United States Department of Labor
Employees' Compensation Appeals Board

R.C., Appellant	)	
and	)	**Docket No. 18-1695**
	)	**Issued: March 12, 2019**
U.S. POSTAL SERVICE, POST OFFICE, North Charleston, SC, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant[1]
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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On September 10, 2018 appellant, through counsel, filed a timely appeal from a March 21, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a recurrence of total disability, commencing March 30, 2015, due to her accepted work-related injuries.

FACTUAL HISTORY

On May 26, 2014 appellant, then a 56-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that, on March 31, 2013, she sustained a groin injury while in the performance of duty. She asserted that she developed pain in her left groin while operating a delivery barcode sorter machine and lifting numerous letter trays. Appellant did not stop work.[3] OWCP assigned the claim OWCP File No. xxxxxx218. After development, it accepted the claim for recurrent unilateral inguinal hernia.[4]

In a March 4, 2015 report, Dr. Mark Netherton, an attending Board-certified anesthesiologist, indicated that appellant complained of chronic ilioinguinal pain since undergoing ilioinguinal hernia surgery in 2010. He diagnosed ilioinguinal neuropathy, post ilioinguinal herniorrhaphy, and unspecified mononeuritis of lower limb. Dr. Netherton indicated that he would be performing a radiofrequency rhizotomy on appellant's left ilioinguinal nerve.

In a June 19, 2015 letter to counsel, Dr. Netherton asserted that lifting up to 35 pounds would aggravate appellant's groin area and cause pain. He indicated that she could lift up to 12 pounds and perform sedentary work.

In an October 3, 2016 letter, Dr. Netherton indicated that, if appellant lifted more than 25 pounds she was at risk for recurrent herniation or strain of her ilioinguinal area with resultant increased pain. He advised that she should not lift, push, or pull more than 10 to 12 pounds and should not have to bend over or reach out on a repetitive basis while performing lifting, pushing, or pulling.

In a January 10, 2017 letter to counsel, Dr. Netherton indicated that appellant should avoid lifting anything weighing more than 20 to 25 pounds and noted that she should use proper back mechanics while lifting to avoid straining her ilioinguinal area.

On July 12, 2017 appellant filed a claim for compensation (Form CA-7) claiming wage-loss compensation for total disability for the period March 30, 2015 to July 10, 2017.

In a July 21, 2017 development letter, OWCP requested that appellant submit additional evidence in support of her disability claim, including why she did not work in the light/limited

[3] At the time she filed her claim for a March 31, 2013 injury, appellant had been working in a light-duty position without wage loss. She voluntarily retired from the employing establishment, effective March 31, 2016

[4] OWCP had previously accepted two occupational disease claims under separate case files. Under OWCP File No. xxxxxx936, it accepted that appellant sustained a left inguinal hernia, which had developed by July 21, 2005. Under OWCP File No. xxxxxx937, OWCP accepted that she sustained a groin strain, which had developed by July 21, 2008. OWCP File Nos. xxxxxx218, xxxxxx936, and xxxxxx937 have been administratively combined, with OWCP File No. xxxxxx218 designated as the master file.

duty assignments offered to her by the employing establishment. It afforded her 30 days to submit such evidence.

In a July 26, 2017 letter, counsel argued that light-duty work had not been available for appellant in mid-2015. In an attached June 30, 2015 letter, a plant manager for the employing establishment indicated that May 21, 2015 work restrictions of Dr. Netherton could not be accommodated. The May 21, 2015 work restrictions of Dr. Netherton were also added to the case record. Dr. Netherton recommended work restrictions of no squatting, kneeling, or twisting; no prolonged standing or walking; and no lifting over eight pounds. In a May 21, 2015 narrative report, he reported examination findings and diagnosed unspecified mononeuritis of lower limb.

In a March 23, 2015 report, Dr. Netherton reported that appellant presented on that date with a complaint of low back pain which radiated into her groin. He diagnosed unspecified mononeuropathy of unspecified left lower limb and recommended a repeat rhizotomy.[5]

By decision dated August 22, 2017, OWCP denied appellant's claim for total disability commencing March 30, 2015. It found that she had not submitted medical evidence sufficient to establish that she had disability on or after March 30, 2015 due to her accepted employment injuries.

On September 6, 2017 appellant, through counsel, requested a hearing with a representative of OWCP's Branch of Hearings and Review. During the hearing held on January 29, 2018, counsel argued that the reports of Dr. Netherton showed that appellant had work-related disability on and after March 30, 2015.

Appellant subsequently submitted a February 23, 2018 letter in which a manager of health and resource management for the employing establishment indicated that appellant accepted and signed a light-duty work assignment on March 24, 2015. The manager indicated that after the employing establishment received the May 21, 2015 work restrictions of Dr. Netherton, which did not allow any twisting, "no job offer was extended due to the zero twisting" restriction. He indicated that the May 21, 2015 work restrictions of Dr. Netherton contained no indication that they were necessitated by a work-related injury.[6]

By decision dated March 21, 2018, OWCP's hearing representative affirmed OWCP's August 22, 2017 decision. She found that appellant had failed to submit medical evidence sufficient to establish that she had disability on or after March 30, 2015 due to her accepted employment injuries. The hearing representative noted that the case record contained evidence showing that the employing establishment could not accommodate appellant's May 21, 2015 work restrictions, but that it had not been shown that these work restrictions were necessitated by an accepted work-related condition.

[5] Dr. Netherton performed other radiofrequency rhizotomies on appellant's left ilioinguinal nerve between 2015 and 2017, but there is no indication in the case record that these procedures were authorized by OWCP.

[6] In an undated statement received on January 31, 2018, appellant further described her pain symptoms.

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.[7]

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 of proof, 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.[8] 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.[9] In the absence of rationale, the medical evidence is of diminished probative value.[10] 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.[11]

In general, withdrawal of a light-duty assignment would establish disability where the evidence established continuing injury-related disability for regular duty,[12] but disability would not be established when a light-duty assignment is withdrawn for reasons of misconduct, non-performance of job duties, or other downsizing or where a loss of wage-earning capacity determination is in place.[13]

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[7] *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).

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

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

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

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

[12] 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.6a(4) (June 2013).

[13] 20 C.F.R. §§ 10.5(x), 10.104(c), and 10.509; *see id*. at Chapter 2.1500.2b (June 2013).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish recurrence of total disability, commencing March 30, 2015, due to her accepted work-related injuries.

Appellant submitted numerous report of Dr. Netherton, but these reports do not contain sufficient probative value to establish appellant's disability claim because he has not provided a rationalized medical opinion showing that appellant had disability on or after March 30, 2015 due to her accepted work-related groin injuries. In various reports beginning in March 2015, Dr. Netherton diagnosed such conditions as ilioinguinal neuropathy, postilioinguinal herniorrhaphy, and unspecified mononeuritis of lower limb. He noted that appellant had complaints of left ilioinguinal pain since at least 2010 and described his performance of radiofrequency rhizotomies on her left ilioinguinal nerve. However, Dr. Netherton did not provide a clear, rationalized opinion that appellant had disability on or after March 30, 2015 due to an accepted work-related groin condition. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment activity could have caused or aggravated a medical condition.[14]

In several letters, Dr. Netherton recommended work restrictions which appeared to be preventative in nature. In a June 19, 2015 letter, he indicated that lifting up to 35 pounds would aggravate appellant's groin area and cause pain. Dr. Netherton indicated that appellant could lift up to 12 pounds and perform sedentary work. In an October 3, 2016 letter, he indicated that, if she lifted more than 25 pounds she was at risk for recurrent herniation or strain of her ilioinguinal area with resultant increased pain. Dr. Netherton advised that appellant should not lift, push, or pull more than 10 to 12 pounds and should not have to bend over or reach out on a repetitive basis while performing lifting, pushing, or pulling. In a January 10, 2017 letter, he indicated that she should avoid lifting anything weighing more than 20 to 25 pounds and noted that she should use proper back mechanics while lifting to avoid straining her ilioinguinal area. The Board notes, however, that Dr. Netherton did not provide an indication that these restrictions were necessitated by a specific work-related groin injury. Moreover, the Board has held that the possibility of future injury constitutes no basis for the payment of compensation.[15]

The Board therefore finds that appellant has not met her burden of proof.

On appeal counsel argues that appellant sustained disability because the employing establishment withdrew light-duty work. The Board finds, however, that the case record contains evidence showing that appellant signed a light-duty job offer on March 24, 2015 and that the employing establishment later advised her that it could not accommodate the May 21, 2015 work restrictions of Dr. Netherton.[16] As noted above, withdrawal of a light-duty assignment generally would establish disability where the evidence established continuing injury-related disability for regular duty, but disability would not be established when a light-duty assignment is withdrawn

[14] *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

[15] *Gaeten F. Valenza*, 39 ECAB 1349, 1356 (1988).

[16] On May 21, 2015 Dr. Netherton recommended work restrictions of no squatting, kneeling, or twisting; no prolonged standing or walking; and no lifting over eight pounds. He did not identify any reason for these restrictions.

for reasons of misconduct, nonperformance of job duties, or other downsizing or where a loss of wage-earning capacity determination is in place.[17] The Board notes, however, it has not been demonstrated that work-related disability occurred due to these circumstances because it has not been established that the highly restrictive May 21, 2015 work restrictions of Dr. Netherton were necessitated by an accepted work-related groin condition.

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 recurrence of total disability, commencing March 30, 2015, due to her accepted work-related injuries.

ORDER

IT IS HEREBY ORDERED THAT the March 21, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 12, 2019
Washington, DC

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

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

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

[17] *See supra* notes 2 and 10.