United States Department of Labor
Employees' Compensation Appeals Board

V.D., Appellant	)	
	)	**Docket No. 16-1175**
and	)	**Issued: February 6, 2017**
	)	
U.S. POSTAL SERVICE, POST OFFICE, Pontiac, MI, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 11, 2016 appellant filed a timely appeal from an April 4, 2016 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 has met her burden of proof to establish a recurrence of disability commencing on April 19, 2014 causally related to her accepted employment injuries.

On appeal, appellant contends that her physicians submitted sufficient medical evidence to support her reduced work hours. She also contends that she sustained a recurrence of disability because the employing establishment had no work available within her restrictions.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 19, 2014 appellant, then a 52-year-old computer forwarding system clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained right wrist and right hand injuries as a result of keying flats into a "CRS" unit. She advised that she first became aware of her conditions and their relation to her federal employment on December 7, 2013.

On March 6, 2014 the employing establishment informed OWCP that appellant was performing full-duty work, eight hours a day with restrictions related to her right wrist. Also, on March 6, 2014 OWCP accepted appellant's claim for right wrist sprain and other tenosynovitis of the right wrist and right hand.

On April 16, 2014 appellant filed a claim for compensation (Form CA-7) for leave without pay (LWOP) from April 16 through 18, 2014. In a time analysis form (Form CA-7a) dated April 21, 2014, she claimed 2.39 hours of LWOP on April 16, 2014 due to her right wrist condition and eight hours of LWOP on both April 17 and 18, 2014 because she could not work according to her physician.

In a March 18, 2014 order, Dr. Hilda C. Ferrarer-Blair, an attending Board-certified family practitioner, diagnosed wrist pain and referred appellant to physical therapy. In an April 18, 2014 letter, she opined that appellant could work no more than four hours a day with restrictions. An April 28, 2014 progress note provided examination findings and a clinical impression of pain, tenderness, and decreased range of motion and strength of the right wrist consistent with tendinitis.

On April 30, 2014 appellant accepted the employing establishment's April 29, 2014 offer of a modified clerk assignment. The assignment was four hours a day with restrictions.

On May 2, 2014 appellant filed a claim for compensation (Form CA-7) for LWOP from April 19 to May 2, 2014. In a Form CA-7a of the same date, she claimed 40.01 hours of LWOP during the claimed period as she was medically restricted to working four hours a day.

By letter dated May 13, 2014, OWCP advised appellant of the deficiencies of her claim and requested that she respond to its inquiries.

On May 16 and June 2, 2014 appellant filed CA-7 forms for LWOP from May 3 to 30, 2014. In a Form CA-7a dated May 16, 2014, she claimed 20 hours of LWOP from May 3 to 9, 2014 because she was medically restricted to working four hours a day and 40 hours of LWOP from May 10 to 16, 2014 because no work was available.

In response to OWCP's May 13, 2014 development letter, appellant attributed her claimed recurrence of disability to typing and copying nixie letters, forms, flats, parcels, and moving first class mail. She also described her right wrist symptoms.

In letters dated January 20 to June 2, 2014, Dr. Ferrarer-Blair reiterated her diagnoses of right wrist pain and tendinitis and her opinion that appellant could work no more than four hours a day with restrictions. She noted that her repetitive work duties would continue to exacerbate her symptoms. Dr. Ferrarer-Blair related that present repetitive motion, even with weight

restrictions and hour restrictions, had impacted the inflammation of appellant's wrist and resulting pain. She concluded that appellant was unable to perform jobs using her hands and wrists, especially any type of repetitive motion.

On June 13 and 27 and July 11 and 28, 2014 appellant filed CA-7 forms for LWOP from May 31 to July 25, 2014.

A June 19, 2014 progress note addressed appellant's right wrist physical therapy. In letters dated June 24 and July 8, 2014, she reiterated that appellant could return to light-duty work for four hours a day with restrictions.

In progress notes dated May 29 to June 12, 2014, Lisa Schliker, an occupational therapist, addressed appellant's right wrist and hand treatment.[2]

A June 16, 2014 hospital report indicated that appellant was evaluated for hand joint pain. She was diagnosed as being obese and having unspecified essential hypertension, chronic back pain greater than three months duration, and right wrist pain and tendinitis.

In a July 31, 2014 decision, OWCP denied appellant's recurrence claim because the medical evidence of record failed to establish disability beginning April 19, 2014 due to a material change or worsening of her accepted work-related injuries.

OWCP subsequently received progress notes dated May 23 and July 8, 2014, from Dr. Ferrarer-Blair who examined appellant and diagnosed bilateral wrist pain and tendinitis, hyperlipemia, and right de Quervain's tenosynovitis.

In a July 8, 2014 progress note, Dr. Amir Ghaznavi, a plastic surgeon, reported appellant's history of injury and medical treatment. He provided findings on physical examination and assessed right de Quervain's tenosynovitis, carpometacarpal (CMC) arthritis, and right wrist pain.

On September 22 and October 3, 2014 appellant filed CA-7 forms for LWOP from September 18 to November 14, 2014. In a Form CA-7a dated September 19, 2014, she claimed three hours to attend therapy on September 18, 2014. In a Form CA-7a dated November 14, 2014, appellant claimed 3.18 hours of LWOP on November 3, 2014 and 2.97 hours of LWOP for therapy.[3]

In a March 24, 2014 progress note and September 18, 2014 physician's order, Dr. Ferrarer-Blair reiterated her diagnosis of right wrist sprain and tenosynovitis.

In a January 6, 2015 letter, Dr. Pete K. Janevski, a Board-certified general surgeon who specializes in hand surgery, advised that appellant had right wrist de Quervain's tendinitis. He noted that cortisone injections had provided temporary relief and improvement, but

[2] Ms. Schliker continued submitting records regarding appellant's status into the record of evidence.

[3] The record indicates that OWCP paid appellant intermittent wage-loss compensation, due to physical therapy appointments, for 34.39 hours from September 18 to November 6, 2014.

recommended surgery for release of the right wrist de Quervain's tendinitis. Dr. Janevski noted that appellant would be off work for two weeks after her surgery.

On January 26, 2015 appellant requested reconsideration of the July 31, 2014 decision.

In a January 6, 2015 letter, Dr. Ferrarer-Blair noted appellant's history of injury and medical treatment and her prior examination findings. She maintained that appellant's initial injury was from repetitive copying, pulling, lifting, and typing. Overuse of appellant's two major tendons and swelling of the covering/sheath over these tendons resulted in tendinitis. Specifically, Dr. Ferrarer-Blair noted that it was the forced and repetitive movement from copying, pulling, and pushing with use of appellant's wrist that resulted in her condition. Her inflammation and tendinitis progressed due to her continued performance of the repetitive work duties. Dr. Ferrarer-Blair recommended surgery as there was no significant improvement with physical therapy. In progress notes dated April 14, October 3, 2014, she provided examination findings and again diagnosed right wrist tendinitis and right de Quervain's tenosynovitis. In addition, Dr. Ferrarer-Blair diagnosed right wrist sprain, and left wrist and back pain. She recommended reduced hours of work regarding appellant's left wrist.

In a January 6, 2015 progress note, Dr. Janevski reported examination findings and reiterated his diagnosis of right wrist de Quervain's tendinitis and surgery recommendation. He also diagnosed mild right and left thumb CMC arthritis. In an April 7, 2015 letter and April 9, 2015 progress note, Dr. Janevski noted that appellant's surgery was scheduled for June 2, 2015 and that she would be off work through June 16, 2015.

In a June 2, 2015 progress note, Dr. Janevski noted that he performed a release of right wrist de Quervain's tendinitis. In a June 9, 2015 letter, he advised that appellant may return to work on June 17, 2015 with a lifting restriction. By letter dated June 23, 2015, Dr. Janevski noted that appellant could not work from June 22 to 29, 2015.[4]

A June 23, 2015 progress note cosigned by Dr. Thaddeus Boucree, II, a plastic and reconstructive surgeon, and Dr. Janevski, indicated that appellant received a cortisone injection for her postoperative pain from right de Quervain's tendinitis.

By decision dated August 14, 2015, OWCP denied modification of its July 31, 2014 decision. It found that the medical evidence submitted was insufficient to show that appellant was unable to work, due to her accepted condition, during the claimed period.

In a September 1, 2015 progress note, Dr. Janevski examined appellant and noted that she had been on restricted work duty. He believed that her right wrist condition had resolved and that she could return to her regular work with no restrictions as of September 2, 2015.

By letter dated December 7, 2015, appellant requested reconsideration of the August 14, 2015 decision.

[4] The record indicates that OWCP authorized the June 2, 2015 surgery. It also reveals that OWCP paid disability compensation for the periods June 3 to 15 and June 22 to 29, 2015.

E-mails dated December 7 and 8, 2015 from the employing establishment addressed light-duty work performed by appellant in April 2015 and the availability of such work in May 2015.

In a September 1, 2015 letter, Dr. Janevski reiterated his opinion that appellant could return to work without restrictions as of September 2, 2015.

By decision dated April 4, 2016, OWCP denied modification of its August 14, 2015 decision.[5] It found that the evidence of record failed to explain why appellant's increased work restrictions beginning on April 19, 2014 were causally related to her accepted employment injuries.

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 resulting from a previous injury or illness, without an intervening cause or a new exposure to the work environment that caused the illness. It can also mean 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 or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.[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 of proof to establish, by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and an inability to 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.[7] To establish a change in the nature and extent of the injury-related condition, there must be a probative medical opinion, based on a complete and accurate factual and medical history, as well as supported by sound medical reasoning, that the disabling condition is causally related to employment factors.[8] In the absence of rationale, the medical evidence is of diminished probative value.[9] While the opinion of a physician supporting causal relationship need not be one of absolute medical

[5] On April 4, 2016 OWCP advised appellant that her claim was also accepted for radial styloid tenosynovitis.

[6] *J.F.*, 58 ECAB 124 (2006). A recurrence of disability does not apply when a light-duty assignment is withdrawn for reasons of misconduct, nonperformance of job duties, or other downsizing. 20 C.F.R. § 10.5(x). *See also Richard A. Neidert*, 57 ECAB 474 (2006).

[7] *A.M.*, Docket No. 09-1895 (issued April 23, 2010); *Terry R. Hedman*, 38 ECAB 222 (1986).

[8] *Mary A. Ceglia*, 55 ECAB 626, 629 (2004).

[9] *Id.*; *Robert H. St. Onge*, 43 ECAB 1169 (1992).

certainty, it must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.[10]

ANALYSIS

The Board finds that appellant has failed to establish a recurrence of total disability commencing on April 19, 2014 causally related to the accepted employment injuries.

OWCP has accepted that appellant sustained right wrist sprain, other tenosynovitis of the right wrist and right hand, and right radial styloid tenosynovitis due to her repetitive work duties. As of March 6, 2014 appellant was performing full-duty work, eight hours a day with restrictions. She claimed disability compensation commencing on or about April 19, 2014, stating that no work was available at the employing establishment within her restrictions. The employing establishment offered appellant part-time modified-duty work based on the restrictions of Dr. Ferrarer-Blair, her attending physician. Appellant further claimed a recurrence of disability commencing on the same date noted above based on Dr. Ferrarer-Blair's reduction of her work hours.

Dr. Ferrarer-Blair's reports do not contain a rationalized opinion explaining how appellant had become disabled on intermittent dates commencing on April 19, 2014 due to a worsening of her accepted work-related conditions. In reports dated January 20, 2014 to January 6, 2015, she opined that appellant could work no more than four hours a day with restrictions. Dr. Ferrarer-Blair diagnosed right wrist pain and tendinitis and restricted her from using her hand and wrist to perform her repetitive work duties. She related that such duties would continue to exacerbate inflammation of appellant's wrist which resulted in her pain. Dr. Ferrarer-Blair did not explain how appellant's repetitive work duties exacerbated her accepted employment-related conditions and resulted in the reduction of her work hours. The Board has held that a medical opinion not fortified by medical rationale is of diminished probative value.[11] Dr. Ferrarer-Blair's remaining reports addressed appellant's right wrist, left wrist, and back conditions and medical treatment. The Board notes that OWCP has not accepted appellant's claim for a left wrist or back condition. For conditions not accepted by OWCP as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not OWCP's burden to disprove such relationship.[12] Dr. Ferrarer-Blair provided no medical rationale explaining how appellant's conditions were caused or related to the accepted employment injuries. The Board has held that medical evidence offering no opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[13]

[10] *Ricky S. Storms*, 52 ECAB 349 (2001).

[11] *See R.C.*, Docket No. 15-315 (issued May 4, 2015); *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

[12] *G.A.*, Docket No. 09-2153 (issued June 10, 2010); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Alice J. Tysinger*, 51 ECAB 638 (2000).

[13] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

Similarly, the reports and progress notes of Dr. Ghaznavi and Dr. Janevski are of limited probative value. The physicians found that appellant had right de Quervain's tenosynovitis, right and left thumb CMC arthritis, and right wrist pain, but did not explain how her right and left thumb condition, which had not been accepted by OWCP, was caused or contributed to by the accepted employment injuries.[14] Further, Dr. Ghaznavi did not provide an opinion addressing whether appellant was totally disabled during the claimed period due to the accepted employment injuries.[15] Reports from Dr. Janevski beginning June 9, 2015, do not address the period at issue and indicate that appellant could work. Likewise, Dr. Boucree's June 23, 2015 progress note addressed his and Dr. Janevski's treatment of appellant's postoperative pain from right de Quervain's tendinitis. He did not offer an opinion stating that she was totally disabled during the claimed period due to the accepted employment injuries.[16]

The progress notes and reports from Ms. Schliker, an occupational therapist, are insufficient to establish appellant's claim as they were not signed by a physician. An occupational therapist is not considered a physician as defined under FECA, therefore, her opinion is of no probative value.[17] Thus, the medical evidence of record fails to support that appellant developed left lateral epicondylitis as a result of his federal employment duties.

Appellant failed to submit sufficiently rationalized medical evidence establishing that her disability commencing on April 19, 2014 resulted from the residuals of her accepted injuries.[18] The Board therefore finds that she has not met her burden of proof.[19]

On appeal, appellant contends that her physicians submitted sufficient medical evidence to support her reduced work hours. For the reasons stated above, there is no rationalized medical evidence to establish a causal relationship between the reduction of appellant's work hours resulting in her claimed disability commencing on April 19, 2014 and her accepted employment injuries.

Appellant also contends that she sustained a recurrence of disability because the employing establishment had no work available within her restrictions. As discussed above, there is no evidence that no work was made available within her restrictions.

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] 5 U.S.C. § 8102(2) of FECA provides as follows: (2) "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. In *J.J.*, Docket No. 15-0727 (issued July 16, 2015) that Board explained that the reports from appellant's occupational therapist have no probative medical value, as occupational therapists are not considered physicians as defined under FECA.

[18] *Cecelia M. Corley*, 56 ECAB 662 (2005).

[19] *Tammy L. Medley*, 55 ECAB 182 (2003).

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 failed to meet her burden of proof to establish a recurrence of disability commencing on April 19, 2014 causally related to her accepted employment injuries.

ORDER

IT IS HEREBY ORDERED THAT the April 4, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 6, 2017
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board