

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

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| T.M., Appellant |) | |
| |) | |
| and |) | Docket No. 18-0272 |
| |) | Issued: December 23, 2019 |
| U.S. POSTAL SERVICE, POST OFFICE, |) | |
| Lincoln, NE, 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
JANICE B. ASKIN, Judge

JURISDICTION

On November 20, 2017 appellant filed a timely appeal from a September 12, 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 has met her burden of proof to establish a recurrence of disability on May 17, 2013 causally related to her accepted April 24, 2013 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the September 12, 2017 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On May 3, 2013 appellant, then a 41-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) for head, neck, and back injuries, which she attributed to an April 24, 2013 motor vehicle accident which had occurred in the performance of duty. She stopped work on the date of injury, and resumed full-time, regular-duty work on May 20, 2013. On June 18, 2013 OWCP accepted appellant's claim for neck, thoracic, and lumbar sprains.³

On July 18, 2017 appellant filed a notice of recurrence (Form CA-2a) of disability commencing May 17, 2013. On the reverse side of the claim form, the employing establishment indicated that she had resumed her full-time, regular-duty work as of October 3, 2014.

In a July 18, 2017 note, Dr. Jacobsen indicated that appellant had been seen that day. He excused her from work "last Saturday," July 15, 2017, and July 18 through 20, 2017. Dr. Jacobsen noted that appellant would be reevaluated on July 20, 2017.

In a July 24, 2017 development letter, OWCP informed appellant that she had not submitted sufficient evidence to establish a recurrence of disability. It requested that she submit a comprehensive narrative medical report from a physician including a description of the duties she could not perform, objective medical findings forming the basis of renewed disability, a statement of medical opinion relating the claimed disability to her accepted employment injury, and the recommended course of treatment. OWCP further attached a questionnaire for appellant's completion. Appellant was afforded 30 days to provide the necessary evidence.

In a July 31, 2017 statement, appellant indicated that her problems had been ongoing since the April 2013 motor vehicle incident. She noted that she was still delivering mail when she could, but had many flare-ups due to the accident. Appellant stated that she believed her current condition/disability was due to her original injury because she never had these problems before. She noted that the pain was continuous, and that constant lifting, bending, and reaching made it worse. Appellant denied having sustained other injuries or illnesses since her original injury. Lastly, she noted that she was never allowed limited duty and that it was either full-time work or nothing.

By decision dated September 12, 2017, OWCP denied appellant's claim for recurrence of disability.

³ By decision dated May 27, 2014, OWCP accepted a recurrence for additional medical care based on an April 17, 2014 report from appellant's treating physician, Dr. Matthew W. Jacobsen, a Board-certified family practitioner, who noted that she had been involved in a work-related motor vehicle accident on April 24, 2013 and continued to struggle with symptoms of neck and back pain. It paid a total of 16 hours of compensation for intermittent wage loss to attend medical appointments between December 26, 2013 and May 16, 2014. However, by decision dated August 27, 2014, OWCP denied wage-loss compensation for the period August 13, 2013 through June 19, 2014. In an October 3, 2014 duty status report (Form CA-17), Dr. Jacobsen indicated that appellant could perform her full-time (9 hours/day), regular duties. From January 2 through September 17, 2015, Dr. Jacobsen continued to regularly follow up with appellant regarding her chronic neck and back pain. By decision dated January 28, 2015, it denied appellant's claim for wage-loss compensation for the period June 20 through September 23, 2014.

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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁴ This term also means an inability to work when a light-duty assignment made specifically to accommodate an employee's physical limitations due to the 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 such that they exceed the employee's physical limitations.⁵

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed.⁶ To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.⁷

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of proof to establish that the disability is related to the accepted injury.⁸ This burden requires 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 the employment injury and supports that conclusion with sound medical reasoning.⁹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability commencing May 17, 2013, causally related to the accepted April 24, 2013 employment injury.

OWCP received a July 18, 2017 note from Dr. Jacobsen. Although he excused appellant from work on July 15, 2017, and from July 18 through 20, 2017, Dr. Jacobsen's note did not explain why or how she was disabled from performing her regular duties. As such, the July 18, 2017 note is insufficient to establish that appellant was disabled on or after July 15, 2017.¹⁰

⁴ 20 C.F.R. § 10.5(x).

⁵ *Id.*

⁶ *E.B.*, Docket No. 19-1179 (issued November 21, 2019).

⁷ *See S.G.*, Docket No. 18-1076 (issued April 11, 2019); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁸ *E.B.*, *supra* note 6.

⁹ *Id.*; *S.S.*, 59 ECAB 315 (2008).

¹⁰ *Id.*

As the medical evidence of record is insufficient to establish a recurrence of disability commencing May 17, 2013, the Board finds that she has not met her 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 met her burden of proof to establish a recurrence of disability commencing May 17, 2013, causally related to the accepted April 24, 2013 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the September 12, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 23, 2019
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board