

FACTUAL HISTORY

On March 20, 2015 appellant, then a 60-year-old part-time flexible city carrier, filed a traumatic injury claim (Form CA-1) alleging that on March 4, 2015 she sustained cracked ribs, leg pain, and back pain when her postal vehicle was rear-ended by another vehicle.³ She stopped work on March 4, 2015 and received continuation of pay from March 4 to April 18, 2015.

In a duty status report (Form CA-17) dated March 30, 2015, Dr. Neal L. Shealy, an attending Board-certified family practitioner, listed the date of injury as March 4, 2015 and diagnosed rib fracture due to the March 4, 2015 injury. He opined that appellant was totally disabled from work.⁴

On April 28, 2015 OWCP accepted that appellant sustained a “closed fracture of rib(s), unspecified, left.” Appellant received disability compensation on the daily rolls for the period April 19 to May 29, 2015.

On April 29, 2015 appellant was assigned a field nurse in order to help facilitate her return to work.

On May 29, 2015 Dr. Shealy opined that appellant could not perform her regular work, but could work for eight hours per day with restrictions including standing for up to one hour per day and lifting, pushing, and pulling up to five pounds. Appellant could not engage in twisting or reaching above her shoulders, and her bending, stopping, squatting, kneeling, and climbing activities were limited due to pain.

Appellant began working in a light-duty position as a modified part-time flexible city carrier for the employing establishment on June 11, 2015. The physical requirements of the position were within the work restrictions recommended by Dr. Shealy.⁵

On June 25, 2015 Dr. Shealy provided handwritten responses to several questions posed by the field nurse assigned to appellant’s case. In response to the question of whether appellant’s condition continued to improve, he reported that her condition seemed to have leveled off without much improvement over the last few visits. Dr. Shealy indicated that he recommended a functional capacity evaluation and, regarding the projected length of time until appellant could return to regular duty, he noted, “Pending capacity.” In response to the question of whether there were “other conditions related to or aggravated by this injury that needed to be considered,” he indicated that appellant’s “knee and back were apparently aggravated.”

In a work restrictions form report completed on June 25, 2015, Dr. Shealy checked a box marked “No” indicating that appellant was incapable of performing her usual job without restrictions and noted, “[Right] knee pain, low back pain, and thoracic pain.” He also checked a

³ In the year prior to her March 4, 2015 accident, appellant worked as a part-time flexible city carrier for an average of 31 hours per week.

⁴ A report of March 4, 2015 x-ray testing showed “nondisplaced rib fractures.”

⁵ The position primarily involved answering telephones.

box marked “No” indicating that appellant was unable to work eight hours per workday without physical restrictions and noted, “[Patient] attempted but [was] unable to tolerate due to increased pain.” In response to a question regarding how long the work restrictions would apply, Dr. Shealy noted, “Will have functional capacity evaluated.” He also checked a box marked “Yes” indicating that appellant was capable of working within the strength level of “Sedentary.”

Appellant stopped work on June 27, 2015.

Dr. Shealy arranged for appellant to undergo a functional capacity evaluation on July 20, 2015. The findings of the evaluation reflected that appellant demonstrated the ability to function in the medium physical category with the capacity to lift up to 30 pounds, carry up to 20 pounds, push up to 30.67 pounds of force, and pull up to 28.67 pounds of force.

In a report dated July 28, 2015, Dr. Shealy noted that according to the recent functional capacity evaluation appellant had demonstrated the capacity to meet the physical demand requirements of a city carrier based on the job description provided.

On August 7, 2015 appellant filed a claim for compensation (Form CA-7) claiming that she was totally disabled from work for the period June 27 to August 7, 2015 due to her March 4, 2015 employment injury. In connection with this claim, she submitted an August 3, 2015 note in which a person with an illegible signature indicated that she could return to work on September 3, 2015.

In an August 20, 2015 letter, OWCP requested that appellant submit additional factual and medical evidence in support of her claim for total disability compensation beginning June 27, 2015. It provided appellant 30 days from the date of the letter to submit such evidence.⁶

By decision dated September 22, 2015, OWCP denied appellant’s claim for compensation for total disability on or after June 27, 2015 due to her March 4, 2015 employment injury. It found that appellant had not submitted a report with a rationalized medical opinion showing that she had such disability due to her March 4, 2015 employment injury.

On March 7, 2016 appellant, through counsel, requested reconsideration of OWCP’s September 22, 2015 decision. Counsel asserted that appellant’s recurrence of total disability claim had been established by the reports of Dr. Charles Nivens, an attending Board-certified physical medicine and rehabilitation physician.

Appellant submitted the findings of diagnostic testing from mid-to-late 2016, including August 3, 2015 x-rays of her chest and right ankle which showed no acute pathology. She also submitted several reports of diagnostic tests from March 4, 2015 as well as physician assistant progress reports, physical therapy notes, laboratory testing reports, and hospital admission and discharge slips dated between early-2015 and mid-2016. In reports dated from July to September 2015, a person with an illegible signature diagnosed back pain, right radicular pain, right ankle pain, and right knee pain.

⁶ Appellant did not submit any additional evidence within the time allotted by the letter.

In a work restrictions form report completed on July 27, 2015, Dr. Shealy checked a box marked “No” indicating that appellant was incapable of performing her usual job without restrictions and added the explanatory notation, “Back pain, right knee pain -- pain radiates down [right] buttock.” He also checked a box marked “No” indicating that appellant was unable to work eight hours per workday with physical restrictions and added the notation, “Requires a cane for ambulation.” In response to a question regarding how long the work restrictions would apply, Dr. Shealy noted, “Unknown.” He also checked a box marked “Yes” indicating that appellant was capable of working within the strength level of “Sedentary.”

In several reports dated September 2015 to February 2016, Dr. Nivens discussed his treatment of appellant’s low back condition with steroid injections. He diagnosed several low back conditions including degenerative disc disease and spondylosis.

In a June 1, 2016 decision, OWCP denied modification of its September 22, 2015 decision denying appellant’s claim for a recurrence of total disability on or after June 27, 2015 due to her March 4, 2015 employment injury. It noted that none of the new medical reports submitted by appellant contained a rationalized medical opinion establishing that she had such disability due to her March 4, 2015 employment injury.

LEGAL PRECEDENT

When 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 of record establishes that he or she 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 and show that he or she cannot perform such light duty. 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.⁷

The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 claimant.⁸

⁷ *S.F.*, 59 ECAB 525 (2008); *Terry R. Hedman*, 38 ECAB 222 (1986). 20 C.F.R. § 10.5(x) provides, “*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. 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 requirements of such an assignment are altered so that they exceed his or her established physical limitations.”

⁸ *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

ANALYSIS

OWCP accepted that on March 4, 2015 appellant sustained a “closed fracture of rib(s), unspecified, left” due to a vehicular accident at work. She stopped work on March 4, 2015. Appellant received continuation of pay from March 4 to April 18, 2015 and disability compensation on the daily rolls from April 19 to May 29, 2015. Appellant returned to light-duty work as a modified part-time flexible city carrier on June 11, 2015. The physical requirements of the position were within the work restrictions recommended by Dr. Shealy, the attending physician.⁹ Appellant stopped working in her light-duty position on June 27, 2015 and filed a Form CA-7 claiming a recurrence of total disability beginning that day due to her March 4, 2015 employment injury.

The Board finds that appellant did not submit sufficient medical evidence to establish a recurrence of total disability on or after June 27, 2015 due to her March 4, 2015 employment injury.

Appellant submitted a June 25, 2015 work restrictions form report in which Dr. Shealy checked a box marked “No” indicating that she was incapable of performing her usual job without restrictions and noted, “[Right] knee pain, low back pain, and thoracic pain.” Dr. Shealy also checked a box marked “No” indicating that appellant was unable to work eight hours per workday with physical restrictions and added the notation, “[Patient] attempted but [was] unable to tolerate due to increased pain.”¹⁰ He checked a third box marked “Yes” indicating that appellant was capable of working within the strength level of “Sedentary.”

In a July 27, 2015 work restrictions form report, Dr. Shealy checked a box marked “No” indicating that appellant was incapable of performing her usual job without restrictions and noted, “Back pain, right knee pain -- pain radiates down [right] buttock[.]” He checked a box marked “No” indicating that appellant was unable to work eight hours per workday with physical restrictions and added the notation, “Requires a cane for ambulation.”¹¹ Dr. Shealy also checked a box marked “Yes” indicating that appellant was capable of working within the strength level of “Sedentary.”

The Board notes that the submission of these reports of Dr. Shealy do not establish appellant’s claim for a recurrence of total disability on or after June 27, 2015 due to her March 4, 2015 employment injury because these reports do not contain a clear opinion that appellant had total disability on or after June 27, 2015, causally related to her March 4, 2015 employment injury. The Board has held that medical evidence which does not offer a clear opinion relating an employee’s condition to employment factors is of limited probative value on the issue of causal

⁹ On May 29, 2015 Dr. Shealy opined that appellant could not perform her regular work, but he indicated that she could work for eight hours per day with restrictions including standing for up to one hour per day and lifting, pushing, and pulling up to five pounds. Appellant could not engage in twisting or reaching above her shoulders, and her bending, stopping, squatting, kneeling, and climbing activities were limited due to pain.

¹⁰ In response to a question regarding how long the work restrictions would apply, Dr. Shealy noted, “Will have functional capacity evaluated.”

¹¹ In response to a question regarding how long the work restrictions would apply, Dr. Shealy noted, “Unknown.”

relationship.¹² Although Dr. Shealy indicated that appellant was disabled from all work, he appeared to relate this disability to several conditions that have not been accepted as related to the March 4, 2015 work accident, including low back pain, thoracic pain, right knee pain, and pain radiating from the back to the right buttock. Dr. Shealy did not provide any notable discussion of appellant's accepted condition, "closed fracture of rib(s), unspecified, left," or of the findings on physical examination and diagnostic testing, and his unrationalized opinion on disability appears to be primarily based on appellant's reported intolerance to work rather than on any objective findings. Medical rationale relating appellant's claimed disability on or after June 27, 2015 to the March 4, 2015 employment injury is especially necessary in the present case as Dr. Shealy provided work restrictions on May 29, 2015 which were consistent with the light-duty work she returned to on June 11, 2015. He also indicated in another June 25, 2015 report that appellant's medical condition seemed to have leveled off over the past few visits. Moreover, Dr. Shealy's opinion on appellant's disability, as expressed in his June 25 and July 27, 2015 reports, is equivocal in that he checked a box marked "Yes" indicating that appellant was capable of working within the strength level of "Sedentary."¹³ The Board has held that an opinion which is equivocal in nature is of limited probative value regarding the issue of causal relationship.¹⁴

In several reports dated between September 2015 and February 2016, Dr. Nivens, an attending physician, diagnosed several low back conditions including degenerative disc disease and spondylosis. These reports do not establish appellant's claim for a recurrence of total disability on or after June 27, 2015 due to her March 4, 2015 employment injury because appellant's case has not been accepted for a back condition. Dr. Nivens did not provide a rationalized medical opinion establishing such a connection between a work-related back condition and the claimed recurrence of total disability.

Appellant submitted several physician assistant progress reports and physical therapy notes discussing her medical condition which were dated between early-2015 and mid-2016. However, under FECA, the report of nonphysicians, including physician assistants or physical therapists, do not constitute probative medical evidence.¹⁵ Appellant also submitted an August 3, 2015 note in which a person with an illegible signature indicated that she could return to work on September 3, 2015, but there is no indication that this note was produced by a physician such that it would constitute medical evidence. In addition, the note does not provide a cause for appellant's disability.

On appeal appellant contends that she continues to suffer back and right knee pain. The Board notes that her claim has not been accepted for a back or right knee condition and the medical evidence does not otherwise show that she had such a work-related condition that caused disability on or after June 27, 2015 due to her March 4, 2015 employment injury.

¹² See *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

¹³ The Board further notes that, shortly after he produced these reports, Dr. Shealy produced a July 28, 2015 report in which he noted, "According to the recent functional capacity evaluation [appellant] has demonstrated the capacity to meet the physical demand requirements of a city carrier based on the job description provided."

¹⁴ See *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962); *James P. Reed*, 9 ECAB 193, 195 (1956).

¹⁵ *C.E.*, Docket No. 14-710 (issued August 11, 2014); *L.L.*, Docket No. 13-829 (issued August 20, 2013).

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 or after June 27, 2015 due to her March 4, 2015 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the June 1, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 21, 2017
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