United States Department of Labor
Employees' Compensation Appeals Board

P.M., Appellant	)	
and	)	**Docket No. 15-1895**
	)	**Issued: February 24, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Harrisburg, PA, 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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On September 14, 2015 appellant filed a timely appeal from a March 16, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] Pursuant to the Federal Employees' Compensation Act[2] (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 met his burden of proof to establish a recurrence of disability for the period May 31 to July 25, 2014 causally related to his January 21, 2014 employment injury.

[1] 20 C.F.R. § 501.3(e) provides that an appeal must be filed within 180 days from the date of issuance of an OWCP decision. As the 180th day following March 16, 2015 fell on Saturday, September 12, 2015, appellant's appeal received on the next business day, Monday, September 14, 2015 was timely filed. *See* 20 C.F.R. § 501.3(f)(2).

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted that on January 21, 2014 appellant, then a 48-year-old letter carrier, sustained a low back injury when he was hit in the back by a heavy door in the performance of duty. Appellant did not stop work. His claim was accepted for aggravation of herniated lumbar disc.

In a February 11, 2014 duty status report, Dr. Carleen T. Warner, a Board-certified family practitioner, noted that on January 21, 2014 appellant sustained a back injury when he was hit in the back with a heavy door at work. She indicated that appellant could work full time with restrictions of kneeling, bending, and stooping for one hour, pushing and pulling for two hours, twisting for four hours, and driving a vehicle and walking for six hours.

On February 19, 2014 appellant accepted a limited-duty assignment as a modified city carrier. His duties involved sitting for second notices, customer service, and unendorsed bulk business mail (UBBM) for eight hours. The physical requirements of the modified assignment were sitting and writing for eight hours and standing to direct customers for one hour.

Appellant received medical treatment from Dr. Deborah Bernal, Board-certified in physical medicine and rehabilitation, who related in a May 7, 2014 report that appellant had a history of two prior job-related injuries that required surgery. Dr. Bernal noted that recently appellant sustained another back injury at work on January 21, 2014. She reported that he did not stop work but began a limited-duty assignment on February 1, 2014. Dr. Bernal indicated that appellant worked in the office, no longer carrying mail, but that he still complained of constant aching and intermittent pain in the lower back going down the right lower extremity. She reported that he underwent a magnetic resonance imaging (MRI) scan, which showed no evidence of any recurrent surgical condition or disc disease. Upon examination of the lumbar spine, Dr. Bernal observed increased lumbar lordosis and tenderness. She also provided range of motion findings. Straight leg raise testing was negative. Dr. Bernal opined that appellant needed a comprehensive rehabilitation program for his pain process and then functional restoration to return to full duty. She recommended that appellant return to work with restrictions. Dr. Bernal also referred appellant for physical therapy.

In a May 7, 2014 duty status report, Dr. Bernal indicated that appellant could return to work with restrictions of intermittent grasping and fine manipulation for five hours, intermittent walking and driving for four hours, intermittent standing for three hours, intermittent lifting and carrying up to 20 pounds for two hours, intermittent twisting and reaching above the shoulder for two hours, and intermittent climbing, kneeling, pushing, pulling, bending, and stooping for one hour.

On May 22, 2014 OWCP offered appellant a limited-duty assignment as a city carrier. The duties involved casing for one to one and a half hours and delivery for two hours. The requirements were driving for four to five hours, twisting for two hours, walking for one to two hours, and lifting for one and a half hours. On May 22, 2014 appellant refused the modified job offer. He contended that the doctor ordered only two hours of twisting.

Appellant filed several Form CA-7 claims for disability compensation for the period May 31 to July 25, 2014.[3] More specifically, OWCP received a Form CA-7 signed by appellant on June 1, 2014 claiming a recurrence of disability claiming wage loss due to a withdrawal of the light-duty assignment. Appellant noted on the time analysis form that there was no job offer available within his restrictions. In a June 17, 2014 CA-7 form, the employing establishment indicated that on May 22, 2014 appellant refused a job offer.

Appellant continued to undergo physical therapy. In progress reports dated May 15 to July 23, 2014, Jessica Haag, a physical therapist, noted a work-related injury of January 21, 2014 and diagnoses of displacement of lumbar intervertebral disc without myelopathy, thoracic or lumbosacral neuritis or radiculitis, lumbar sprain, SI ligament sprain, and muscle weakness. She related appellant's complaints of continued pain across the lower back, right buttock, and right posterior calf. Ms. Haag provided examination findings and noted that appellant had reduced flexibility, decreased core strength, and issues with radiculitis. She reported that he would benefit from skilled physical therapy to address his symptoms resulting from his work-related injury.

Dr. Bernal also continued to treat appellant. In a June 13, 2014 report, she reported that he had not worked for two and a half weeks because he refused a job that exceeded his work restrictions. Dr. Bernal related that the employing establishment did not allow appellant to return to his previous light-duty position. She noted that topical analgesics helped with appellant's pain management and physical therapy had increased his functional level. Dr. Bernal related that appellant was to begin new job duties on June 28, 2014 and requested the parameters of the new job in order to determine whether the job fit within appellant's restrictions. Until then, she advised that appellant undergo a functional capacity evaluation and continue physical therapy. In a June 11, 2014 duty status report, Dr. Bernal advised that appellant could return to work with restrictions of simple grasping and fine manipulation for five hours, intermittent walking for four hours, intermittent standing for three hours, intermittent sitting and twisting for two hours, and intermittent climbing, kneeling, bending, stooping, pushing, and pulling up to one hour.

On June 18, 2014 appellant underwent a functional capacity evaluation by Kathryn Fry-Fogle, a physical therapist. Ms. Fry-Fogle noted that he was diagnosed with disc bulging at L2-3, L3-4, and L4-5 as a result of a January 21, 2014 work-related injury. She related that although appellant was able to work, he went to see his doctor when the pain did not improve for two weeks and was placed on light duty with restrictions of no lifting more than 20 pounds. Ms. Fry-Fogle noted that he was still on light duty, but his employer was not able to accommodate his restrictions at this time. She provided examination findings. Ms. Fry-Fogle reported that musculoskeletal evaluation revealed decreased lumbar spine range of motion, decreased lower extremity strength and flexibility, and decreased core muscle strength. She opined that appellant did not meet the physical requirements to perform his job as a letter carrier for the employing establishment as described by the work-related functional questionnaire. Ms. Fry-Fogle recommended that appellant participate in a work conditioning program four hours a day and five days a week for eight weeks.

[3] Appellant also filed for intermittent disability for the period May 3 to 30, 2014. He requested 2 hours on May 12, 1.75 hours on May 15, and 1.99 hours on May 19, 2014, 7.16 hours on May 22, and 8 hours each on May 27, 28, and 30, 2014 for a total of 36.90 hours. OWCP paid disability compensation.

By letter dated July 1, 2014, OWCP advised appellant that the medical evidence failed to demonstrate that he was disabled from work beginning May 27, 2014 as a result of his employment injury. It requested that he submit additional evidence to establish his disability claim.

In another letter dated July 1, 2014, OWCP noted that appellant had refused a May 20, 2014 job offer as a modified letter carrier. It explained that it had reviewed the job offer and found it suitable and in accordance with his medical limitations provided by Dr. Bernal. Appellant was given 30 days to review and accept the job offer or provide a valid reason to refuse the position.

In a July 1, 2014 e-mail, Holly Dash, a human resource specialist for the employing establishment, indicated that appellant's modified job position was still available. She explained that appellant declined the offer because he believed it exceeded his twisting limitations.

On July 2, 2014 appellant inquired from the employing establishment *via* telephone about his Form CA-7 claims. He stated that he had worked until May 22, 2014 when he received another job offer. Appellant explained that he refused the job because it exceeded his restrictions and was sent home. He contended that the job required twisting of more than four hours per day. The employing establishment noted that the job offer they provided was for only two hours. Appellant alleged that the job offer had been tampered with. The employing establishment advised him that his work stoppage was being treated as a recurrence and he would not receive disability compensation until the recurrence claim was resolved.

In a July 14, 2014 report, Dr. Bernal related that appellant had been under her care since May 7, 2014 for a work-related injury. She noted that appellant was not cleared to twist more than two hours occasionally and intermittently during the workday. Dr. Bernal opined that appellant would be at risk for further injury if he did not comply with the recommendations. She recommended that appellant could work with restrictions of lifting up to 30 pounds occasionally, lifting up to 20 pounds frequently, and occasionally sitting, standing, walking, climbing, kneeling, bending and stooping, twisting, pulling and pushing, reaching, and fine manipulation.

On July 18, 2014 OWCP received a statement from appellant. Appellant explained that his doctor placed him on restrictions for two hours of intermittent twisting, but the employing establishment's job offer was over that limit. He noted that the employing establishment required one to one and half hours of casing and two hours of delivery. Appellant explained that both of these duties required intermittent twisting for a total of at least three and a half hours of twisting. He also asserted that even though the job offer stated that the physical requirements involved two hours of twisting it did not specify intermittent twisting. Appellant noted that he was including his physical therapy scripts and medical correspondence. He related that he began physical therapy on May 12, 2014 and had approximately nine sessions lasting two hours each. On June 19, 2014 appellant started work conditioning therapy which occurred every day for four hours a day. He provided various physical therapy notes.

In a July 25, 2014 report, Dr. Bernal noted diagnoses of lumbar strain, hip contracture, and muscle weakness. She related that appellant had finished physical therapy and was able to increase his strength, range of motion, and flexibility. Dr. Bernal provided examination findings

and reported that appellant's pain had resolved. She opined that appellant was at maximum medical improvement and could return to full duty without restrictions.

On July 26, 2014 appellant returned to full duty.

By decision dated August 11, 2014, OWCP denied appellant's claim for a recurrence of disability beginning May 22, 2014.[4] It explained that the medical evidence did not demonstrate that there had been a return of or increase in disability related to the accepted back condition or due to a change or withdrawal of the limited-duty assignment.

Appellant requested an oral hearing. In an undated statement, he related that he sustained a work-related injury on January 21, 2014 and was placed on limited duty. Appellant stated that the employing establishment was able to accommodate his restrictions but in his doctors' appointment on May 7, 2014 his restrictions were changed slightly. He noted that on May 22, 2014 he was provided with a new job offer. Appellant explained that when he reviewed the new job offer he found some requirements that were over the restrictions and he expressed his concerns to Brion Durgin, his union representative, and Kate Crerand, his supervisor. He related that they agreed that his concerns were justified. They contacted Holly Dash to work on a solution about his concerns. Appellant stated that while they were working on the situation Mike Becker, the postmaster, came into the office and instructed them to send appellant home if he refused the job offer. He noted that he did not refuse the job offer but was sent home by the employing establishment. Appellant noted that he did not realize there was a problem until approximately 40 days later when he called OWCP about his disability payments. He stated that he was not given the opportunity to have his doctor review the job offer, and when his doctor finally got an opportunity to examine the job offer he wrote a letter, which was in his file.

Appellant provided copies of his calendar for May to June 2016 with notations for doctor's appointments and therapy. He also resubmitted physical therapy treatment notes and Dr. Bernal's June 11, 2014 duty status report.

Appellant also resubmitted the May 22, 2014 job offer with an added notation that the job duties required intermittent twisting.

In a December 29, 2014 statement, Mr. Durgin, the senior union steward, noted that he was present on May 22, 2014 when appellant was given a new job offer. He related that appellant expressed concerns about aspects of the job to himself, Ms. Crerand, and Virginia Fulton, a senior supervisor. They believed his concerns were justified. Mr. Durgin noted that as they were working on a suitable job offer, Mr. Becker came into the meeting and ordered appellant to go home if he did not accept the pending job offer. He explained that appellant did not refuse work, but instead he was sent home.

On December 30, 2014 a telephone hearing was held. Appellant reiterated that he was on light duty when the employing establishment offered him a new job that was over his restrictions. He contended that he did not refuse the job offer but was sent home as he was trying

[4] The Board notes that although OWCP addressed appellant's disability claim as beginning May 22, 2014 the record reflects that appellant received compensation until May 30, 2014.

to discuss the job offer with the employing establishment. Appellant stated that after his January 21, 2014 injury he was working light duty sitting at a desk for two to three hours writing certified or second notices, standing in the lobby to direct customers for the automated postal system, and sitting down again. He noted that there was no twisting involved. Appellant explained that on May 22, 2014 he was in a meeting with Ms. Crerand, Ms. Fulton, and his union steward regarding a new job offer. He expressed his concerns that the job offer was over his restrictions and he believed they agreed. They called Ms. Dash over the telecom to discuss other light-duty job assignments. Appellant stated that Mr. Becker barged into the meeting room and stated that if appellant did not accept the job offer he should go home. He believed that Mr. Becker was acting in retaliation to an Equal Employment Opportunity (EEO) claim appellant had filed.

Appellant further alleged that the job duties in the new job offer required more than two hours of twisting. He explained that the job offer required casing for one to one and a half hours a day and delivering mail for two hours a day. Appellant noted that these duties required constantly twisting his back, which meant that he would be twisting his back for roughly three to four hours a day even though his restrictions were for two hours of intermittent twisting. He stated that he went home and did not think much about the situation until he did not receive his monthly disability check at the end of June. Appellant stated that he continued to seek medical treatment from Dr. Bernal and underwent physical therapy.

On February 2, 2015 Ms. Dash responded to appellant's hearing testimony. She contended that no twisting is required when casing mail and noted that the employing establishment instructed him to move his feet a few steps to move from one section of the case to the other in order to avoid twisting while casing mail. Ms. Dash also noted that delivering mail did not involve constant twisting. She stated that no twisting was required when behind the wheel, driving from the post office, and driving from one roadside mail box to the next. Ms. Dash further explained that the tray inside the postal vehicle upon which the mail sat was adjustable to reduce twisting and reaching, and that the driver's seat swiveled to further reduce twisting. She stated that periodic twisting was required, but not constant twisting while casing and driving mail. Ms. Dash further noted that OWCP ruled on July 1, 2014 that the May 22, 2014 job offer was a valid offer. She explained that once a job offer is crafted they contact the employee and the job offer presented must be accepted or declined. If the job offer is declined, Ms. Dash stated that the employee is sent home. She recommended that OWCP's denial decision be upheld.

By decision dated March 16, 2015, the OWCP hearing representative affirmed the August 11, 2014 decision denying appellant's recurrence claim.

LEGAL PRECEDENT

OWCP's implementing regulations define a recurrence of disability as 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. This term also means an inability to work when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his 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 such that they exceed the employee's physical limitations.[5] Appellant has the burden to establish that there was no medically appropriate light duty available for the claimed period.[6]

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 a recurrence of total disability and to show that he cannot perform the limited-duty position. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty requirements.[7] To establish a change in the nature and extent of the injury-related condition, there must be probative medical evidence of record. The evidence must include a rationalized medical opinion, based on a complete and accurate factual and medical history and supported by sound medical reasoning, that the disabling condition is causally related to employment factors.[8]

This burden includes the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history, that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.[9]

ANALYSIS

The Board finds that appellant did not establish a recurrence of disability for the period May 31[10] to July 25, 2014 causally related to the January 21, 2014 employment injury.

As previously noted a recurrence of disability is defined as 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 and an inability to work 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

[5] 20 C.F.R. § 10.5(x). *See John I. Echols*, 53 ECAB 481 (2002); *Terry R. Hedman*, 38 ECAB 222 (1986).

[6] *J.F.*, 58 ECAB 124 (2006).

[7] *Albert C. Brown*, 52 ECAB 152 (2000); *Mary A. Howard*, 45 ECAB 646 (1994).

[8] *Vanessa Young*, 55 ECAB 575 (2004).

[9] *Ronald A. Eldridge*, 53 ECAB 218 (2001); *see Nicolea Bruso*, 33 ECAB 1138 (1982). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3 (January 2013).

[10] The Board notes that even though appellant stopped work on May 22, 2014 alleging that the modified duty exceeded his restrictions, he did not request leave without pay compensation until May 27, 2014. As the record reveals that appellant received disability compensation for May 27, 28, and 30, 2014, the issue on appeal is whether appellant is entitled to disability compensation for the remaining May 31 to July 25, 2014 period.

are altered such that they exceed the employee's physical limitations.[11] In this case, appellant has alleged that the employing establishment withdrew his light-duty work and offered a new job position which exceeded his medical restrictions, specifically the twisting limitations. In a May 7, 2014 duty status report, Dr. Bernal restricted appellant to intermittent twisting and reaching above the shoulder for two hours. A review of the May 22, 2014 job offer, however, has revealed that the physical requirements of the job required driving for four to five hours, twisting for two hours, walking for one to two hours, and lifting for one and half hours. Because the May 22, 2014 job offer required twisting for two hours, the Board finds that it did not withdraw or alter appellant's light-duty job so as to require him to exceed his physical restrictions as outlined in Dr. Bernal's May 7, 2014 duty status report.

Although appellant contended in a July 18, 2014 statement and in his telephone hearing that the job duties of casing mail for one to one and a half hours and delivering mail for two hours actually required twisting for at least three and a half hours, he did not provide any evidence to support his contention that performance of the May 22, 2014 job duties would exceed his medical restriction of twisting for two hours. Furthermore, the employing establishment disputed appellant's argument and explained in detail that appellant's duties casing and delivering mail would not require constant twisting. In a February 2, 2015 report, Ms. Dash described that appellant was instructed to move his feet instead of twisting his body while casing mail and that the trays and seat within appellant's postal vehicle were adjustable so that twisting was not required. Accordingly, the Board finds that appellant has failed to establish that he was unable to perform the duties of the May 22, 2014 job offer as a result of his employment injury.

The Board further notes that the record does not contain any medical evidence to demonstrate that appellant was unable to perform the duties of the May 22, 2014 job offer due to his January 21, 2014 employment injury. All of the duties and physical requirements listed were within the limitations provided by Dr. Bernal. In a June 13, 2014 report, she noted that appellant had not worked for two and a half weeks because he refused a job that exceeded his work restrictions. Dr. Bernal further indicated in a July 14, 2014 report that appellant could not twist more than two hours during the workday. She explained that appellant would be at risk for further injury if he did not comply with the recommendations. The Board notes that while Dr. Bernal addressed appellant's twisting limitation of two hours, she did not specifically opine or address whether appellant's May 22, 2014 job offer exceeded appellant's medical restrictions. Instead, Dr. Bernal attributed appellant's need for medical restrictions as a way to prevent future injury. The Board has held that prophylactic work restrictions do not establish a basis for wage-loss compensation.[12] A fear of future injury is not compensable under FECA.[13] Thus, Dr. Bernal's reports failed to establish appellant's disability compensation claim.

The additional physical therapy reports dated May 15 to July 23, 2014 and June 18, 2014 functional capacity evaluation are likewise insufficient to establish appellant's disability

[11] *Supra* note 7.

[12] *S.O.*, Docket No. 14-1303 (issued April 29, 2015).

[13] *Manuel Gill*, 52 ECAB 282 (2001).

compensation claim as these reports were provided by physical therapists.[14] Physical therapists are not physicians as defined by FECA. Therefore an opinion expressed regarding the medical issue of disability is of limited probative value. Thus, there is no evidence to establish that appellant was unable to perform the duties of the modified-duty assignment as a result of his January 21, 2014 employment injury.[15] Accordingly, the Board finds that appellant has failed to establish his claim.

On appeal, appellant alleges that he was justified in questioning the May 22, 2014 job offer. He reiterates that he did not refuse the job offer but was sent home by the employing establishment. The May 22, 2014 job offer on the record, however, clearly demonstrated that appellant refused the modified assignment because he believed the position exceeded his restrictions. As previously stated, appellant has failed to establish that his light-duty assignment was withdrawn or altered to the extent that his job duties exceeded his medical limitations. He did not otherwise submit medical evidence showing that he sustained a recurrence of disability from May 31 to July 25, 2014 causally related to his January 21, 2014 employment injury.

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 not established a recurrence of disability for the period May 31 to July 25, 2014 causally related to his January 21, 2014 employment injury.

[14] Section 8102(2) of FECA provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. As physical therapists are not "physicians" as defined by FECA, their medical opinions regarding diagnosis and causal relationship are of no probative medical value. *See* 5 U.S.C. § 8101(2); *see also David P. Sawchuk*, 57 ECAB 316 (2006) lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion.

[15] *See H.H.*, Docket No. 15-304 (issued July 28, 2015).

ORDER

IT IS HEREBY ORDERED THAT the March 16, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 24, 2016
Washington, DC

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

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

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