

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

L.J., Appellant)
and) Docket No. 14-1595
U.S. POSTAL SERVICE, PROCESSING &) Issued: September 16, 2015
DISTRIBUTION CENTER, Miami, FL,)
Employer)

)

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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 16, 2014 appellant filed a timely appeal from a January 27, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (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 established a recurrence of disability commencing August 15, 2013 causally related to her February 22, 2011 employment injuries.

¹ Appellant requested oral argument. By Order dated July 13, 2015, the Board, in its discretion, denied oral argument as it determined that the issues on appeal could be adequately addressed in a decision based on a review of the case record.

² 5 U.S.C. § 8101 *et seq.*

On appeal, appellant contends that she sustained a work-related back injury following her return to work at the employing establishment. She states that her job did not comply with her restrictions.

FACTUAL HISTORY

OWCP accepted that on February 22, 2011 appellant, then a 27-year-old mail handler, sustained a back sprain and displacement of lumbar intervertebral disc without myelopathy at L5-S1. Appellant was placed on the periodic rolls on August 12, 2011.

In an effort to determine appellant's work capacity, and after a conflict in medical evidence had been created, appellant was referred to Dr. Richard J. Simon, a Board-certified orthopedic surgeon and an impartial medical specialist. In his January 16, 2013 medical report, Dr. Simon opined that appellant was unable to return to a full-time mail carrier position, but she could work eight hours a day based on the results of a functional capacity evaluation. Appellant could occasionally lift up to 40 pounds, lift 30 pounds from floor to waist and waist to shoulder, carry up to 40 pounds, push 28 pounds of force, and pull 24 pounds of force. She could frequently sit, stand, walk, reach at desk and floor levels, balance, and perform firm/simple grasping. Appellant could also occasionally reach at overhead level, stoop, kneel, crouch, stair climb, crawl, and perform fine/gross hand manipulation.

After a period of vocational rehabilitation on July 19, 2013, appellant returned to work in a full-time modified-duty mail handler position based on the restrictions set forth by Dr. Simon.³

On December 2, 2013 appellant filed a claim (Form CA-7) for compensation for leave without pay from August 8 to December 2, 2013. She indicated that she stopped work on August 8, 2013 and that her last day of pay was August 15, 2013.

In support of her recurrence of disability claim, appellant submitted medical reports including a report from Dr. Andrew S. Ellowitz, an attending Board-certified orthopedic surgeon. In an August 28, 2013 narrative report, Dr. Ellowitz provided a history of the February 22, 2011 employment injury. He also provided a history of a July 2013 incident when appellant reinjured her back as a result of pushing and pulling heavy gates. Following the July 2013 incident, Dr. Ellowitz noted that appellant immediately experienced low back pain that radiated into her mid-back and sought urgent care medical treatment. Appellant's legs were buckling at work and she was having more pain recently secondary to this event. Dr. Ellowitz noted appellant's medical and social background. He listed findings on physical examination and provided an impression of back pain. In a Florida workers' compensation form dated August 28, 2013, Dr. Ellowitz indicated a date of injury as February 21, 2011. He advised that appellant had work-related low back pain. Dr. Ellowitz stated that she had a preexisting condition that was exacerbated by her current condition. He concluded that appellant could return to her activities with restrictions. In an industrial pharmacy management report dated September 24, 2013,

³ In a September 9, 2013 decision, OWCP found that appellant received an overpayment of compensation in the amount of \$1,095.60 because she received total disability compensation from June 30 to July 27, 2013 after she had returned to full-time light-duty work.

Dr. Ellowitz noted that appellant was being treated for a work-related injury/illness. He ordered medication to treat her condition.

By letter dated December 17, 2013, OWCP advised appellant that the evidence submitted was insufficient to establish her recurrence claim. It noted that Dr. Ellowitz's August 28, 2013 report referred to a new injury and advised her that, if it were related to her employment, she would need to file a new injury claim. OWCP requested additional medical evidence to establish that her condition had worsened such that she was no longer able to perform her job duties when she stopped work on August 8, 2013.

In an August 28, 2013 industrial pharmacy management report, Dr. Ellowitz ordered medication to treat appellant's condition. In narrative reports dated September 24 and October 29, 2013 and January 14, 2014, he noted that appellant had low back problems status post two work-related accidents. Dr. Ellowitz provided findings on physical and neurological examination and listed impressions of chronic lumbar herniated disc and back pain. In his October 29, 2013 report, he advised that appellant was unable to perform her normal job which required lifting up to 70 pounds. In Florida workers' compensation forms dated September 24 and October 29, 2013 and January 14, 2014, Dr. Ellowitz again listed the date of injury as February 21, 2011 and reported that appellant was being treated for a work-related injury/illness. He advised that there was no change in her capacity to perform functional activities. Dr. Ellowitz concluded that appellant had reached maximum medical improvement on January 14, 2014. In a January 14, 2014 prescription, he ordered physical therapy to treat her chronic low back pain.

In a January 27, 2014 decision, OWCP denied appellant's recurrence claim, finding that the medical evidence was insufficient to establish a recurrence of disability commencing August 15, 2013. It found that she failed to submit the requested medical evidence establishing a material worsening, supported by clinical findings, rendering her disabled from her modified job as a result of the accepted employment injuries without intervening factors.

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.⁴ 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 (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.⁵

⁴ 20 C.F.R. § 10.5(x).

⁵ *Id.*

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.⁶

To show a change in the degree of the work-related injury or condition, the claimant must submit rationalized medical evidence documenting such change and explaining how and why the accepted injury or condition disabled the claimant for work on and after the date of the alleged recurrence of disability.⁷

ANALYSIS

OWCP accepted appellant's claim for back sprain and displacement of lumbar intervertebral disc without myelopathy at L5-S1. On July 17, 2013 appellant returned to full-time modified-duty work at the employing establishment. She claimed a recurrence of disability on August 15, 2013 due to her accepted injuries. Appellant does not allege that this disability was a result of a change in the nature and extent of her limited-duty job requirements. Her burden therefore is to show a change in the nature and extent of her injury-related condition.

The Board finds that appellant has not submitted sufficient medical opinion evidence to support her claimed recurrence of disability. Dr. Ellowitz's narrative reports and Florida workers' compensation forms document that appellant sustained a lumbar herniated disc and low back pain status post two work-related accidents. He provided a history of the February 22, 2011 employment injuries and a July 2013 incident when appellant reinjured her back as a result of pushing and pulling heavy gates at work. Dr. Ellowitz advised that her preexisting condition was exacerbated by her employment. He opined that appellant could not perform her normal job which required lifting up to 70 pounds. The Board finds that Dr. Ellowitz did not establish that appellant's back conditions and resultant disability as of August 15, 2013 were due to a recurrence of the accepted February 22, 2011 employment injuries. Dr. Ellowitz reported a history of an intervening July 2013 incident due to pushing and pulling heavy gates, rather than the accepted condition of back sprain and displacement of lumbar intervertebral disc without myelopathy at L5-S1 which occurred on February 22, 2011. Further, his description of appellant's job duties was inaccurate. Dr. Ellowitz reported that she was required to lift 70 pounds in her position, whereas the actual duties of the June 21, 2013 modified-job offer required that appellant be able to lift up to 40 pounds. It is well established that medical reports must be based on a complete and accurate factual and medical background and medical opinions based on an incomplete or inaccurate history are of little probative value.⁸

⁶ *Albert C. Brown*, 52 ECAB 152, 154-155 (2000); *Barry C. Petterson*, 52 ECAB 120 (2000); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁷ *James H. Botts*, 50 ECAB 265 (1999).

⁸ *Douglas M. McQuaid*, 52 ECAB 382 (2001).

Dr. Ellowitz also failed to adequately distinguish the effects of the July 2013 intervening event from the continuing effects of the accepted 2011 condition. This intervening event contradicts his finding that the current conditions are the result of a spontaneous change in the accepted conditions.⁹ Without medical reasoning supported by an adequate factual understanding of the case, Dr. Ellowitz's reports and state workers' compensation forms are insufficient to meet appellant's burden of proof.¹⁰

Dr. Ellowitz's remaining reports and prescription notes found that appellant had low back pain that required treatment with medication and physical therapy. The Board has held that pain is a symptom, rather than a firm medical diagnosis.¹¹ Moreover, Dr. Ellowitz did not provide any opinion on whether appellant's condition and disability for work were causally related to the accepted employment injuries. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹² For the stated reasons, the Board finds that Dr. Ellowitz's reports and prescriptions are insufficient to establish appellant's claim.

Appellant failed to submit sufficiently rationalized medical evidence establishing that her back condition and resultant disability commencing August 15, 2013 resulted from the residuals of her accepted injuries.¹³ She has therefore not met her burden of proof.¹⁴

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 appellant has failed to establish that she sustained a recurrence of disability commencing August 15, 2013 causally related to her February 22, 2011 employment injuries.

⁹ See *Robert W. Meesom*, 44 ECAB 834 (1993) (where the Board determined that striking a deer in an automobile accident constituted an independent intervening cause which broke the chain of causation with respect to a claimant's prior employment back injury); *Anthony S. Wax*, 7 ECAB 330 (1954).

¹⁰ *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

¹¹ *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

¹² See *K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Willie M. Miller*, 53 ECAB 697 (2002); *Michael E. Smith*, 50 ECAB 313 (1999).

¹³ *Cecelia M. Corley*, 56 ECAB 662 (2005).

¹⁴ *Tammy L. Medley*, 55 ECAB 182 (2003).

ORDER

IT IS HEREBY ORDERED THAT the January 27, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 16, 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