United States Department of Labor
Employees' Compensation Appeals Board

B.T., Appellant	)	
and	)	**Docket No. 19-1331**
	)	**Issued: April 30, 2020**
U.S. POSTAL SERVICE, MARTECH CARRIER ANNEX, Atlanta, GA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On May 29, 2019 appellant filed a timely appeal from an April 10, 2019 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish total disability from work during the period October 5 through 26, 2018 causally related to her accepted April 11, 2018 employment injury.

[1] 5 U.S.C. § 8101 *et seq*.

FACTUAL HISTORY

OWCP accepted that on April 11, 2018 appellant, then a 56-year-old city carrier, sustained a strain of the muscle of the fascia and tendon of the lower back as a result of pulling a bucket of mail while in the performance of duty. She did not stop work.

In an April 26, 2018 encounter note, Dr. Angela R. Miller, an osteopath, indicated that appellant was seen in her office on April 12, 2018. She advised that appellant was unable to perform her work duties and placed her off work from April 12 through May 7, 2018. Dr. Miller further advised that appellant could return to work on May 8, 2018.

In a series of medical reports dated June 19 through September 19, 2018, Dr. Eric I. Francke, an attending Board-certified orthopedic surgeon, diagnosed low back pain and strain, and lumbar spondylosis and radiculopathy. He allowed appellant to continue working with a 10-pound lifting restriction and ordered physical therapy. In his September 19, 2018 duty status report (Form CA-17), Dr. Francke indicated that her diagnosis of "M54.16" was due to an April 12, 2018 injury. He advised that appellant could work eight hours a day with restrictions which included lifting no more than 25 pounds intermittently and bending and stooping intermittently for eight hours a day.

Progress notes dated June 15 through July 24, 2018 from appellant's physical therapist indicated her lumbar diagnoses and treatment.

In an August 2, 2018 lumbar spine magnetic resonance imaging (MRI) scan report, Dr. George W. Eason, a Board-certified diagnostic radiologist, provided an impression of a lumbar spine examination that was negative for a degenerative spinal stenosis. He indicated that the "AP" neural canal volume appeared well-maintained throughout the lumbar spine. Dr. Eason also provided an impression of no evidence of a lumbar disc herniation. The L1-2 disc demonstrated a small central subligamentous disc bulge without evidence of an exiting nerve root mass effect.

In a letter dated October 5, 2018, a health and resource management specialist for the employing establishment provided OWCP a copy of a modified city carrier position offered to appellant on September 27, 2018 based on the work restrictions assigned by Dr. Francke in his September 19, 2018 report and requested that it determine whether she could perform the duties of the offered position. The job offer bore the heading "Offer of Modified Assignment (Limited Duty)." The effective/available work date was listed as September 27, 2018. Work hours for the offered position were 8:50 a.m. to 5:00 p.m. with Sunday and Monday as scheduled days off. The position had an annual salary of $63,144.00. The location of the position was at the employing establishment. The position involved casing and delivering mail along established routes. The physical requirements of the position included intermittent lifting and carrying up to 25 pounds and intermittent bending and stooping, eight hours a day. Appellant refused the job offer on October 4, 2018. She explained that the period for twisting, sitting, and standing was not addressed.

In a response dated October 12, 2018, OWCP advised the employing establishment that, although appellant had refused the job offer, she was currently under medical care status only, was not receiving compensation, and had not submitted a claim for wage loss at that time. It further advised that, should she later submit a claim for wage loss, it would then develop the case and

provide due process. OWCP noted that no determination could be made whether the position offered was suitable. It concluded therefore that no further action would be taken at that time.

On October 12, 2018 appellant filed wage-loss compensation claims (Form CA-7) for leave without pay (LWOP) reimbursement for the period October 4 to 26, 2018. On the reverse side of the claim form the employing establishment indicated that she had received annual leave pay for October 5, 2018 and holiday pay for October 6, 2018. It further indicated that appellant had received 32 hours of LWOP from October 9 through 12, 2018.

OWCP, in an October 24, 2018 letter, acknowledged receipt of appellant's CA-7 forms. It informed her that the employing establishment's September 27, 2018 offer of a "temporary light[-]duty assignment" was within the work restrictions assigned by Dr. Francke in his September 19, 2018 report. OWCP also informed appellant of the provisions of 20 C.F.R. § 10.500(a) and further advised that her entitlement to wage-loss compensation may be denied under this provision if she did not accept the offered "temporary light[-]duty assignment" or provide a written explanation with justification for her refusal within 30 days.

OWCP received additional medical evidence from Dr. Francke. In a November 6, 2018 encounter note and Form CA-17 report, Dr. Francke reviewed the findings of a functional capacity evaluation (FCE), discussed findings on physical examination, and reiterated his prior diagnoses of lumbar spondylosis and radiculopathy, and low back strain. He determined that appellant had reached maximum medical improvement regarding her April 12, 2018 work-related injury. Dr. Francke recommended that she continue with a home exercise program for her back pain. Based on his review of the FCE results, he recommended lifting no more than 27 pounds intermittently, carrying no more than 17 pounds intermittently, and no crawling, kneeling, bending, stooping, or twisting. Dr. Francke indicated that these restrictions were long term.

In a December 18, 2018 visit status report, Dr. Francke again diagnosed low back pain and recommended a 27-pound lifting restriction with no crawling, kneeling, bending, stooping, or twisting.

OWCP received additional progress notes and a report dated December 13, 2018 from appellant's physical therapist.

By decision dated January 23, 2019, OWCP denied appellant's claims for total disability for the period October 5 through 26, 2018 pursuant to 20 C.F.R. § 10.500(a) based on her refusal to accept the employing establishment's September 27, 2018 offer for a "temporary light[-]duty assignment." It explained that the evidence established that she had medical restrictions in place, a light-duty work assignment within those restrictions was available to her, and she was previously notified in writing that such light duty was available.

OWCP continued to receive daily notes dated January 3, 15, and 17, 2019 from appellant's physical therapists.

On March 5, 2019 appellant requested reconsideration of the January 23, 2019 decision. She claimed that she was unable to perform the duties of the modified-duty assignment. Appellant maintained that the duties of casing and delivering mail was not addressed in the modified-duty assignment. She further maintained that continuous twisting aggravated her diagnosed lumbar

condition, which was why Dr. Francke referred her to a fitness-for-duty examination and addressed her inability to twist in his November 6, 2018 report. Appellant noted that she had returned to work in November 2018 after the FCE results and his updated restrictions.

In support of her reconsideration request, appellant submitted an additional Form CA-17 report dated October 9, 2018 from Dr. Francke who indicated that on September 19, 2018 he had advised her to resume work. Dr. Francke noted that appellant could not perform her regular work duties. He recommended work restrictions of lifting no more than 25 pounds continuously and bending, stooping, and twisting intermittently.

OWCP, by decision dated April 10, 2019, denied modification of its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[2] In general the term disability under FECA means incapacity because of injury in employment to earn the wages which the employee was receiving at the time of such injury.[3] This meaning, for brevity, is expressed as disability for work.[4]

To establish causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such causal relationship.[5] The opinion of the physician must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship.[6]

Section 10.500(a) of OWCP's regulations provides that benefits are available only while the effects of a work-related condition continue. Compensation for wage loss due to disability is available only for periods during which an employee's work-related medical condition prevents him or her from earning the wages earned before the work-related injury. For example, an employee is not entitled to compensation for wage-loss claimed on a Form CA-7 to the extent that evidence contemporaneous with the period claimed on a Form CA-7 establishes that an employee

[2] *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

[3] *See* 20 C.F.R. § 10.5(f).

[4] *See S.W., supra* note 2. *See also A.M.*, Docket No. 09-1895 (issued April 23, 2010); *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

[5] *J.M.*, Docket No. 19-0478 (issued August 9, 2019).

[6] *Id*.

had medical work restrictions in place, that light duty within those work restrictions was available, and that the employee was previously notified in writing that such duty was available.[7]

OWCP's procedures provide that, when a claimant is not on the periodic rolls, a claim for wage-loss compensation may be received on a Form CA-7 when a temporary light-duty assignment has been provided by the employing establishment. These procedures further provide that, when a formal loss of wage-earning capacity has not been issued, OWCP's claims examiner should follow certain specified procedures. If the evidence establishes that injury-related residuals continue and result in work restrictions, that light duty within those work restrictions was available, and that the employee was notified in writing that such light duty was available, then wage-loss benefits (effective the date of the written notification of light-duty availability) are not payable for the period covered by the available light-duty assignment. Such benefits are payable only for periods during which an employee's work-related medical condition prevent him or her from earning the wages earned before the work-related injury.[8]

ANALYSIS

The Board finds that this case is not in posture for decision.

OWCP has denied appellant's claims for wage-loss compensation for the period October 5 to 26, 2018 pursuant to 20 C.F.R. § 10.500(a). The Board, however, is unable to determine from the current record whether its denial of her claims is proper under section 10.500(a) as it cannot be established whether she had been offered a temporary or a permanent employment position.

On September 27, 2018 the employing establishment provided appellant a full-time modified city carrier position beginning that date. The document effectuating the offer bore the heading "Offer of Modified Assignment (Limited-Duty)." The assignment was for a modified city carrier with full-time work and had an annual salary of $63,144.00. The cover letter for the written job offer, completed by a health and resource management specialist for the employing establishment, provided notice that the offer was based on the work restrictions set forth by Dr. Francke in his September 19, 2018 report. However, the specialist did not provide an indication as to whether the offered assignment was temporary or permanent and her notice is vague in the absence of further clarifying documentation in the case record. In denying appellant's Form CA-7 claims on January 23, 2018 and affirming the denial on April 10, 2019, OWCP noted that on September 27, 2018 she was offered a "temporary light-duty assignment" by the employing establishment. The Board finds, however, that there is no documentation of record supporting the status of the offered assignment as temporary in nature.[9]

The case will therefore be remanded for OWCP to obtain information from the employing establishment as to whether it had offered appellant a temporary modified-duty position in accordance with 20 C.F.R. § 10.500(a) and, if not, it should determine whether she has met her

[7] 20 C.F.R. § 10.500(a); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Job Offers and Return to Work*, Chapter 2.814.9a (June 2013).

[8] *Id.* at Chapter 2.814.9b (June 2013).

[9] *See generally, C.W.*, Docket No. 18-1779 (issued May 6, 2019).

burden of proof to establish that she was totally disabled for the period October 5 through 26, 2018 causally related to her accepted April 11, 2018 employment injury. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision as to whether she was entitled to the claimed wage-loss compensation.

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the April 10, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 30, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board