

medical condition, pain disorder associated with psychological and general medical condition, spinal stenosis in the cervical region, impotence of organic origin, and hypertension not otherwise specified. Appellant underwent spinal surgeries in 2008 and 2011.

Appellant returned to full-time limited duty in June 2013. He claimed compensation for wage loss, however, beginning January 16, 2014.

Appellant was seen in the emergency room on January 17, 2014 for upper back/bilateral shoulder/neck pain that gradually worsened “in the setting of frequent pushing/pulling of heavy drawers at this place of employment.” He was diagnosed with muscle strain and prescribed medication and a heating pad. Appellant was advised to limit his heavy pushing/pulling for four to six weeks.

Dr. Lance La Certe, a clinical psychologist, saw appellant on January 22, 2014. Appellant was having increased pain from pulling trays at work, so he left early from work. He stated that he received a prescription for being taken off work and was given restrictions not to pull trays for the next four to six weeks. Appellant advised that he was requested to attend a meeting with the supervisor’s boss. He insisted on union representation, and when a union representative was not present, he became increasingly agitated. When told they were going to set up a telephone conversation, appellant felt that he was being lied to and manipulated. Appellant indicated that he was feeling agitated and needed to leave. The main supervisor stepped in front of him and told him he was not going anywhere and would be absent without leave if he did. Appellant felt harassed and intimidated but ultimately signed papers and left. He stated that he was tired of dealing with the harassment.

Appellant was seen at the emergency room on January 27, 2014 and received a note stating that he could return to work starting February 9, 2014.

Dr. Alexander H. Zimmer, a Board-certified neurologist, noted on February 3, 2014 that appellant had experienced a recent flare-up of cervical pain and headaches “apparently due to increased physical activity at work between Christmas and New Year’s.

Appellant followed up with Dr. La Certe on February 6, 2014. Dr. La Certe noted that appellant’s mental status continued to be compromised with the ongoing conflicts he had with the employing establishment.

Appellant saw Dr. La Certe again on February 20, 2014. He discussed the recent meeting with a manager and his immediate supervisor. Appellant left the meeting and again expressed his unwillingness to work in the most recent environment. Dr. La Certe noted that appellant continued to be embroiled in conflict with the employing establishment and felt that he was not being adequately represented by his union.

Appellant saw Dr. Sheldon Goldberg, a Board-certified physiatrist, on February 25, 2014. He told Dr. Goldberg that he was very frustrated with his “hostile work environment.”

On March 3, 2014 appellant saw Dr. Zimmer for clarification of his return to work status from both a medical and psychiatric point of view. It was Dr. Zimmer’s impression that appellant had a recent flare-up of pain symptoms in the posterior neck and upper trapezius, as

well as headaches associated with increased work activities between Christmas and New Year's. Records from Dr. La Certe, as well as the history appellant was reporting, indicated that appellant had flare-ups of his depression and anxiety symptoms in the past associated with issues with specific supervisors and other personnel at work. Dr. Zimmer advised that appellant's return to work would be contingent on improvement in his depression.

In a decision dated March 25, 2014, OWCP denied appellant's disability claim. It explained that unless he was taken off work for the medical conditions that were accepted as work related, the period of disability he claimed was not compensable. OWCP noted that Dr. Zimmer offered no objective findings to support any disability for work. His report was based entirely on appellant's subjective complaints of pain.

On April 15, 2014 Dr. La Certe found that the stress of appellant performing his duties exacerbated his depression and anxiety. Based on appellant's report, Dr. La Certe had no evidence that the deterioration of appellant's mental status was due to a new injury. "I am continuing to treat this as a recurrence of [appellant's] depression and pain disorder symptoms." Dr. La Certe noted that Dr. Zimmer's identification of a flare-up of pain symptoms associated with increased work activities supported his impression of a continuation of appellant's original injuries."

On June 12, 2014 appellant described to Dr. Zimmer a flare-up of his depression earlier in the year. This was felt to be related to his response to the flare-up of pain symptoms associated with his work activities over the week between Christmas and New Year's. Dr. Zimmer noted that appellant had stress at work dealing with supervisors. "This would also be a contributing factor to his depression. I would consider this a recurrence of [appellant's] depression and pain disorder syndrome."

OWCP referred appellant to Dr. John D. Douthit, a Board-certified orthopedic surgeon. On June 18, 2014 Dr. Douthit related appellant's history and his findings on physical examination. He reviewed OWCP's statement of accepted facts and appellant's medical records. It was Dr. Douthit's opinion that appellant could work sedentary duty with restrictions of no lifting over 10 pounds. He noted that the reason appellant was giving for his inability to work -- headaches and back spasms -- could not be objectively verified. Dr. Douthit found no objective physical findings that would support total disability.

OWCP also referred appellant to Dr. Randolph W. Pock, a Board-certified psychiatrist, who evaluated appellant on August 8, 2014. Dr. Pock related appellant's history and complaints. He described the results of testing and examination. It was Dr. Pock's opinion that appellant had a psychiatric condition as a result of his injury. He agreed with Dr. La Certe and Dr. Douthit that appellant's symptoms, by themselves, did not prevent him from working. Since appellant's allegations of a hostile work environment, in which he was asked to exceed his physical restrictions, were not accepted as factual by OWCP, Dr. Pock could not comment on that portion of appellant's statement. Dr. Pock concluded that appellant was capable of working with the physical restrictions he was given "in a situation which he does not find hostile or threatening."

On August 14, 2014 the employing establishment contended that appellant's absence from work beginning January 16, 2014 was due to administrative issues and not to a worsening

of the accepted injuries. It explained that he was to perform his limited duties at his discretion. Appellant did not do any one task for extended periods of time, as the attending physician limited most of his physical activities to “as tolerated.”

The employing establishment also explained that appellant’s duties did not change. The November 2013 assignment did not add more duties; it only provided more details about the duties he had been performing since June 2013. With respect to appellant’s allegation of frequently pushing and pulling heavy drawers, the employing establishment explained:

“[Appellant] refers to an assignment whereby he was tasked with locating a missing document in the filing system. There are approximately 600 files in the filing system, however, [he] was never tasked with accessing every file. [Appellant] was asked to look in the files he recently added documents in to see if the missing document had been misfiled. This task did not require him to constantly pull and push to look in the files. [Appellant] would have to pull the file drawer out, reach in and retrieve the individual file folder, open it to see if the documents were in it then replace the file folder and repeat until he either needed to move to another task to stay within his restrictions of ‘as tolerated’ or he was at the end of that file drawer then push the drawer back into the filing system. [He] did not perform this task for an extended period of time each day.”

The employing establishment noted that appellant presented new restrictions, dated January 17, 2014. The manager scheduled a meeting with him on January 21, 2014 to offer a new modified assignment based on the new restrictions, but he walked out of the meeting stating that he was not comfortable meeting the manager. Appellant did not return. The employing establishment added that there was no incident with appellant’s supervisor or other workers. The manager conducted an investigative interview with him on January 10, 2014, but it was determined that discipline was not warranted. She tried to schedule other meetings with him, but appellant refused to report to work. The manager advised that these were administrative actions.

In a decision dated September 17, 2014, an OWCP hearing representative affirmed the denial of appellant’s disability claim. The hearing representative found that he had failed to submit probative and reliable evidence sufficient to establish the occurrence of an objective change in the nature and extent of his injury-related conditions or a verifiable change in the nature and extent of his light-duty job requirements.

The hearing representative found the case file devoid of a well-reasoned medical opinion, based on a complete and accurate factual and medical history, explaining how and why any of the accepted medical conditions worsened on or around January 16, 2014 such that appellant could no longer continue working in the modified full-time position he had held since June 2013.

The hearing representative further found that appellant had not established a factual basis for the alleged increase in work duties. He found that appellant’s description of the physical requirements of searching for a specific document was inconsistent with the statement provided by the employing establishment. The hearing representative found that appellant’s allegation was of diminished credibility and could not be accepted as factual. This in turn diminished the

probative value of opinions given by physicians that appellant was unable to continue working due to an increase in his pain symptoms brought on by this specific work activity.

Further, the hearing representative found the case file devoid of evidence to support appellant's allegations of a hostile work environment. As he provided no substantial, reliable, or probative evidence supportive of his allegations of harassment or abuse, the hearing representative found that Dr. Le Certe's opinion was based on a unsubstantiated factual history and was therefore of diminished probative value.

On appeal, appellant submits a packet of information concerning billing charges and collection efforts. He argues the hearing representative had a conflict of interest, as he was once an OWCP claims examiner. Appellant indicates that the job offer was in error. He states that, when he performed the job, he experienced muscle spasm, increased neck pain, lower back pain, and persistent headache. Appellant notes that he and his attorney responded to the employing establishment's submissions. He indicates that a directive to input data and update records into the computer was a direct violation of his work-related injury (restrictions). Therefore, appellant states, the employing establishment created a hostile work environment. He had requested an ergonomic workstation evaluation. There was a disregard of appellant's work-related injury. He was denied the ergonomic evaluation.

LEGAL PRECEDENT

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

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 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 of record establishes that he or she can perform the light-duty position, the employee has the burden of establishing 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 his or her 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 job requirements.⁵

² *Id.* at § 8102(a).

³ 20 C.F.R. § 10.5(f).

⁴ *Id.* at § 10.5(x).

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

ANALYSIS

The record shows that appellant accepted and returned to full-time limited duty in June 2013. He would later file claims alleging total disability for work beginning January 16, 2014 due to the injury he sustained on July 13, 2006. Appellant therefore has the burden to show a change in the nature and extent of his injury-related condition or a change in the nature and extent of his light-duty job requirements.

More specifically, appellant must show that his inability to work beginning January 16, 2014 was caused by a spontaneous change in an accepted medical condition without an intervening injury or new exposure in the work environment that caused the illness. However, there is no indication in the record that his accepted medical conditions naturally progressed or spontaneously worsened to the point that he could no longer perform his limited duty. Appellant instead informed the emergency room on January 17, 2014 that his upper back/bilateral shoulder/neck pain gradually worsened from frequent pushing and pulling of heavy drawers at work. While this might be relevant to a new occupational disease claim, it does not support that a spontaneous recurrence of disability caused the July 13, 2006 work injury as claimed. Appellant indicated that his exposure to new employment factors were responsible for his inability to work beginning January 16, 2014.

Appellant told Dr. La Certe, the clinical psychologist, that the increased pain appellant experienced from pulling and pushing file cabinet drawers caused him to leave early from work. He then explained that he became increasingly agitated during a meeting with the manager and needed to leave, but she stepped in front of him and told him that he was not going anywhere, and if he did leave, he would be considered absent without leave. Appellant felt harassed and intimidated and never returned to work. He noted that he was tired of dealing with the harassment.

Appellant attributed his alleged inability, or unwillingness, to continue working to the interaction he was having with management. This does not support a natural progression or spontaneous worsening of the accepted emotional conditions and it does not support that the July 13, 2006 work injury caused a recurrence of disability.

Other medical reports confirmed that appellant did not attribute his inability to work beginning January 16, 2014 to a spontaneous change in his accepted medical conditions. He told Dr. Zimmer, the neurologist, that he had experienced a recent flare-up of cervical pain and headaches apparently due to increased physical activity at work between Christmas and New Year's. Dr. Le Certe noted that appellant's mental status continued to be compromised with the ongoing conflicts he had with the employing establishment. When appellant saw Dr. La Certe on February 20, 2014, he discussed how he had another meeting with management, but he again left the meeting unwilling to work in that environment. Dr. La Certe noted that appellant continued to be embroiled in conflict with the employing establishment and felt that he was not being adequately represented by the union.

Appellant thereby attributed his frustration to a hostile work environment. He did not allege that his accepted emotional conditions naturally progressed or spontaneously worsened to the point that he could no longer perform his limited-duty assignment. Dr. La Certe and

Dr. Zimmer would later use the word “recurrence” to support appellant’s inability to work, but they both also associated his disability with his exposure to recent work activities.

Dr. Douthit, the second-opinion orthopedic surgeon, and Dr. Pock, the second-opinion psychiatrist, did not address appellant’s disability beginning January 16, 2014. Their reports have little bearing on whether appellant suffered a recurrence of disability causally related to the July 13, 2006 work injury.

With respect to whether appellant has shown a change in the nature and extent of his light-duty job requirements, he pointed to changes in the language on the offers of limited duty. For example, he noted the addition of data entry duties in November 2013, which did not appear on the June 2013 offer. The employing establishment explained, however, that appellant’s duties did not change; the offer simply better reflected what he had already been doing. More to the point, the evidence contemporary to his January 16, 2014 work stoppage did not support that he could no longer continue his limited-duty assignment because of data entry duties.

Appellant instead told his health care providers that he had frequently been pushing and pulling heavy drawers at work. This represented no change. Appellant’s duties always included pushing and pulling “as tolerated.” He was asked to look for a particular document, but this again represented no change in his duties, because filing was already a part of his duties. Further, the hearing representative found that appellant’s description of the physical requirements of searching for the document was inconsistent with the statement provided by the employing establishment, and therefore his account of events lacked credibility.

The Board finds that appellant has not met his burden to establish that he sustained a recurrence of disability beginning January 16, 2014 causally related to his July 13, 2006 work injury. Appellant has failed to show a change in the nature and extent of his injury-related condition or a change in the nature and extent of his light-duty job requirements. Accordingly, the Board will affirm OWCP’s September 17, 2014 decision.

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.

The information appellant has submitted to the Board relating to billing charges and collection matters has no bearing on his appeal. His arguments fail to address the issue raised by his claims for wage-loss compensation, namely, whether he could no longer continue his limited-duty assignment beginning January 16, 2014 because of the injury he sustained on July 13, 2006. The primary issue is whether the accepted medical conditions he sustained on July 13, 2006 spontaneously changed or whether the employing establishment truly changed his modified assignment such that it was no longer medically suitable. On this issue, appellant has not met his burden of proof. In addition, he has not shown that the hearing representative was biased or issued a decision that was not supported by the evidence of record. Indeed, based on its own review of the evidence, the Board affirms the decision of the hearing representative denying appellant’s recurrence claim.

CONCLUSION

The Board finds that appellant has not met his burden to establish a recurrence of disability beginning January 16, 2014 causally related to his July 13, 2006 work injury.

ORDER

IT IS HEREBY ORDERED THAT the September 17, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 1, 2015
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