

ISSUE

The issue is whether appellant met her burden of proof to establish a recurrence of total disability on November 28, 2011 and January 11 and 31, 2012 causally related to her August 27, 2010 employment injury.

On appeal, counsel contends that the employing establishment changed the nature and extent of appellant's light-duty job requirements and, therefore, she sustained recurrences of total disability on November 28, 2011 and January 11 and 31, 2012.

FACTUAL HISTORY

On September 10, 2010 appellant, then a 43-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging neck and shoulder injuries on August 27, 2010 as a result of closing mailboxes. She stopped work on August 31, 2010. OWCP accepted the claim for sprain of neck and right shoulder sprain and authorized physical therapy.⁴

On December 15, 2011 appellant, through counsel, filed a claim for a recurrence (Form CA-2a) commencing November 28, 2011. She returned to work on December 2, 2011. Appellant indicated that she had an indefinite restriction from a prior injury, under OWCP File No. xxxxxx029,⁵ but was told that she had no restrictions on file and was required to work full duty when she returned to work on November 28, 2011. The employing establishment stated that her "only restriction [was a] 30[-] pound weight restriction, which [was] full duty of position for carriers in her unit." OWCP noted that there were "[i]nsufficient medical[s] to satisfy absence or additional restrictions."

In reports dated August 16 through December 9, 2011, Dr. Thomas Helbig, a Board-certified orthopedic surgeon, diagnosed herniated disc at C6-7 and opined that appellant's cervical condition was causally related to her August 27, 2010 employment injury. He indicated that she was unable to work due to her herniated cervical disc and could not work on November 29 and 30, 2011. Thereafter, until December 9, 2011, Dr. Helbig restricted appellant to no lifting over 10 pounds continuously, and 15 pounds intermittently.

In a December 16, 2011 letter, OWCP notified appellant of the deficiencies of her claim and afforded her 30 days to submit additional evidence and respond to its inquiries.

Appellant submitted a January 10, 2012 work excuse note from Dr. Helbig, indicating that she was able to work that day with the restriction of no delivery.

⁴ Appellant received continuation of pay from August 31 to October 14, 2010. She received wage-loss compensation for total disability from October 15, 2010 to April 16, 2011. She returned to part-time full-duty work on April 18, 2011 and received wage-loss compensation for the hours she did not work from that date through November 18, 2011.

⁵ The record reveals that OWCP had accepted this claim for a sprain of the right shoulder and upper arm and a cervical intervertebral disc displacement without myelopathy. Claim number xxxxxx029 is not presently before the Board.

By decision dated January 18, 2012, OWCP denied appellant's recurrence claim, as the medical evidence submitted was insufficient to establish a recurrence of disability commencing November 28, 2011 causally related to the August 27, 2010 employment injury.

On January 25, 2012 appellant, through counsel, requested reconsideration and submitted a January 24, 2012 duty status report from Dr. Helbig indicating that appellant was restricted to lifting 20 pounds continuously and 10 pounds intermittently for four hours a day. On January 31, 2012 Dr. Helbig stated that appellant had been seen for a cervical disc herniation at C6-7 and a cervical sprain and indicated that she had been asked by her supervisor to perform duties that were beyond her restrictions.

Appellant, through counsel, filed a second notice of recurrence on February 14, 2012. She indicated that on January 11, 2012 she was sent home and told there was no work for her. On the claim form, the employing establishment stated that appellant had been working full duty with a permanent 30-pound weight restriction.

On February 16, 2012 appellant, through counsel, filed a third notice of recurrence. She indicated that on January 31, 2012 she was told there was no job offer for her at the time. The employing establishment noted that she had a "permanent restriction of 30 pounds lifting for another injury," which was considered full duty in her current position.

In a February 27, 2012 letter, OWCP notified appellant of the deficiencies of her claims and afforded her 30 days to submit additional evidence and respond to its inquiries.

Appellant submitted a February 21, 2012 report from Dr. Helbig who reiterated his diagnosis and indicated that she continued to have a lot of neck pain.

By decision dated April 10, 2012, OWCP denied modification of its January 18, 2012 decision. It found that the medical evidence submitted was insufficient to establish that appellant sustained a recurrence of disability commencing November 28, 2011 causally related to the August 27, 2010 employment injury.

In a second decision also dated April 10, 2012, OWCP denied appellant's additional recurrence claims of January 11 and 31, 2012 as the medical evidence submitted was insufficient to establish that she sustained a recurrence of disability commencing on those dates causally related to the August 27, 2010 employment injury. It explained that the evidence of record neither established a change in the nature or extent of her employment-related injury, nor a change in the nature and extent of her light-duty position.

On November 20, 2012 appellant, through counsel, requested reconsideration of both OWCP decisions, and submitted progress reports dated May 12, 2011 through September 27, 2012 from Dr. Helbig. She also submitted reports dated April 4 through October 24, 2012 from Dr. David Conyack, a Board-certified anesthesiologist, who diagnosed cervical radiculopathy secondary to C4-7 herniated disc, cervical myofascial dysfunction of the cervical paraspinal muscles, and myofascial spasm of the bilateral trapezius muscles.

The employing establishment attached a job offer as a modified carrier technician which appellant had accepted on January 26, 2012. The duties included casing mail up to four hours a

day with the following restrictions: standing and reaching at, above, or over the shoulder up to four hours a day; lifting up to 10 pounds intermittently up to four hours a day.

By decision dated February 14, 2013, OWCP denied modification of its prior decisions, finding that the evidence submitted in support of the three recurrence claims did not show a change in the nature and extent of the injury-related condition or change in the nature and extent of the limited-duty job requirements.

On March 5, 2013 appellant, through counsel, requested reconsideration and submitted progress reports dated February 14 through May 14, 2013 from Dr. Helbig. She also submitted a position description indicating that the duties and requirements of a letter carrier included lifting up to 10 pounds continuously and 70 pounds intermittently.

By decision dated June 7, 2013, OWCP denied modification of its February 14, 2013 decision.

On October 24, 2013 counsel again requested reconsideration and submitted progress reports dated July 16 through September 10, 2013 from Dr. Helbig reiterating prior diagnoses and findings.

By decision dated December 23, 2013, OWCP denied modification of its June 7, 2013 decision.

On January 7, 2014 appellant, through counsel, again requested reconsideration and submitted reports dated January 2 through September 30, 2014 from Dr. Helbig who indicated that the cervical spine was tender in the right parascapular and trapezial muscles. Appellant further submitted a July 15, 2014 magnetic resonance imaging (MRI) scan of the cervical spine, requested by Dr. Conyack, which showed disc ridging and foraminal narrowing.

By decision dated November 14, 2014, OWCP denied modification of its prior decision. It found that the evidence of record was insufficient to establish either that appellant was working limited duty at the time of the claimed recurrences, that there was a worsening of her employment-related condition, or that there was a withdrawal of a limited-duty offer.

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 has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁶ 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

⁶ 20 C.F.R. § 10.5(x). See *T.S.*, Docket No. 09-1256 (issued April 15, 2010).

requirements of such an assignment are altered so that they exceed his or her established physical limitations.⁷

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.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 the employment injury. The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.⁹

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.¹⁰ The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.¹¹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a recurrence of total disability causally related to her August 27, 2010 employment injury.

OWCP accepted that appellant sustained a neck and right shoulder sprain on August 27, 2010 in the performance of duty. Appellant filed three recurrence claims. On appeal, counsel contends that the employing establishment changed the nature and extent of appellant's light-duty job requirements (essentially placing her in a position which exceeded her lifting restrictions) and, therefore, she sustained a recurrence commencing November 28, 2011 and January 11 and 31, 2012. Appellant has the burden to provide medical evidence sufficient to establish that she was totally disabled due to a change in her job duties such that she was unable to perform her light-duty work.

On the recurrence claim forms, the employing establishment stated that appellant's only restriction was a 30-pound lifting restriction for a prior injury and explained that she was

⁷ *Id.*

⁸ *See A.M.*, Docket No. 09-1895 (issued April 23, 2010).

⁹ *See L.F.*, Docket No. 14-1817 (issued February 2, 2015); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (January 2013).

¹⁰ *See I.R.*, Docket No. 09-1229 (issued February 24, 2010).

¹¹ *See I.J.*, 59 ECAB 408 (2008); *see also Victor J. Woodhams*, 41 ECAB 465 (2005).

considered full duty in her carrier position even with the weight restriction as a 30-pound restriction was considered full duty for carriers. Appellant later accepted a modified carrier technician position on January 26, 2012 with restrictions on lifting no more than 10 pounds intermittently up to four hours a day. On April 10, 2013 the employing establishment indicated that it complied with appellant's restrictions and accommodated her.

Appellant alleged that her recurrence of total disability was caused by an inability to perform her light-duty job requirements. However, the record shows that on January 24, 2012 appellant's attending physician, Dr. Helbig, found that she could perform light-duty work within the restriction of lifting 20 pounds continuously and 10 pounds intermittently for four hours a day. Appellant did not submit sufficient medical evidence to establish that her assigned duties had changed such that she was not medically able to perform them. She did not submit adequate medical evidence to support that her assigned duties exceeded her medical limitations or that she otherwise had a spontaneous change in her accepted condition in the present claim. On January 31, 2012 Dr. Helbig noted that appellant had been asked by her supervisor to perform duties that were beyond her restrictions. However, he failed to provide a rationalized medical opinion explaining how appellant's assigned duties exceeded her physical limitations or caused or aggravated her accepted conditions. The Board finds that the evidence of record is insufficient to establish that appellant's light-duty job requirements changed such that the job requirements were no longer within the restrictions provided by Dr. Helbig and appellant was unable to perform her position.¹²

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a recurrence of total disability causally related to her August 27, 2010 employment injury.

¹² See *J.F.*, 58 ECAB 124 (2006); see also *Terry R. Hedman*, 38 ECAB 222 (1986).

ORDER

IT IS HEREBY ORDERED THAT the November 14, 2014 decision of the Office of Workers' Compensation Programs is affirmed.¹³

Issued: July 27, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

¹³ James A. Haynes, Alternate Judge participated in the original decision but was no longer a member of the Board effective November 16, 2015.