's claim for recurrence of disability beginning December 12, 2011 finding that the medical evidence did not establish that she could not perform the offered limited-duty position.

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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. This term also means an 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 or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.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 light-duty position or the medical evidence of record establish that he or she can perform the light-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 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 injury-related condition or a change in the nature and extent of the light-duty requirements.⁴ Furthermore, appellant has the burden of establishing by the weight of the substantial, reliable, and probative evidence, a causal relationship between her recurrence of disability commencing December 12, 2011 and her accepted employment injury.⁵ This burden includes the necessity of 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 employment factors and supports that conclusion with sound medical reasoning.⁶

³ 20 C.F.R. § 10.5(x).

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

⁵ *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-9 (1982).

⁶ *See Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

ANALYSIS

OWCP accepted appellant's occupational disease claim for left shoulder sprain, thoracic sprain, lumbar sprain, and neck sprain on November 19, 2012. Appellant stopped work on June 28, 2011 and used sick leave through July 27, 2011.

Appellant's attending physicians, Drs. Chollak and Vakili provided a diagnosis of cervical radiculopathy as well as work restrictions based on this condition beginning in 2011. OWCP has not accepted cervical radiculopathy as resulting from appellant's employment. Drs. Chollak and Vakili did not provide any medical opinion evidence which indicated which work restrictions were due to appellant's accepted sprains and which were due to her diagnosed condition of cervical radiculopathy which was not accepted by OWCP. Appellant returned to light-duty work for a few hours on December 10, 2011 and again on December 12, 2011. She stated that she did not receive a light-duty job description on December 10, 2012 and the record does not contain a position description of that date. Appellant then declined the offered light-duty position on December 12, 2011 after working for a few hours alleging that the job duties exceeded her work restrictions.

The medical evidence from appellant's attending physicians establishes that appellant was capable of performing light-duty work on December 12, 2011. Dr. Chollak completed a duty status report on November 15, 2011 and indicated that appellant could lift or carry less than five pounds for eight hours a day. He opined that she could sit for eight hours a day, stand and walk for one to two hours at a time in an eight-hour day. Appellant was capable of climbing stairs, kneeling, bending, stooping, and twisting for one hour a day. She could not work outdoors, climb ladders, reach above the shoulder, or drive anything other than a passenger car. Dr. Chollak stated that appellant could drive a passenger car for one hour at a time up to two hours a day. He indicated that she could use her hands for grasping, fine manipulation, and keying for one to two hours a day. Dr. Chollak restricted appellant to desk work with no reaching or lifting with her dominant left arm.

On December 14, 2011 Dr. Vakili indicated that appellant could lift and carry less than five pounds for one hour. He found that she could sit for six hours, stand and walk for one to two hours, climb stairs for one hour, kneel, bend, and stoop for one hour and could not twist, grasp, type, key, or reach above the shoulder. Dr. Vakili found that appellant could not drive, case or sort mail.

On October 2, 2012 Dr. Mendiratta limited appellant to lifting and carrying 10 pounds with her left arm and restricted activities of carrying overhead or loading and unloading. She stated that appellant could not drive a heavy vehicle such as a mail truck as she did not have the appropriate range of motion to turn the steering wheel. Appellant could not reach above the shoulder, climb ladders, or work outside.

While these reports provide medical restrictions, the reports are not sufficiently detailed or well reasoned to establish that the work restrictions listed are causally related to appellant's accepted employment injuries. Without medical evidence explaining how and why the work restrictions, particularly related to driving a postal vehicle and working outside, the restrictions not met by the employing establishment's December 12, 2011 light-duty job offer, are due to the

accepted conditions of strains these reports are not sufficient to establish that appellant was disabled on or after December 12, 2011 due to her accepted employment injury. As appellant's physicians diagnosed an additional condition not excepted by OWCP, the medical evidence must specify the diagnosed condition which required the restriction, rather than merely listing all restrictions without qualification. Appellant cannot meet her burden of proof to establish a recurrence of disability, unless the medical evidence establishes that her disability was due to her accepted employment injury. In this case it is unclear whether the restrictions, upon which the light-duty assignment was made, were specifically to accommodate her work-related injury. Furthermore given the discrepancies between the accepted and diagnosed conditions, the medical evidence is not sufficiently detailed to establish appellant's employment-related physical limitations.

Due to the deficiencies in the medical evidence, the Board finds that appellant has not met her burden of proof in establishing a recurrence of total disability on or after December 12, 2011.

Appellant may submit new evidence or argument with a 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 the medical evidence is not sufficiently detailed and well-reasoned to establish that appellant sustained a recurrence of total disability on or after December 12, 2011 due to her accepted employment injuries.

ORDER

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

Issued: March 26, 2015
Washington, DC

Patricia Howard Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

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