United States Department of Labor
Employees' Compensation Appeals Board

E.B., Appellant	)	
and	)	**Docket No. 16-1468**
	)	**Issued: December 7, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Paradise, CA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On July 6, 2016 appellant filed a timely appeal from a June 2, 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 over the merits of this case.

ISSUE

The issue is whether appellant sustained a recurrence of disability on April 11, 2016 causally related to her accepted employment injury.

FACTUAL HISTORY

On November 24, 2009 appellant, then a 49-year-old distribution clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained spondylolisthesis, a spinal fracture, lumbar strain, and spondylolysis causally related to factors of her federal employment.

[1] 5 U.S.C. § 8101 *et seq.*

OWCP accepted the claim for cervical sprain, lumbar sprain, and a permanent aggravation of congenital abnormalities of the spine at L5-S1.

Appellant worked limited duty from July 29, 2010, when she stopped work. She returned to modified work for six hours per day beginning September 17, 2010. OWCP paid appellant compensation for two hours per day based on an informal wage-earning capacity determination until August 2012, when she returned to full-time modified employment.

On April 12, 2016 appellant telephoned OWCP and advised that she had experienced sudden back pain while at home watching television. She sought treatment in a hospital emergency room after having problems with respiration.

In a report dated April 11, 2016 and amended April 12, 2016, Dr. Vincent Balardi, Board-certified in emergency medicine, obtained a history of appellant having "upper back pain, worse with movement since last night while sitting on a couch." On examination he found paraspinal muscle spasm of the lumbosacral and thoracic spine. Dr. Balardi diagnosed musculoskeletal back pain and strain.

Dr. Balardi, in a work release note dated April 16, 2016, found that appellant could resume her usual employment. The work release note contains a handwritten note indicating that she had a "gas bubble in [her] back" causing breathing difficulty.

On April 19, 2016 appellant filed a recurrence of disability claim (Form CA-2a) alleging that on April 11, 2016 she sustained disability from work due to her accepted employment injury. She stopped work on April 11, 2016 and returned to work on April 18, 2016.

By letter dated April 27, 2016, OWCP advised appellant of the definition of a recurrence of disability and requested that she submit additional factual and medical information, including a detailed report from her attending physician addressing the relationship between her current disability and her accepted work injury. It noted that the medical evidence submitted identified her condition as a gas bubble in her back.

In a May 3, 2016 response, appellant related that she initially believed that she might have had gas, but subsequently realized that her pain was from her back condition.[2] The symptoms were like those she experienced from her accepted work injury. In another letter dated May 3, 2016, appellant related that her supervisor wrote in her notes that appellant had a gas bubble.

In a chart note dated May 4, 2016, Dr. Suk Chun Lee, who specializes in family practice, discussed appellant's history of pain in her trapezius and middle back beginning April 10, 2016 and her treatment in the emergency room on April 11, 2016. He noted that she returned to work on April 18, 2016. Dr. Lee diagnosed recurrent trapezius strain and upper back pain.

[2] Appellant telephoned OWCP on May 3, 2016 and related that she was not diagnosed with a gas bubble and that her attending physician would no longer provide her with treatment.

By decision dated June 2, 2016, OWCP denied appellant's claim for a recurrence of a medical condition. It determined that the medical evidence was insufficient to show that she required treatment due to a worsening of her accepted injury.

LEGAL PRECEDENT

Where an employee, who is disabled from the job he or she held when injured due to employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee 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. 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 job requirements.[3]

OWCP regulations provide that 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 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 her established physical limitations.[5]

ANALYSIS

OWCP accepted that appellant sustained cervical sprain, lumbar sprain, and a permanent aggravation of congenital spinal abnormalities at L5-S1 due to factors of her federal employment. In August 2012, appellant returned to full-time modified employment. On April 19, 2016 she filed a recurrence of disability claim (Form CA-2a) alleging that she was unable to work from April 11 to 18, 2016 due to her accepted employment injury.

Initially, the Board notes that OWCP identified the issue as to whether appellant sustained a recurrence of a medical condition rather than a recurrence of disability. Appellant claimed, however, that she was disabled from April 11 to 18, 2016, and thus the issue is whether she was unable to work during this period as a result of her employment injury.

Appellant has not alleged a change in the nature and extent of her modified job requirements. Instead, she attributed her recurrence of disability to a change in the nature and extent of her employment-related conditions. Appellant must provide medical evidence establishing that she experienced increased disability due to a worsening of her accepted

[3] *Richard A. Neidert*, 57 ECAB 474 (2006); *Jackie D. West*, 54 ECAB 158 (2002); *Terry R. Hedman*, 38 ECAB 222 (1986).

[4] 20 C.F.R. § 10.5(x).

[5] *Id*.

conditions of cervical and lumbar sprain and a permanent aggravation of congenital abnormalities at L5-S1.[6]

The Board finds that appellant has failed to submit sufficient medical evidence to establish disability from April 11 to 18, 2016 due to her accepted work injury. In a report dated April 11, 2016 and amended April 12, 2016, Dr. Balardi noted that appellant experienced pain in her upper back when she was sitting on a couch the previous evening. He diagnosed back pain and strain. Dr. Balardi, however, did not address the cause of the diagnosed conditions. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.[7] On April 16, 2016 Dr. Balardi released appellant to resume her usual employment. As he did not relate any condition or disability to her accepted employment injury, his report is insufficient to meet her burden of proof.[8]

Dr. Lee, on May 4, 2016, advised that appellant experienced trapezius and middle back pain on April 10, 2016. He diagnosed recurrent upper back pain and trapezius strain. Dr. Lee did not address causation and thus his report is also of little probative value.[9] OWCP has not accepted an upper back or trapezius strain as employment related and Dr. Lee did not address whether such condition was due to the accepted work injury. Where appellant claims that a condition not accepted by OWCP was due to her employment injury, she must establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence.[10]

The Board finds that appellant failed to establish disability beginning April 11, 2016. Consequently, appellant 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 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established a recurrence of disability on April 11, 2016 causally related to her accepted employment injury.

[6] *See Jackie D. West, supra* note 3.

[7] *See S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Conard Hightower*, 54 ECAB 796 (2003).

[8] *See A.D.*, 58 ECAB 124 (2006).

[9] *Id*.

[10] *See Jaja K. Asaramo*, 55 ECAB 200 (2004).

ORDER

IT IS HEREBY ORDERED THAT the June 2, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 7, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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