United States Department of Labor
Employees' Compensation Appeals Board

L.F., Appellant	)	
and	)	**Docket No. 16-0872**
	)	**Issued: April 17, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Harrisburg, PA, 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 March 22, 2016 appellant filed a timely appeal from a March 3, 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.[2]

ISSUE

The issue is whether appellant met his burden of proof to establish a recurrence of disability commencing October 11, 2010 causally related to his October 12, 1993 employment injury.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence on appeal after the March 3, 2016 decision was issued. The Board's jurisdiction is limited to the evidence that was before OWCP at the time of its final decision. Therefore, the Board is precluded from reviewing this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On October 15, 1993 appellant, a 35-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that he sustained an injury on October 12, 1993 as a result of a motor vehicle accident. On April 5, 1994 OWCP accepted the claim for a lumbar strain. It was subsequently expanded to include aggravation of psoriatic arthropathy, sacroiliitis, and aggravation of localized primary osteoarthritis of the left ankle and foot.

OWCP accepted that appellant sustained a recurrence on March 17, 1994 and paid wage-loss compensation for the period April 16 to 29, 1994. Appellant returned to work as a modified rural carrier on March 11, 2002 and OWCP reduced his compensation benefits to zero because it determined that this position fairly and reasonably represented his wage-earning capacity.

OWCP later accepted that appellant sustained a recurrence of disability on January 9, 2009 for which it subsequently authorized two left foot surgeries. Appellant underwent the surgeries on June 4 and July 8, 2009. OWCP paid wage-loss compensation benefits and on October 16, 2013 granted appellant a schedule award for 24 percent permanent impairment of the left lower extremity.

On April 24, 2009 appellant accepted a modified city letter carrier position. The duties required casing letters and flat mail, 3982 verification and ancillary carrier work, and answering telephones. The physical requirements included standing for one hour per day and sitting for up to seven hours per day.

Appellant filed Form CA-7 claims for wage-loss compensation for the periods November 9, 2009 to April 9, 2010 and April 10 to June 18, 2010.

OWCP referred appellant along with a statement of accepted facts (SOAF) and the medical evidence of record to Dr. Arthur Huppert, a Board-certified rheumatologist, for a second opinion evaluation to determine the nature and extent of his employment-related conditions. In his March 28, 2010 report, Dr. Huppert determined that appellant had not yet reached maximum medical improvement (MMI) and opined that he was not capable of delivering mail. He provided the following restrictions: walking and standing no more than two hours per day; repetitive movements with wrists and elbows, pushing, pulling, and lifting no more than one hour per day. In a June 18, 2010 addendum report, Dr. Huppert opined that appellant was not at all totally disabled from December 14, 2009 to the date of the examination and that the restrictions provided were effective going forward from December 14, 2009.

By decisions dated June 30 and July 28, 2010, OWCP denied appellant's claims for compensation for the periods December 14, 2009 to April 9, 2010 and April 10 to June 18, 2010 based on Dr. Huppert's finding that he was not totally disabled from work.

On August 2, 2010 appellant requested an oral hearing by a representative of the Branch of Hearings and Review regarding the July 28, 2010 decision. On September 7, 2010 appellant requested a review of the written record by a representative of the Branch of Hearings and Review again with regard to the July 28, 2010 decision.

In support of his claim, appellant submitted an August 16, 2010 report from Dr. Marzena Bieniek, a Board-certified rheumatologist, who asserted that appellant suffered from severe psoriatic arthritis and chronic low back pain. Dr. Bieniek indicated that appellant had a severe flare-up of his psoriatic arthritis and Crohn's disease and opined that he was disabled due to his underlying condition. He continued with bilateral knee inflammatory arthritis, as well as elbow inflammatory arthritis and chronic low back pain. Dr. Bieniek advised that now being back on medication and off steroids, appellant was able to return to sedentary work as of August 16, 2010. She determined that he was not able to work all the time prior to his disease coming under control on that date.

By decision dated September 15, 2010, an OWCP hearing representative determined that the case was not in posture for a hearing and merit consideration was completed on September 9, 2010. She vacated the June 30 and July 28, 2010 decisions, finding that Dr. Huppert's reports were insufficiently rationalized to establish appellant's work restrictions. The case was remanded for a new second opinion examination.

Also on September 15, 2010 appellant accepted a modified city letter carrier position with restrictions of standing for 1.5 hours per day.

On October 11, 2010 appellant retired from his federal employment.

OWCP subsequently referred appellant to Dr. Mark Durback, a Board-certified rheumatologist, for another second opinion examination. In his June 18, 2013 report, Dr. Durback reviewed the SOAF and the medical evidence of record. He diagnosed severe psoriatic arthritis with involvement of both feet, knees, and lumbar spine, chronic pain in the feet, knees, and lower back, bilateral foot pain due to severe erosive arthritis, and postsurgical wound infections on the left ankle and left first toe. Dr. Durback determined that appellant had reached MMI, but was incapable of returning to work that would require long periods of standing or walking, such as work as a letter carrier. He opined that appellant was capable of working a sedentary position that required sitting at a desk, answering telephones, using the computer, and with short periods of standing and walking. Dr. Durback noted that appellant had worked for 10 years as a clerk, that he was able to perform that job without a problem, and that he could return to such a sedentary position if offered to him. He released appellant to limited-duty work with restrictions of standing and walking no more than half-an-hour per day.

On August 24, 2014 appellant filed a recurrence claim (Form CA-2a) alleging that in January 2009 he sustained a recurrence of his October 12, 1993 employment injury when his permanent, light-duty assignment was taken away from him. He alleged that he had been given a permanent, light-duty job in October 2001 and the employing establishment subsequently withdrew his light-duty position in violation of his medical restrictions. Appellant noted that he had asked to be returned to the light-duty position, but that was denied. He indicated that he had stopped work on October 11, 2010 due to his retirement, which he claimed was necessitated due to his inability to work beyond his restrictions.

In a September 5, 2014 letter, OWCP advised appellant of the deficiencies of his recurrence claim. It requested additional evidence in support of the claim and afforded appellant 30 days to respond to its inquiries.

In response, appellant resubmitted an April 24, 2009 modified city letter carrier job offer, which required standing for one hour per day, and Dr. Durback's June 18, 2013 second opinion report. Appellant further submitted a September 19, 2014 report from Dr. Bieniek who opined that appellant had been disabled since June 3, 2009 due to his psoriatic arthritis, psoriasis, and chronic low back pain related to his October 12, 1993 work injury. Dr. Bieniek opined that appellant was not capable of work that required walking or standing longer than 15 to 30 minutes.

By decision dated November 21, 2014, OWCP denied appellant's recurrence claim. It noted that on August 24, 2014 he filed a Form CA-2a claiming a need for additional medical care for his accepted work-related conditions. OWCP noted that a recurrence of the work-related medical condition (for medical treatment only) is defined as a documented need for additional medical treatment after a release from treatment for the work-related injury. It found that the evidence of record failed to establish that he required additional medical treatment due to a worsening of his accepted conditions, without intervening cause.

On February 6, 2015 appellant requested reconsideration and submitted a February 9, 2004 duty status report (Form CA-17) from Dr. Bieniek, who provided work restrictions that limited standing to one hour per day.

By decision dated March 3, 2016, OWCP denied modification of its prior decision.

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.[3] 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.[4]

When an employee who is disabled from the job he or she had 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.[5] This burden

[3] 20 C.F.R. § 10.5(x). *See T.S.*, Docket No. 09-1256 (issued April 15, 2010).

[4] *Id.*

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

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.[6]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[7] 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.[8]

ANALYSIS

The Board finds that the evidence of record is sufficient to establish that the modified city letter carrier position was beyond appellant's physical limitations and he has, therefore, established a recurrence of disability, as alleged.

Following an injury, appellant had returned to work as a modified rural carrier on March 11, 2002 and OWCP reduced his compensation to zero because it determined that the modified position fairly and reasonably represented his wage-earning capacity. The employing establishment subsequently removed the modified, light-duty position and offered appellant a new modified city letter carrier position, which he accepted on April 24, 2009. Appellant, however, was unable to perform the work, which included standing for one hour per day and sitting for up to seven hours per day. On September 9, 2010 he again accepted a modified city letter carrier position which required standing for 1.5 hours per day. Appellant noted that he was unable to perform the position and he, therefore, retired from his federal employment on October 11, 2010.

The Board finds that OWCP improperly denied appellant's recurrence claim as the evidence of record establishes that the light-duty assignment which had been made specifically to accommodate his physical limitations due to his accepted work injury was withdrawn.[9] The subsequently offered positions are found to be beyond the restrictions set forth in the second opinion report ordered by the hearing representative in her September 15, 2010 decision. In his June 18, 2013 report, Dr. Durback determined that appellant had reached MMI, but was not capable of returning to work that would require long periods of standing or walking. He specifically released appellant to limited-duty work with restrictions of standing no more than half-an-hour per day. According to the position description of the modified city letter carrier

[6] *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).

[7] *See I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

[8] *See I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

[9] *Supra* note 3.

position, appellant's job required standing for 1.5 hours per day. Therefore, the duties of the city letter carrier position exceed the restrictions imposed by Dr. Durback.

The Board finds that the medical evidence of record establishes that appellant cannot perform such limited-duty work. As the employing establishment had withdrawn the light-duty assignment, which formed the basis of his wage-earning capacity, and replaced that position with an unsuitable position, appellant has established a recurrence of disability. Consequently, the Board will reverse the March 3, 2016 decision.

CONCLUSION

The Board finds that appellant has met his burden of proof to establish a recurrence of disability commencing October 11, 2010 causally related to his October 12, 1993 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the March 3, 2016 decision of the Office of Workers' Compensation Programs is reversed.

Issued: April 17, 2018
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