

On appeal appellant asserts that she was forced to work outside the restrictions provided by her physicians and was scheduled to work outside agreed hours.

FACTUAL HISTORY

On May 31, 1989 appellant, then a 30-year-old rural carrier, was injured lifting a bundle of mail. The claim was initially accepted for herniated disc at C5-6. Appellant had cervical surgery on August 4, 1989. She received wage-loss compensation and returned to limited duty for four hours a day on February 5, 1990, and then to full-time work. A May 29, 1991 rehabilitation job offer, accepted by appellant that day, described general clerical duties of typing, filing, copying, data input, answering telephones, and assisting customers with problems. Sitting, standing, walking, kneeling, bending, stooping, twisting, and simple grasping were listed as intermittently, up to eight hours per day, with no climbing or reaching above the shoulder.

The claim was expanded to include prolonged depressive reaction due to the accepted factors. In two decisions dated September 24, 1990, OWCP denied appellant's claim for additional compensation, and found that her light-duty employment fairly and reasonably represented her wage-earning capacity.³ A recurrent herniated cervical disc was accepted, and on February 14, 1992 appellant had additional cervical surgery.⁴ After rehabilitation, in 1997 appellant worked as an injury compensation specialist at the employing establishment.⁵ She also had gastric bypass surgery in 1997.

Appellant filed a recurrence claim (Form CA-2a) on April 8, 2014, alleging total disability as of April 7, 2014. Appellant stated that the employing establishment kept changing her work schedule and asked her to work outside her restrictions. She further noted that she injured her back and was off three weeks, and when she returned they started "messing" with her. The employing establishment noted that it accommodated appellant for years and then she was totally off work for about 10 years. On March 3, 2014 appellant injured her back in the performance of duty and was off work until March 31, 2014. She returned to work on March 31 and April 1, 2014 for four hours each day.⁶ Appellant thereafter stopped work.

In letters dated April 9 and 11, 2014, OWCP notified appellant of the evidence needed to develop her recurrence claim.⁷

³ Appellant filed claims for an additional 8 hours weekly, stating that prior to the injury she worked 48 hours a week.

⁴ The record is devoid of medical evidence from June 7, 1991 to April 16, 2002.

⁵ The record indicates that on September 18, 1996 OWCP denied appellant's claim for compensation for the period March 4 to April 23, 1996, and in decisions dated October 29, 1996 and September 17, 1997 affirmed the denial. The record does not indicate whether appellant's rehabilitation position was full or part time.

⁶ The March 3, 2014 injury was adjudicated in a separate claim and accepted for lumbar sprain.

⁷ OWCP listed the accepted conditions as sprain of back, lumbar region; displacement of cervical intervertebral disc without myelopathy; prolonged depressive reaction; sprain of shoulder and upper arm, acromioclavicular, right; postlaminectomy syndrome, cervical region; and brachial neuritis or radiculitis, not otherwise specified. Appellant also submitted a CA-7, claim for compensation, for the period April 8 through May 5, 2014.

In an April 15, 2014 statement, appellant related that since returning to work her stress and pain increased significantly. She stated that she had to throw parcels and load mail, and these repetitive activities had caused great pain which caused emotional stress. Appellant related that on March 3, 2014 she injured her back when she lifted a tub of flats. She maintained that her work injury consumed her life, restricted her activities of daily living, and made her suicidal.

By decision dated May 12, 2014, OWCP denied the recurrence claim for resumption of total disability compensation because she reported new stressors that were considered intervening factors and not related to the May 31, 1989 employment injury. Appellant continued to receive medical benefits and partial wage-loss compensation.

On September 5, 2014, January 5 and April 22, 2015 appellant requested reconsideration. In support of her reconsideration requests, she submitted additional medical evidence. On a March 4, 2014 Turkey Creek Medical Center emergency department discharge summary, Dr. Roger Millwood, Board-certified in emergency medicine, noted that appellant was seen for back pain. He diagnosed myofascial lumbar strain. A thoracic spine x-ray that day demonstrated scoliosis with minimal degenerative change. Turkey Creek Medical Center records show that appellant was admitted on March 17, 2014 for complaints of a one-month history of increasing epigastric pain, and that she began vomiting blood on the day of admission. The admission history and physical noted appellant's past medical and surgical history. Dr. Harold Steven Silver, Board-certified in internal medicine and gastroenterology, performed an endoscopy on March 17, 2014. He diagnosed esophagitis, status post gastric bypass, gastritis, and anastomotic ulcer times two. Appellant was seen by Dr. Steve W. Reed, Board-certified in internal medicine and cardiology, who noted a history of syncope for several years. Dr. Reed ordered more tests. Dr. David W. Brandes, a Board-certified neurologist, saw appellant for complaints of headaches and syncope. He reported a long history of neck and right shoulder pain, described her prior surgeries and findings. Dr. Brandes diagnosed cervicogenic headaches, episodic hypotension and syncope of undetermined original, treated hypertension, chronic right arm/shoulder pain syndrome, acute gastrointestinal bleed, and depression. Appellant was discharged on March 20, 2014 with diagnoses of syncope secondary to orthostasis secondary to blood loss anemia, blood loss anemia secondary to acute anastomotic ulcers, candida esophagitis, and severe headache, myogenic, cervicogenic.

Appellant was seen by Dr. Donald Jones, a Board-certified anesthesiologist, on April 21, 2014 for pain management. Dr. Jones did not mention the recent hospitalization.

Hospital records from Physicians Regional Medical Center indicated that appellant was admitted on April 22, 2014. Dr. Sharon R. Burnside, a Board-certified psychiatrist, noted that appellant had long-standing depression and was admitted for crisis management due to severe hopelessness, worsening chronic pain, and an abscessed tooth. She related appellant's report that she was trying to work 12 hours a week, but continued to be asked by other employees to work outside her restrictions, and that she recently became suicidal when she had to have an abscessed tooth pulled. Dr. Burnside also noted that appellant had regained most of the weight she had lost following gastric bypass, and had syncopal episodes with falls. Appellant was discharged on April 25, 2014 with diagnoses of major depression, recurrent, severe, without psychotic features, syncopal episodes, anemia with blood loss recently from an anastomotic ulcer, chronic headaches with cervical spine disease, and prior gastric bypass.

On May 8, 2014 Dr. Kelley D. Walker, a Board-certified psychiatrist, noted the recent hospitalization and appellant's report that it was "more for detox, not suicide." She found that appellant was unable to work. In a May 21, 2014 treatment note, Dr. Jones noted appellant's report that she recently passed out, fell, and was told she had fractured three ribs. He again did not mention the April hospitalization.

Dr. Silver saw appellant in follow-up on May 22, 2014. He noted appellant's report of no further nausea, vomiting, severe abdominal pain, and no evidence of gastrointestinal bleeding. A June 2, 2014 endoscopic examination demonstrated status post gastric bypass with three anastotic and post-anastomotic ulcers.

On May 25, 2014 Dr. Millwood reported that appellant was seen in the emergency department for a chest contusion due to a fall at home. A chest x-ray demonstrated old right rib fractures and a tiny amount of pleural fluid. Appellant was discharged that day.

In reports dated May 29 to June 11 2014, Dr. Walker noted a history that appellant had recently fallen and broken ribs. She reported that appellant was being treated by Dr. Robert Dowell for chronic pain.⁸ Dr. Walker opined that appellant's emotional condition was directly related to her chronic pain caused by the May 31, 1989 work injury. She noted, "I expect [appellant's] condition to continue to affect her ability to work in any occupation." On June 11, 2014 Dr. Walker also noted that appellant reported that she was passing out almost daily and felt suicidal.

In a June 16, 2014 discharge summary, Dr. J. Joseph Kennedy, a Board-certified psychiatrist, noted appellant's admission to Physicians Regional Medical Center on June 13, 2014 for depression which was worsened by pain and suicidal thinking. He diagnosed major depression, recurrent, much improved, anxiety disorder, not otherwise specified, dependent traits, headaches, family issues, chronic depression, and medical issues.

Appellant was next admitted to Physicians Regional Medical Center on June 24, 2014 for major depression with suicidal ideation. Dr. Kennedy described appellant's report that there was ongoing family stress because relatives were living with them and that her son wanted her pain medication. This caused an altercation between him and her husband, his stepfather. Appellant related that she then began cutting her wrists, and then went to stay with her parents. She was seen in consultation by Dr. Zakir Hai, a Board-certified internist for hypotension and syncope which he advised was multifactorial, likely related to changes in medication. A brain computerized tomography (CT) scan on June 30, 2014 was normal. Appellant was discharged on July 1, 2014. At that time Dr. Kennedy reported that appellant's depression was much improved.

Dr. Jones continued to provide pain management on a monthly basis. On August 7, 2014 Dr. Walker reported that any little thing triggered panic attacks, and that she had two to three episodes of suicidal feelings.

⁸ There are no reports in the record from a Dr. Robert Dowell.

Appellant was again admitted to Physicians Regional Medical Center on September 5, 2014. She sought, by Dr. Ashok Shandari, Board-certified in internal medicine, clearance to begin electroconvulsive therapy (ECT). In a September 10, 2014 discharge summary, Dr. Burnside reported that appellant was seen by Dr. Kenneth Jobson, a Board-certified psychiatrist, who recommended ECT. Appellant had two ECT treatments while hospitalized and was to continue the treatment as an outpatient.⁹

In reports dated September 20 and October 21, 2014, Dr. Walker noted that appellant had completed five ECT treatments, but that she still had suicidal thoughts. In November 18, 2014 to February 18, 2015 reports, Dr. Walker noted appellant's continued ECT treatment with Dr. Burnside, advising that it seemed to help her depression. On March 3, 2015 Dr. Walker advised that the ECT treatment had helped with appellant's depression. She related that, although appellant attempted to return to work, she continued to have increased pain relating to the initial injury and increased severe mood swings with suicidal ideations, and was unable to continue to work even with limited duties. Dr. Walker opined that appellant's emotional condition was directly related to her chronic pain caused by the May 31, 1989 cervical injury and, due to the nature of her illness, it would continue to affect her ability to work in any occupation. On April 15, 2015 she reported that appellant was again depressed and had conflicts with family members.

In correspondence dated May 8, 2015, OWCP asked Dr. Walker to explain the cause of appellant's claimed disability beginning April 7, 2014. Dr. Walker was specifically asked to detail what work aspects appellant was unable to perform due to her psychological condition.

Dr. Walker, in a May 14, 2015 note, indicated that the ECT treatments were helping appellant feel better although she still had bad days with increased pain and depression. She also noted that appellant broke her right toe when she lifted her grandson. In response to OWCP's inquiry, on June 1, 2015 Dr. Walker advised that appellant was unable to sustain gainful employment due at least in part to the 1989 work injury. She concluded that records from her office alone showed a woman suffering multiple medical and personal issues who repeatedly reported difficulty maintaining a schedule, poor ability to perform a job in a safe and efficient manner, plus the constant stress of dealing with her compensation claim.¹⁰

In a June 10, 2015 merit decision, OWCP denied modification of the May 12, 2014 denial of her recurrence claim. It found that appellant had not established that the claimed recurrence, beginning April 7, 2014, was causally related to the 1989 work injury or that her light duty had been withdrawn. OWCP noted that she had filed a claim for a new employment injury under a separate file number on March 3, 2014,¹¹ and that when she claimed recurrence

⁹ Appellant was next admitted to Physicians Regional Medical Center on October 26, 2014 for syncope and an extensive deep venous thrombosis. An echocardiogram on October 27, 2014 demonstrated normal left ventricular function and trace mitral and tricuspid regurgitation. Appellant was discharged on October 29, 2014.

¹⁰ By decision dated June 8, 2015, OWCP found appellant not at fault in creating a \$3,613.21 overpayment of compensation. The overpayment was created because health benefit premiums were not deducted from April 19, 2014 to April 4, 2015. As OWCP found appellant not at fault, it therefore denied waiver of recovery of the overpayment. This issue is not currently before the Board.

¹¹ The March 3, 2014 injury was adjudicated in a separate claim and accepted for lumbar sprain.

under the instant claim she alleged that management had changed her work schedule and she was asked to work beyond her restrictions. It advised appellant that she could alternatively file a new occupational disease claim.

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.¹² This term also means an inability to work 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 his or her established physical limitations.¹³

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.¹⁴

An individual who claims a recurrence of disability resulting from an accepted work 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 supports that conclusion with sound medical reasoning.¹⁵

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability on April 7, 2014, caused by the May 31, 1989 employment injury. The accepted conditions are cervical strain, herniated disc at C5-6, prolonged depressive reaction to accepted factors, recurrence of herniated disc, lumbar sprain, right acromioclavicular joint sprain, postlaminectomy syndrome, cervical region, and brachial radiculitis.

After the 1989 work injury, appellant returned to work in 1997 in a rehabilitation position as an injury compensation specialist. She continued in that position until September 26, 2003 when she stopped work and was placed on the periodic compensation rolls. On August 20, 2013

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

¹³ *Id.*

¹⁴ *Shelly A. Paolinetti*, 52 ECAB 391 (2001); *Robert Kirby*, 51 ECAB 474 (2000); *Terry R. Hedman*, 38 ECAB 222 (1986).

¹⁵ *S.S.*, 59 ECAB 315 (2008).

appellant telephoned OWCP, reporting that she would be returning to work. On August 23, 2013 she advised that she had accepted a modified clerk position. The job offer provided a schedule of 3:00 p.m. to 7:00 p.m. on Wednesday, Thursday, and Friday, with duties of checking in carriers for 2.5 hours daily, preparing dispatch for 30 minutes daily, and accepting and separating shipments. Lifting was limited to 10 pounds. Appellant returned to this position on August 28, 2013, and continued to receive partial wage-loss compensation for 28 hours per week.

On April 8, 2014 appellant claimed a recurrence of disability on April 7, 2014. She asserted that the employing establishment kept changing her work schedule and asked her to work outside her restrictions. Appellant also indicated that she had injured her back and was off three weeks and that, when she returned, the employing establishment started “messing” with her. In an April 15, 2014 statement, she related that, since returning to work, her stress and pain had increased significantly. Appellant maintained that she had to throw parcels and load mail, and that these repetitive activities caused great pain which caused emotional stress. She described a March 3, 2014 employment back injury, adjudicated separately by OWCP, which had been accepted for lumbar sprain.¹⁶ Appellant maintained that the work injury had consumed her life, restricted her activities of daily living, and made her suicidal several times. The employing establishment indicated that, following the March 3, 2014 back injury, she was off work until March 31, 2014, and had worked only March 31 and April 1, 2014 for four hours each day.

There is no evidence of record to support that appellant was disabled from performing the modified duties from an orthopedic standpoint due to the accepted conditions. While Dr. Jones provided pain management, he did not comment on her ability to work. An August 16, 2013 functional capacity evaluation (FCE) demonstrated that appellant could perform sedentary work with lifting limited to 5 pounds frequently and 15 pounds occasionally.

As to appellant’s allegations of working outside her restrictions, she submitted no evidence, such as a witness statement, to verify this contention. Appellant submitted no evidence to show that her schedule had been frequently changed, as alleged, such as a time/analysis report. There is, therefore, insufficient evidence to demonstrate that she was not provided appropriate light-duty work. Likewise, she was nonspecific in her assertion that she was being “messed with” at the employing establishment, and reported to Dr. Walker only that her new boss “picked on her.” A claimant must establish a factual basis for his or her allegations with probative and reliable evidence.¹⁷ Appellant did not do so in this case.

The medical evidence contemporaneous with the claimed April 2014 recurrence includes a March 4, 2014 emergency room report in which Dr. Millwood diagnosed myofascial lumbar strain. On March 13, 2014 Dr. Walker noted that appellant injured her back at work and was told by a physician not to return to work until at least March 26, 2014. Evidence shows that appellant was hospitalized on March 17, 2014, when she was vomiting blood, and was discharged on March 20, 2014. Dr. Silver diagnosed esophagitis, status post gastric bypass, gastritis, and anastomotic ulcer times two. Discharge diagnoses were syncope secondary to

¹⁶ *Supra* note 11.

¹⁷ *James E. Norris*, 52 ECAB 93 (2000).

orthostasis secondary to blood loss anemia; blood loss anemia secondary to acute anastomotic ulcers; candida esophagitis; and severe headache. On March 21, 2014 Dr. Jones reported that appellant was recently hospitalized with pneumonia.

On April 7, 2014 Dr. Walker indicated that appellant worked Tuesday and Wednesday the previous week, but took Thursday off for a family member's surgery. Appellant reported that she was a "basket case" because her work schedule had been changed three times and this made her suicidal and depressed because she needed to work three days in a row. Dr. Walker also noted that three weeks earlier appellant injured her back at work, and that a new boss picked on her. She found appellant unable to work due to her major depression. On June 1, 2015 Dr. Walker advised that appellant was unable to work due at least in part to the 1989 work injury. She opined that appellant was a woman suffering multiple medical and personal issues who repeatedly reported difficulty maintaining a schedule, poor ability to perform a job in a safe and efficient manner, plus the constant stress of dealing with her compensation claim. Dr. Walker merely alluded to stress at work and did not discuss any specific job duties or sufficiently explain why appellant could not work her modified part-time position. She did not explain from a medical perspective the nature of the relationship between the accepted depression and the job duties appellant was performing at the time of the claimed recurrence.

Dr. Burnside merely noted that appellant reported that she was forced to work outside her restrictions. She also reported that appellant had an abscessed tooth, that she had regained most of the weight she had lost following gastric bypass, and that she had syncopal episodes with falls. Dr. Burnside did not explain how appellant had a spontaneous change in her accepted conditions causing total disability. Dr. Kennedy reported that appellant's depression was worsened by pain and that she had suicidal thinking. He also reported that appellant had ongoing family stress. Dr. Kennedy provided no opinion regarding appellant's work abilities. While the evidence supports that appellant had four psychiatric hospitalizations in 2014, none of the associated medical reports include a specific explanation that she could no longer work 12 hours of modified duty weekly beginning April 2014 because of her accepted employment-related conditions.

At the time of the claimed disability, appellant had been hospitalized for a nonwork-related condition, problems resulting from a gastric bypass. The employing establishment thought she was off work due to a March 3, 2014 back injury. Neither Dr. Walker nor Dr. Jones reported awareness of this serious medical hospitalization. Moreover, neither exhibited any knowledge of appellant's part-time modified duties. No physician has provided a rationalized medical report explaining how a spontaneous change in the accepted conditions caused total disability.¹⁸ The need for rationale is particularly important since the contemporaneous medical evidence indicates that appellant was also treated for many nonemployment-related conditions around the time of her claimed recurrence of disability.

As noted an individual who claims a recurrence of disability has the burden of proof to establish that the disability is related to the accepted injury. This requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical

¹⁸ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

history, concludes that the disabling condition is causally related to the employment injury and who supports that conclusion with sound medical reasoning.¹⁹ The Board finds insufficient medical evidence in this case. Consequently, appellant has not met her burden of proof to establish that her claimed April 2014 recurrence of total disability was a result of the accepted conditions.

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 did not meet her burden of proof to establish a recurrence of total disability on April 7, 2014, caused by a May 31, 1989 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the June 10, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 1, 2016
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

¹⁹ *Supra* note 15.