

**United States Department of Labor
Employees' Compensation Appeals Board**

C.W., Appellant)

and)

U.S. POSTAL SERVICE, NETWORK)
DISTRIBUTION CENTER, Springfield, MA,)
Employer)

**Docket No. 17-1633
Issued: February 26, 2018**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 24, 2017 appellant filed a timely appeal from a May 2, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 established a recurrence of total disability commencing March 20, 2017 causally related to his accepted December 17, 2015 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence after OWCP rendered its May 2, 2017 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On December 18, 2015 appellant, then a 59-year-old tractor trailer operator, filed a traumatic injury claim (Form CA-1) alleging that on December 17, 2015 he injured his knees, back, and neck as a result of a work-related motor vehicle accident when a truck moving 30 miles per hour backed into the right side of the stationary truck he was operating. He did not initially stop work.

On February 1, 2016 OWCP accepted his claim for a sprain of the right great toe. On February 22, 2016 it accepted the additional condition of lumbar radiculopathy. By decision dated March 23, 2016, OWCP expanded acceptance of appellant's conditions to include right big toe sprain, lumbosacral radiculopathy, muscle spasm of the back, right shoulder joint sprain, strain of the muscle of the cervical region, and a temporary subluxation of the L1-2 lumbar vertebrae. Appellant received wage-loss compensation and medical benefits on the supplemental rolls for the period February 2 through March 5, 2016, and on the periodic rolls as of March 6, 2016.

By letter dated November 1, 2016, OWCP proposed to terminate appellant's wage-loss compensation and medical benefits as a result of his failure to accept a suitable modified position at the employing establishment.

In a report dated February 8, 2017, Dr. Ann Maria Elder, Board-certified in physical medicine and rehabilitation, listed appellant's unresolved conditions as including cervical sprain, cervical disc displacement at C2 through C3 and C4 through C7 with radiculopathy, right shoulder sprain, thoracic sprain, and lumbar disc disorder. She noted that he continued to have neck, back, and shoulder pain, but that he had reached maximum medical improvement. Dr. Elder noted that appellant had been totally disabled from work from December 17, 2015 through September 1, 2016, partially disabled from September 1, 2016 through February 8, 2017, and currently he could not return to regular duty until he was seen by a neurosurgeon. She opined to a reasonable degree of medical certainty that his diagnosed conditions were causally related to the injuries he sustained on December 17, 2015.

In a letter dated February 21, 2017, a supervisor at the employing establishment noted that appellant had refused the limited-duty assignment found suitable on November 1, 2016. Appellant refused to accept the job offer, stating that he could not assume the scheduled hours due to child care issues. The supervisor noted that the work hours of the modified offer were the same work hours to which he was currently assigned, but that appellant had been working a modified assignment on different work hours due to operational needs. These operational needs had ceased to exist, and the job offer placed appellant back on his actual assigned hours.

In a note dated March 13, 2017, Dr. Marc Linson, a Board-certified orthopedic surgeon, examined appellant and noted that he could remain on light duty.

On March 23, 2017 appellant claimed a recurrence of disability (Form CA-2a). He indicated the date of recurrence as March 20, 2017, but also as March 21, 2017 in a separate field. Appellant explained that the recurrence occurred when he dropped his pen and truck cards

on the floor, bent to pick them up, and his back went out. A supervisor noted that appellant had been provided with limited-duty assignments.

In a note dated March 23, 2017, Dr. Linson stated that appellant requested a note to remain out of work and that he provided appellant with such a note.

By letter dated March 29, 2017, the employing establishment controverted appellant's claim for recurrence. It explained that on February 17, 2017 appellant had refused a suitable job offer due to nonemployment-related child care issues. The employing establishment speculated that appellant's claim for recurrence was an attempt to stop termination of his benefits.

By development letter dated March 31, 2017, OWCP informed appellant that he had not submitted sufficient evidence to establish recurrence of total disability as he had not submitted any supporting documentation with his claim. The medical evidence of record reflected that he had the medical capacity to perform full-time limited-duty work, which had been provided by his employing establishment. OWCP requested that appellant submit a comprehensive narrative report from a physician including a description of the duties he could not perform, objective medical findings forming the basis of renewed disability subsequent to March 23, 2017, a statement of medical opinion relating his claimed disability to his accepted work injury, and the recommended course of treatment. It further requested that appellant respond to a list of inquiries regarding his alleged recurrence.

In a record of a telephone conversation on April 7, 2017, appellant maintained that he had sustained a recurrence of total disability. He also noted that he could not work days anymore due to daycare issues. An OWCP representative informed appellant that a workers' compensation case could not be used for accommodation of childcare.

On April 11, 2017 appellant responded to OWCP's inquiries. He explained that his recurrence occurred on March 20, 2017, when he bent over suddenly to pick up his pen and truck cards that had dropped on the floor. Appellant noted that he had been sitting in an uncomfortable chair doing paperwork when someone knocked his cards on the floor. In response to OWCP's inquiry regarding whether this claim was for a new traumatic injury due to his account of events, he maintained that his back hurt from the injury sustained on December 17, 2015. Appellant explained that he believed his disability was due to his accepted conditions because he had tremendous pain in his back, as well as muscle tightness, spasms, muscle tension, and headaches.

By decision dated May 2, 2017, OWCP denied appellant's claim for recurrence of disability. It found that he did not submit sufficient medical evidence to establish that he was disabled due to a material change or worsening of his accepted work-related conditions.

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.³

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.⁴ 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.⁵ In the absence of rationale, the medical evidence is of diminished probative value.⁶ While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, it must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.⁷

ANALYSIS

The Board finds that appellant has failed to establish a recurrence of total disability commencing on March 20, 2017 causally related to the accepted employment injuries.

OWCP accepted that appellant sustained right great toe sprain, lumbosacral radiculopathy, muscle spasm of the back, right shoulder joint sprain, strain of the muscle of the cervical region, and a temporary subluxation of the L1-2 lumbar vertebrae when a truck moving 30 miles per hour backed into the right side of the stationary truck he was operating on December 17, 2015. Appellant was totally disabled from work from December 17, 2015 through September 1, 2016, and partially disabled from September 1, 2016 through February 8, 2017. Dr. Elder, in a report dated February 8, 2017, noted that he could not return to regular duty until he was seen by a neurosurgeon. The employing establishment provided and offered light-duty work for appellant, which he refused on the basis that the hours conflicted with nonemployment-related childcare duties.

In support of his recurrence claim, appellant submitted only a March 23, 2017 note from Dr. Linson, stating that appellant requested a note to remain out of work and that he provided appellant with such a note. Without any explanation or rationale for the conclusion reached,

³ *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).

⁴ *A.M.*, Docket No. 09-1895 (issued April 23, 2010); *Terry R. Hedman*, 38 ECAB 222 (1986).

⁵ *Mary A. Ceglia*, 55 ECAB 626, 629 (2004).

⁶ *Id.*; *Robert H. St. Onge*, 43 ECAB 1169 (1992).

⁷ *Ricky S. Storms*, 52 ECAB 349 (2001).

such report is insufficient to establish causal relationship.⁸ Dr. Linson's report fails to provide medical explanation and rationale, supported by objective findings, that appellant was in fact disabled due to his accepted conditions.⁹

The Board finds that Dr. Linson's mere statement that appellant asked for a note to stay out of work, and that Dr. Linson provided the note, is not a rationalized opinion that appellant was totally disabled causally related to his accepted injury. Therefore, Dr. Linson's note is insufficient to establish appellant's claim.¹⁰

For each period of disability claimed, an employee must establish that he or she was disabled from work as a result of the accepted employment injury. The Board will not require OWCP to pay compensation for disability without sufficient medical evidence to support the claim. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.¹¹

Appellant failed to submit sufficiently rationalized medical evidence establishing that he was totally disabled commencing March 20, 2017 causally related his accepted employment injuries.¹² The Board therefore finds that he has not met his burden of proof.¹³

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 failed to meet his burden of proof to establish a recurrence of total disability commencing on March 20, 2017 causally related to his accepted December 17, 2015 employment injury.

⁸ See *M.R.*, Docket No. 17-1388 (issued November 2, 2017).

⁹ See *B.B.*, Docket No. 15-1738 (issued January 12, 2017).

¹⁰ *Supra* note 6.

¹¹ See *C.Y.*, Docket No. 17-0605 (issued January 11, 2018).

¹² See *Cecelia M. Corley*, 56 ECAB 662 (2005).

¹³ See *Tammy L. Medley*, 55 ECAB 182 (2003).

ORDER

IT IS HEREBY ORDERED THAT the May 2, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 26, 2018
Washington, DC

Christopher J. Godfrey, 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