United States Department of Labor
Employees' Compensation Appeals Board

G.C., Appellant	)	
and	)	**Docket No. 17-0389**
	)	**Issued: May 8, 2017**
U.S. POSTAL SERVICE, POST OFFICE, Merrick, NY, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 9, 2016 appellant filed a timely appeal from a November 8, 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(d), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that he sustained a recurrence of disability on March 11 and 12, 2016 causally related to accepted sacroiliitis.

FACTUAL HISTORY

OWCP accepted that on October 30, 2013 appellant, then a 45-year-old city carrier, was kicked in the low back by a coworker and sustained sacroiliitis.[2] Dr. Alexandre B. DeMoura, an

[1] 5 U.S.C. § 8101 *et seq.*

[2] October 30, 2013 x-rays taken at a hospital emergency room were negative for acute fracture or subluxation.

attending Board-certified orthopedic surgeon, diagnosed sacroiliac joint syndrome.[3] He held appellant off work through December 20, 2013. Appellant participated in physical therapy.

On December 21, 2013 appellant accepted the employing establishment's offer of full-time, limited-duty assignment as a modified city carrier, lifting up to 50 pounds intermittently, walking up to four hours, and reaching above the shoulder for up to eight hours.

Dr. DeMoura submitted periodic reports through March 3, 2014 diagnosing sacroiliac joint syndrome, right-sided lumbar radiculitis, an L3 hemangioma, and a herniated L5-S1 disc.

Appellant continued working as a modified city carrier. OWCP paid compensation for intermittent work absences due to medical appointments and physical therapy.[4]

In a January 7, 2016 report, Dr. DeMoura diagnosed lumbar radiculopathy, lumbar disc displacement, and myofascial pain syndrome.[5] On January 28, 2016 he diagnosed sciatica.

In a March 10, 2016 duty status report (Form CA-17), Dr. DeMoura diagnosed paraspinal lumbar spasms. He released appellant to work on March 14, 2016.

On March 15, 2016 appellant claimed a recurrence of disability (Form CA-2a) on March 11 and 12, 2016 due to an increase in lumbar spasms and pain. He was working full-time modified duty at the time of the claimed recurrence. Appellant returned to limited-duty work on March 15, 2016.

In a May 23, 2016 letter, OWCP advised appellant of the additional evidence needed to establish his claim, including medical evidence establishing a spontaneous worsening of the accepted condition, or withdrawal of his modified-duty position. It afforded him 30 days to submit such evidence. Appellant responded by undated letter that he did not sustain a recurrence of disability. He provided a June 6, 2016 duty status report (Form CA-17) from Dr. DeMoura, finding appellant able to work eight hours a day modified duty as of March 14, 2016.

On June 16, 2016 appellant claimed an unspecified occupational disease (Form CA-2) commencing October 30, 2013. He continued to work full-time modified duty with intermittent absences.

On October 25, 2016 appellant telephoned OWCP, asserting that he had not intended to claim a recurrence of disability or occupational disease. He acknowledged signing the forms, but that his supervisor submitted them.

[3] November 4, 2013 lumbar x-rays showed straightening of the lumbar lordosis indicative of muscle spasm. A February 7, 2014 lumbar magnetic resonance imaging (MRI) scan showed a small L4-5 disc bulge, and a "small central L5-S1 disc protrusion with proximal S1 nerve encroachment."

[4] Dr. Debora Mottahedeh, an attending osteopath Board-certified in physiatry, administered a series of sacroiliac and lumbar injections from March 25, 2014 through September 29, 2015.

[5] A January 21, 2016 lumbar MRI scan showed a persistent L4-5 disc bulge, and a small central L5-S1 disc herniation without nerve root encroachment.

By decision dated November 8, 2016, OWCP denied appellant's claim for a recurrence of disability as he had not established that the accepted sacroiliitis spontaneously worsened or that his modified-duty position was altered or withdrawn.

LEGAL PRECEDENT

OWCP's implementing regulations define a recurrence of disability as "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]

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 the employee 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 to 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] This includes the necessity of 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 employment factors and supports that conclusion with sound medical reasoning.[8] An award of compensation may not be made on the basis of surmise, conjecture, speculation or on appellant's unsupported belief of causal relation.[9]

ANALYSIS

OWCP accepted that appellant sustained sacroiliitis when kicked by a coworker. Appellant returned to full-time modified duty work with intermittent absences. He claimed that he sustained a recurrence of disability on March 11 and 12, 2014, at which time he was performing modified duty. Appellant asserted that the accepted sacroiliitis condition became painful spontaneously, such that he was disabled from his modified-duty position. He thus has the burden of proof to provide sufficient evidence, including rationalized medical evidence, to establish the causal relationship asserted.[10]

In support of his claim, appellant provided a March 10, 2016 duty status report (Form CA-17) from Dr. DeMoura, an attending Board-certified orthopedic surgeon, diagnosing paraspinal lumbar spasms. Dr. DeMoura held appellant off work through March 13, 2016. He also submitted a June 6, 2016 duty status report, finding appellant able to perform full-time modified duty as of March 14, 2016. However, Dr. DeMoura did not opine that the accepted

[6] 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2.b (June 2013). *See also Philip L. Barnes*, 55 ECAB 426 (2004).

[7] *Albert C. Brown*, 52 ECAB 152 (2000); *see also Terry R. Hedman*, 38 ECAB 222 (1986).

[8] *Ronald A. Eldridge*, 53 ECAB 218 (2001); *see Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

[9] *Patricia J. Glenn*, 53 ECAB 159 (2001); *Ausberto Guzman*, 25 ECAB 362 (1974).

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

sacroiliitis worsened spontaneously, such that appellant was disabled from performing his modified-duty position. In this absence of such rationale, his opinion is of diminished probative value and is insufficient to meet appellant's burden of proof.[11] Appellant did not submit additional medical evidence addressing his condition on March 11 and 12, 2016.

OWCP advised appellant by May 23, 2016 letter to submit rationalized medical evidence regarding whether the accepted conditions had worsened on and after March 11, 2016 as claimed. Appellant did not submit such evidence. The Board notes that appellant contended in an undated response and on October 5, 2016 that he did not intend to claim a recurrence of disability. Therefore, appellant did not meet his burden of proof.

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 not established that he sustained a recurrence of disability on March 11 and 12, 2016 causally related to accepted sacroiliitis.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 8, 2016 is affirmed.

Issued: May 8, 2017
Washington, DC

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

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

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

[11] *Deborah L. Beatty*, 54 ECAB 340 (2003).