

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

S.F., Appellant)	
)	
and)	Docket No. 19-1735
)	Issued: March 12, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Glen Ellyn, IL, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 16, 2019 appellant filed a timely appeal from a July 31, 2019 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

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the July 31, 2019 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 evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a recurrence of total disability for the period commencing October 19, 2018 causally related to her accepted September 30, 2017 employment injury.

FACTUAL HISTORY

On October 10, 2017 appellant, then a 41-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on September 30, 2017 she sustained a low back strain when a vehicle rear-ended her mail truck while in the performance of duty. On the reverse side of the claim form, the employing establishment noted that she stopped work on September 30, 2017 and returned to work on October 10, 2017. On November 29, 2017 OWCP accepted the claim for strain of muscle, fascia, and tendon of the lower back. Appellant stopped work again in December 2017 as no work was available within her restrictions. OWCP paid her intermittent wage-loss compensation on the supplemental rolls from December 8, 2017 through June 30, 2018.

Appellant returned to full-time, limited-duty work on June 25, 2018. No limited-duty job offer appears of record.³

An October 18, 2018 duty status report (Form CA-17) by Dr. Goldvekht noted that appellant was injured on September 30, 2017 and indicated that his October 12, 2017 report should be referenced for details of her injury. He noted her current diagnoses of C5 and L5 facet syndrome, which he indicated were due to her employment injury. Dr. Goldvekht noted that appellant was unable to resume work. In an accompanying October 18, 2018 disability status report, he indicated that she was seen for the conditions of cervical facetogenic pain, thoracic facetogenic pain, and lumbar facetogenic pain. Dr. Goldvekht placed appellant on total temporary disability from work until her next follow-up appointment.

OWCP also received a Form CA-17 from Dr. Goldvekht dated December 18, 2018 which noted that appellant was seen for C5 and L5 facet syndrome and referred to the prior report dated December 13, 2018. In an accompanying December 13, 2018 disability status report, Dr. Goldvekht noted that she was seen for cervical facetogenic pain, thoracic facetogenic pain, and lumbar facetogenic pain and that she was placed on total temporary disability from work.

On May 7, 2019 appellant filed a claim for compensation (Form CA-7) claiming disability for the period October 19, 2018 to February 1, 2019.

In a May 13, 2019 development letter, OWCP advised appellant that the evidence of record was insufficient to establish her recurrence claim. It advised her that if she was claiming disability due to a worsening of her accepted work-related condition, her physician must submit a narrative

³ In a September 20, 2018 report, Dr. Aleksandr Goldvekht, Board-certified in physical medicine and rehabilitation, diagnosed cervical facetogenic pain, thoracic facetogenic pain, and lumbar facetogenic pain. He related that appellant could return to work with the restrictions of no lifting, carrying, pushing, or pulling over 20 pounds, limited bending, twisting, turning, stooping, and climbing, and no sitting or walking more than two continuous hours at a time or as needed.

report which included a history of injury and an explanation supported by objective findings as to how her condition had worsened such that she was no longer able to perform her light-duty position. OWCP afforded appellant 30 days for a response.

An OWCP memorandum dated June 10, 2019 provided CA-110 notes regarding a telephone call with appellant wherein she advised OWCP that she had not returned to work after October 18, 2018 and had resigned effective March 3, 2019 due to her employment-related disability.

On June 14, 2019 OWCP received an illegible medical document.

By decision dated July 31, 2019, OWCP denied appellant's recurrence claim.

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 so that they exceed his or her established physical limitations.⁵

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 to show that he or she cannot 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.⁶ This burden of proof 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, for each period of disability claimed, the disabling condition is causally related to the employment injury, and supports that conclusion with medical reasoning.⁷ Where no such rationale is present, the medical evidence is of diminished probative value.⁸

⁴ 20 C.F.R. § 10.5(x); *see Theresa L. Andrews*, 55 ECAB 719 (2004).

⁵ *Id.*

⁶ *J.B.*, Docket Nos. 18-1752, 19-0792 (issued May 6, 2019).

⁷ *H.T.*, Docket No. 17-0209 (issued February 8, 2019); *Ronald A. Eldridge*, 53 ECAB 218 (2001).

⁸ *E.M.*, Docket No. 19-0251 (issued May 16, 2019); *Mary A. Ceglia*, Docket No. 04-0113 (issued July 22, 2004).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a recurrence of total disability commencing October 19, 2018 and continuing causally related to the accepted September 30, 2017 employment injury.

Appellant has not alleged a change in her light-duty job requirements. Instead, she attributed her inability to work to a change in the nature and extent of her employment-related conditions. Appellant therefore has the burden of proof to provide medical evidence to establish that she was disabled due to a worsening of her accepted work-related condition.⁹

Dr. Goldvekht's October 18, 2018 disability status report noted that appellant was seen for cervical facetogenic pain, thoracic facetogenic pain, and lumbar facetogenic pain and indicated that he placed her on total temporary disability from work until her next follow-up appointment. He did not provide an opinion regarding the cause of her period of disability. Medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.¹⁰ Appellant also submitted Dr. Goldvekht's October 18 and December 18, 2018 Form CA-17 reports wherein he noted that she was injured on September 30, 2017. Dr. Goldvekht diagnosed C5 and L5 facet syndrome, which he indicated that was due to her employment injury. He did not support his opinion regarding causal relationship with objective findings and medical rationale explaining how the September 30, 2017 employment injury caused the claimed disability. Dr. Goldvekht's opinion is therefore insufficient to establish appellant's claim.¹¹

The illegible document received on June 14, 2019 does not constitute probative medical evidence as it does not establish that the author is a physician.¹²

Because appellant has not submitted sufficient medical evidence to establish that she was unable to work beginning October 19, 2018 and continuing due to a spontaneous change or worsening of her accepted September 30, 2017 employment-related condition, the Board finds that she has not met her burden of proof in this case.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.

⁹ See *J.P.*, Docket No. 18-1396 (issued January 23, 2020).

¹⁰ *L.O.*, Docket No. 19-0953 (issued October 7, 2019).

¹¹ See *J.M.*, Docket No. 16-0306 (issued May 5, 2016).

¹² See *C.S.*, Docket No. 18-1633 (issued December 30, 2019); see also *K.C.*, Docket No. 18-1330 (issued March 11, 2019).

¹³ See *J.P.*, Docket No. 18-1396 (issued January 23, 2020).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a recurrence of total disability for the period commencing October 19, 2018 causally related to her accepted September 30, 2017 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the July 31, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 12, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board