United States Department of Labor
Employees' Compensation Appeals Board

A.V., Appellant	)	
and	)	**Docket No. 16-0024**
	)	**Issued: February 25, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Charlottesville, VA, 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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On October 7, 2015 appellant filed a timely appeal from a July 30, 2015 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 met her burden of proof to establish a recurrence of disability on May 29, 2015, caused by a January 23, 2015 employment injury.

FACTUAL HISTORY

On January 24, 2015 appellant, then a 40-year-old letter carrier, filed a traumatic injury claim (Form CA-1), alleging that on January 23, 2015 she slipped on steps and fell while

[1] 5 U.S.C. § 8101 *et seq.*

delivering mail, injuring her back and shoulders. She did not stop work and began modified duty.

In reports dated January 24, 2015, Dr. Shelly Dawson, a family physician, noted appellant's complaint that she injured her back and shoulder when she fell down steps. She indicated that x-rays of the left scapula and thoracic spine demonstrated no acute pathology and described physical examination findings. Dr. Dawson diagnosed sprain/strain of the thoracic and lumbar spine, and contusions of the back and shoulder. She advised that appellant could resume modified duty, but could not carry a mailbag and had physical restrictions of no heavy lifting, pushing, or pulling; no reaching overhead or rotating left shoulder; and that bending and stooping were limited. On January 30, 2015 Dr. Dawson noted that appellant had continued spasms and tenderness of the left shoulder and advised that she could perform sedentary work only. On February 6, 2015 she reported that appellant's physical examination was normal and that she was released to full duty with no restrictions.

On June 3, 2015 appellant filed a recurrence of disability claim (Form CA-2a) beginning on May 29, 2015. She claimed that following the January 23, 2015 injury, she continued to have occasional flare-ups with a stiff neck and pain in her shoulder and arm, and that on May 26, 2015 the pain worsened. The employing establishment reported that, since the January 23, 2015 incident, appellant had performed only office duties.

In reports dated May 29, 2015, Candyce Dunn, a nurse practitioner, noted that appellant's left upper back, neck, and shoulder pain had increased over the past three days. Physical examination demonstrated upper back muscle spasms and full but painful range of motion of the left neck and left shoulder. Ms. Dunn diagnosed thoracic back strain. On a form report she indicated that appellant had no restrictions and also advised that appellant was unable to work with an anticipated return to duty on June 4, 2015.

On June 3, 2015 Dr. Dawson noted appellant's complaint of pain and sensitivity in the left shoulder area. She described tenderness to palpation in the left scapula. Dr. Dawson diagnosed shoulder sprain/strain, provided a restriction on no heavy lifting, and recommended evaluation by a specialist.

In a June 23, 2015 decision, OWCP notified appellant that her claim had initially been administratively handled to allow payment of limited medical expenses and was not formally adjudicated but that, since she had filed a recurrence claim, it was reopened for formal adjudication. It accepted bilateral contusion of back, bilateral contusion of shoulder, and bilateral sprain of back.

In a letter also dated June 23, 2015, OWCP informed appellant of the evidence needed to adjudicate the recurrence claim.

In a July 18, 2015 statement, appellant noted that on May 26, 2015, during the workday, she had a burning and tingling sensation in her left shoulder and arm, and as the week progressed, pain and sensitivity increased. She maintained that she believed the new pain and sensitivity were due to the original injury because it was in the same area. Appellant related that, following the claimed May 29, 2015 recurrence, she had returned to modified duty on June 16,

2015 and that on July 17, 2015, while casing mail, turned her neck and it immediately became painful and stiff.

Appellant submitted additional medical evidence, including a June 2, 2015 report, from Kristine G. Shannon, a nurse practitioner. Ms. Shannon noted the history of injury with intermittent flare-ups and appellant's current complaint of left arm pain that had begun a week earlier, with left arm numbness and weakness in the left hand. Neck range of motion was normal with muscular tenderness. Tenderness was present in the left rhomboid region and left upper arm. Ms. Shannon diagnosed neck pain.

On June 12, 2015 Dr. Adam L. Shimer, a Board-certified orthopedic surgeon, noted a history that appellant had fallen down stairs, and initially her posterior neck, scapula, and left shoulder were painful. He described her complaint of neck pain that radiated into the elbow and left scapula. Dr. Shimer advised that cervical spine x-ray showed mild-to-moderate spondylosis at multiple levels, and that physical examination was positive for triceps weakness on the left.[2] Differential diagnosis was C7 radiculopathy, scapular dyskinesia, and muscle strain. He recommended a magnetic resonance imaging (MRI) scan of the cervical spine. On June 12, 2015 Dr. Abdurrahman Kandil, a resident physician in orthopedics, advised that appellant could return to work with a lifting restriction of 15 pounds.

On June 13, 2015 Dr. Dawson reported that appellant's left shoulder pain was improving. Tenderness was noted on palpation of the scapula, posterior shoulder, and upper back with upper back spasms. Dr. Dawson diagnosed cervical radiculopathy and shoulder pain and advised that appellant could return to modified duty that day with a lifting restriction of 15 pounds and a pushing/pulling restriction of 30 pounds. She was not to carry a mailbag. Dr. Dawson advised that appellant could return to full duty on July 13, 2015.

A June 29, 2015 cervical spine MRI scan demonstrated small posterior disc osteophyte complexes at C5-6 and C6-7 and a left paracentral/foraminal protrusion at C5-6 causing moderate left neural foraminal stenosis that likely contacted the exiting left C6 nerve root.

On June 30, 2015 Dr. Shimer advised that appellant's neck pain had improved with continued left arm subjective weakness and pain. He noted his review of the cervical MRI scan and found strength differences barely perceptible in comparing the upper extremities. Dr. Shimer opined that he believed appellant's symptoms were related to a left-sided C5-6 disc protrusion which was, more likely than not, a result of her work-related fall. He noted, "I base that opinion on the fact that she has been seen for these symptoms since that time and those symptoms correspond to the disc herniation seen on MRI [scan]," noting current symptoms of radicular arm pain and mild weakness. Dr. Shimer reported slight weakness of elbow flexion and wrist extension, and parasthesias in the C6 dermatome. He concluded that appellant was able to perform all work duties.

By decision dated July 30, 2015, OWCP denied appellant's recurrence claim, finding that the medical evidence was insufficient to establish that her current condition and disability was caused by the January 23, 2015 accepted employment injury.

[2] The x-ray report is found in the record.

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.[3] 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 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.[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 establishes that light duty can be performed, the employee has the burden to establish by the weight of reliable, probative, and substantial evidence a recurrence of total disability. As part of this burden of proof, 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 light-duty requirements.[5]

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden to establish that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and who supports that conclusion with sound medical reasoning.[6]

ANALYSIS

The Board finds that appellant has not established a recurrence of disability on May 29, 2015 causally related to the accepted bilateral contusion of back, bilateral contusion of shoulder, and bilateral sprain of back.

Following the January 23, 2015 employment injury, appellant did not stop work and began modified duty. In medical reports dated January 24 and 30, 2015, Dr. Dawson noted appellant's complaint of back and left shoulder tenderness and pain. She mentioned no neck pathology. On February 6, 2015 Dr. Dawson advised that appellant's physical examination was normal and she could return to full duty without restriction. The employing establishment, however, indicated that appellant only performed office duties following the employment injury.

[3] 20 C.F.R. § 10.5(x); *see Theresa L. Andrews*, 55 ECAB 719 (2004).

[4] *Id.*

[5] *Shelly A. Paolinetti*, 52 ECAB 391 (2001); *Robert Kirby*, 51 ECAB 474 (2000); *Terry R. Hedman*, 38 ECAB 222 (1986).

[6] *S.S.*, 59 ECAB 315 (2008).

Appellant did not seek medical care between February 6 and May 29, 2015 when she was seen by Ms. Dunn, a nurse practitioner. The report of Ms. Dunn on May 29, 2015 and the June 2, 2015 report of Ms. Shannon, also a nurse practitioner, do not constitute medical evidence under FECA as a nurse practitioner is not considered a physician as defined in section 8102(2) of FECA.[7] Section 8101(2) provides that "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law.[8]

As noted above, appellant's burden requires that she furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and who supports that conclusion with sound medical reasoning.[9] Where no such rationale is present, the medical evidence is of diminished probative value.[10]

After the claimed May 29, 2015 recurrence, on June 3, 2015 Dr. Dawson merely restricted appellant to no heavy lifting. On June 13, 2015 she advised that appellant could return to modified duty that day with a lifting restriction of 15 pounds and a pushing/pulling restriction of 30 pounds. Appellant was not to carry a mailbag. Dr. Dawson advised that appellant could return to full duty on July 13, 2015. She did not reflect familiarity with appellant's job duties and did not relate the recommended restrictions to the January 23, 2015 employment injury. Similarly, on June 12, 2015 Dr. Kandil merely advised that appellant could return to work with a lifting restriction of 15 pounds. He provided no further explanation. These reports are, therefore, insufficient to establish that appellant sustained a recurrence of disability on May 29, 2015.

Likewise, Dr. Shimer's reports are insufficient to establish a recurrence of disability on May 29, 2015. In reports dated June 12 and 30, 2015, he discussed appellant's cervical condition including MRI scan findings. While Dr. Shimer advised that he believed appellant's symptoms were related to a left-sided C5-6 disc protrusion which was, more likely than not, a result of her work-related fall, a disc protrusion has not been accepted as caused by the January 23, 2015 employment injury.[11] Dr. Shimer exhibited no knowledge of appellant's modified duties. Moreover, he advised on June 30, 2015 that she could perform all job duties.

[7] *Paul Foster*, 56 ECAB 208 (2004).

[8] 5 U.S.C. § 8102(2); *see R.M.*, 59 ECAB 690 (2008).

[9] *Supra* note 6.

[10] *Mary A. Ceglia*, 55 ECAB 626 (2004).

[11] As noted, in her reports dated January 24 to February 6, 2015, Dr. Dawson mentioned no neck pathology. Appellant did not mention neck problems until she filed the recurrence claim on June 3, 2015 when she first stated that, following the January 23, 2015 employment injury, she occasionally had flare-ups with a stiff neck and shoulder and arm pain.

Appellant failed to submit sufficient medical evidence to establish a recurrence of disability on May 29, 2015 causally related to the January 23, 2015 employment injury.[12]

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 failed to meet her burden of proof to establish a recurrence of disability on May 29, 2015, caused by a January 23, 2015 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the July 30, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 25, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[12] *Supra* note 10.