United States Department of Labor
Employees' Compensation Appeals Board

N.G., Appellant	)	
and	)	**Docket No. 16-1421**
	)	**Issued: December 12, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Plymouth, MI, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 27, 2016 appellant filed a timely appeal of an April 18, 2016 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 to consider the merits of the case.

ISSUE

The issue is whether appellant has met her burden of proof to establish that she was totally disabled from January 14 through 16, 2016 due to her accepted March 3, 2015 employment injury.

FACTUAL HISTORY

On March 3, 2015 appellant, then a 39-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she slipped and fell in the performance of duty injuring her left leg, lower back, and right arm. She accepted a light-duty position as a city carrier at the

[1] 5 U.S.C. § 8101 *et seq.*

employing establishment on March 13, 2015. OWCP initially allowed payment of a limited amount of medical expenses, but on March 31, 2015 formally accepted her claim for back contusion.[2]

Dr. Jai Duck Liem, a Board-certified physiatrist, examined appellant on March 26, 2015 and noted that she had a history of chronic low back pain with L5-S1 disc protrusion. He reported that appellant was performing limited-duty work at the time of her March 3, 2015 work injury. Dr. Liem diagnosed left sacroiliac sprain. Appellant stopped work on April 14, 2015. Dr. Liem noted that appellant could return to work on April 16, 2015 with restrictions including no lifting over 10 pounds, no prolonged standing or walking, bending no more than 10 times an hour, and pushing or pulling up to 20 pounds.

Appellant filed a claim for compensation (Form CA-7) for wage loss from April 18 through May 1, 2015. She underwent a magnetic resonance imaging (MRI) scan on April 28, 2015 which demonstrated mild disc desiccation with minimal disc bulge at L5-S1, but no appreciable canal stenosis or neural foraminal narrowing. On May 4, 2015 Dr. Liem opined that appellant was totally disabled diagnosing herniated lumbar disc, sacroiliac strain, and contusion of the back. Appellant requested leave-without-pay compensation beginning May 2, 2015. OWCP authorized compensation benefits.

In a note dated May 18, 2015, Dr. Liem diagnosed severe trochanter bursitis. He noted that appellant did not have any hip pain problem prior to her fall on March 3, 2015. Dr. Liem diagnosed left sacroiliac sprain and trochanteric bursitis of the left hip. He continued to support her total disability from work.

Dr. Carrie Stewart, a Board-certified physiatrist, examined appellant on June 18, 2015 and noted her history of injury on March 3, 2015. She also reported that appellant had a previous low back injury at work in 2009. Dr. Stewart diagnosed left sacroiliac joint dysfunction following a slip and fall on March 3, 2015. She also diagnosed left lower extremity radicular pain with lumbar disc protrusion abutting the S1 nerve roots at L5-S1 as well as possible piriformis syndrome. Dr. Stewart found that appellant was totally disabled from work for six weeks. She found that appellant could return to light-duty work four hours a day on July 30, 2015. Appellant's work restrictions included changing positions frequently and no walking or standing for more than 30 minutes at a time, with sitting breaks every 30 minutes. She was allowed to case mail and drive, but not lift more than 10 pounds at waist level and no lifting from the floor.

Appellant returned to part-time limited duty on August 3, 2015. Dr. Stewart reduced appellant's restrictions on September 3, 2015 to allow her to lift, push, and pull up to 15 pounds and to work six hours a day. On November 19, 2015 she indicated that appellant could lift, push, and pull up to 20 pounds. Dr. Stewart also increased her total amount of walking.

OWCP requested additional information from Dr. Stewart on December 17, 2015. In a report dated January 13, 2016, Dr. Stewart described appellant's history of injury on March 3, 2015. She noted that shortly before December 25, 2015 appellant required a few days

[2] Appellant has a previously accepted claim for lumbosacral sprain, lumbar strain, and disc protrusions L5-S1 without nerve impingement. The prior claim, File No. xxxxxx272, has been combined with the present claim.

off due to severe back pain which limited her ability to get out of bed. Dr. Stewart reported that she had an additional period of severe pain during the first week of January 2016. Appellant reported to work despite her pain. Dr. Stewart indicated that appellant continued to experience moderate back pain and that she attributed her condition to wearing ice cleats which were not well fitted and altered her gait resulting in back pain. She diagnosed left sacroiliac joint dysfunction, lumbar disc herniation L5-S1 with intermittent left S1 radicular symptoms, and left iliotibial (IT) band strain and tendinitis. Dr. Stewart found that appellant could continue to work six hours a day, but limited her walking to two hours per shift. She noted that appellant would continue to have episodic flare-ups.

In a report dated January 14, 2016, Dr. Stewart found that appellant experienced severe pain on that date. She noted that appellant felt unable to bear weight on her left leg due to pain and numbness radiating down the left leg into the foot. Dr. Stewart found that appellant appeared uncomfortable sitting, transitioned from sitting to standing slowly, and walked with a markedly antalgic gait. She also noted that appellant was tender to palpation over the left sacroiliac joint and markedly tender to palpation over the left greater trochanteric bursa and IT band. Dr. Stewart did not find motor strength, reflex, or sensory deficits. She diagnosed a worsening of appellant's left S1 distribution radicular pain and recommended an electromyogram. Dr. Stewart found that appellant was totally disabled through January 18, 2016.

On January 22, 2016 appellant filed a Form CA-7, claiming compensation for intermittent leave without pay from January 9 through 22, 2016. The employing establishment indicated that appellant used 2.33 hours of leave without pay on January 9, 2016 4.24 hours on January 13, 2016 and eight hours each on January 14 through 16, 2016. Appellant used 2.38 hours of leave without pay on January 19, 2016 and 2.46 hours on January 21, 2016. She used two hours of leave without pay on January 11 and 22, 2016. On January 26, 2016 OWCP authorized compensation for 21.4 hours from January 9 through 22, 2016 which included the specific times under eight hours claimed, as well as two hours a day each on January 14 through 16, 2016.

In a letter dated February 9, 2016, OWCP requested additional medical evidence in support of appellant's January 22, 2016 Form CA-7. It noted that appellant claimed 39.40 hours and had received compensation for 21.40 hours based on her light-duty job restrictions. OWCP requested additional medical evidence explaining why appellant was totally disabled from work from January 14 through 16, 2016. It allowed appellant 30 days for a response.

Dr. Stewart completed a report on February 4, 2016 addressing appellant's total disability for work on February 2, 2016. She described her work duty on February 1, 2016 including carrying over 80 stacks of flyers weighing eight pounds each stack. Appellant sought additional medical treatment on February 27, 2016 due to left leg pain.

On March 3, 3016 Dr. Stewart noted appellant's increased back and left leg pain on February 26, 2015. She indicated that appellant had flare-ups from January 15 through 17, January 22 and 25, and February 2, 22, 25, and 26, 2016. Dr. Stewart noted that appellant attributed her flare-ups to walking on snow and ice with metal gripper shoes. She noted that wearing those shoes in the snow was very hard on appellant's back causing several recent flare-

ups such that she was unable to get out of bed due to pain. Dr. Stewart recommended an additional MRI scan.

In a report dated March 16, 2016, Dr. Stewart noted appellant's history of injury on March 3, 2015. She indicated that appellant continued to experience pain in her low back and down the left leg. Dr. Stewart opined that appellant had "struggled especially this past winter due to wearing metal cleats when walking on snow and ice." She noted that appellant had a walking route.

By decision dated April 18, 2016, OWCP denied appellant's claim for total disability for the period January 14 through 16, 2016. It authorized compensation for two hours a day during the period January 9 through 22, 2016 in keeping with appellant's restriction of working six hours a day. OWCP found that appellant had not submitted sufficient medical evidence to establish that she was totally disabled from January 14 through 16, 2016.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[3] The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.[4]

Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative, and substantial medical evidence.[5] Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work. When a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that she hurts too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.[6] 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 employees to self-certify their disability and entitlement to compensation.[7]

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.[8] Rationalized medical evidence is medical

[3] *G.T.*, 59 ECAB 447 (2008); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] 20 C.F.R. § 10.5(f); *see, e.g., Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury but no loss of wage-earning capacity).

[5] *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

[6] *Id.*

[7] *Id.*

[8] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

evidence which includes a physician's detailed medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[9] Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[10]

ANALYSIS

The Board finds that appellant has not submitted the necessary medical opinion evidence to meet her burden of proof to establish that she was totally disabled from work from January 14 through 16, 2016.

In support of her claim for total disability from January 9 through 22, 2016, due to her accepted condition of contusion of the back, appellant submitted a note dated January 14, 2016 from Dr. Stewart finding that she experienced severe pain on that date. Dr. Stewart reported her findings on examination and diagnosed a worsening of appellant's left S1 distribution radicular pain. She found that appellant was totally disabled through January 18, 2016. This report is insufficient to meet appellant's burden of proof to establish total disability from January 14 through 16, 2016 as Dr. Stewart did not explain how or why appellant's accepted employment-related condition rendered her totally disabled for the periods claimed. Dr. Stewart did not offer any medical rationale supporting her opinion that appellant was totally disabled from work due to her employment injuries on the dates claimed.

Dr. Stewart completed notes on March 3 and 16, 2016 indicating that appellant had flare-ups from January 15 through 17, 2016 of her back and left leg pain. She indicated that appellant attributed her flare-ups to walking on snow and ice with metal gripper shoes. Dr. Stewart noted that wearing the gripper shoes in the snow was very hard on appellant's back causing several recent flare-ups such that appellant was unable to get out of bed due to pain.[11] The Board finds that Dr. Stewart's reports are insufficient to establish appellant's claim for total disability from January 15 through 17, 2016 due to her accepted condition of contusion of the back. Appellant has failed to meet her burden of proof.

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.

[9] *Leslie C. Moore*, 52 ECAB 132 (2000).

[10] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[11] The Board notes that the report attributed appellant's condition to a new employment factor, the wearing of metal gripper shoes while delivering her route. This report does not attribute appellant's disability for work due to her accepted employment injury, but instead to a new occupational disease resulting from additional employment factors.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she was totally disabled from January 14 through 16, 2016 due to her accepted March 3, 2015 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the April 18, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 12, 2016
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board