United States Department of Labor
Employees' Compensation Appeals Board

A.H., Appellant	)	
and	)	**Docket No. 20-1211**
	)	**Issued: April 30, 2021**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, New York, NY, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On May 26, 2020 appellant filed a timely appeal from a January 16, 2020 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.[2]

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the January 16, 2020 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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a recurrence of disability, commencing September 28, 2019, causally related to the accepted November 30, 1989 employment injury.

FACTUAL HISTORY

On December 18, 1989 appellant, then a 45-year-old postal distribution clerk, filed a traumatic injury claim (Form CA-1) alleging that on November 30, 1989 she sustained shoulder, back, and leg injuries when a coworker accidentally pulled the chair she was sitting in out from under her. OWCP accepted the claim for lumbago, bilateral ankle sprain, right leg strain, left shoulder strain, and lumbar and lumbosacral strains. Appellant stopped work on the date of injury and returned to a modified job working four hours per day on December 29, 1990, which was subsequently increased to six hours per day on July 13, 2005.[3] OWCP paid her wage-loss compensation on the periodic rolls and the supplemental rolls.[4]

On October 2, 2019 appellant filed a notice of recurrence (Form CA-2a) alleging that she sustained a recurrence of disability on September 27, 2019, with wage-loss commencing September 28, 2019. She related that she had been confined to a wheelchair following the work injury, that getting up to use the restroom caused back pain, and that her constant back pain had worsened.

In support of her recurrence claim, appellant submitted a return-to-work form dated September 28, 2019 from Dr. Yu-Shiuan Sun, a physician specializing in family medicine, who certified that appellant was disabled from work due to back pain. He released her to return to work on October 14, 2019.

In an October 12, 2019 return-to-work form, Dr. Sun noted that appellant had lower back pain and noted an October 28, 2019 return-to-work date. On October 23, 2019 he completed another return-to-work form and indicated that appellant was disabled due to lower back and lower extremity pain and that she could return to work on November 18, 2019.

By development letter dated November 6, 2019, OWCP noted receipt of appellant's claim for a recurrence of disability due to a material change/worsening of the accepted work-related condition. It also noted that she returned to part-time limited-duty work following her original injury and continued to work until October 7, 2019, when she stopped work. OWCP related that it appeared that appellant was claiming a material worsening/change of her accepted conditions and it provided a definition of a recurrence of disability. Appellant was advised that she should submit a narrative medical report from her physician that addressed why she could not perform

[3] In OWCP File No. xxxxxx971, OWCP accepted that appellant sustained a cervical and lumbosacral ligament sprains on October 19, 1998. OWCP File No. xxxxxx971 has been administratively combined with OWCP File No. xxxxxx535, with the former serving as the master file. No medical development has occurred under OWCP File No. xxxxxx971 since 2007.

[4] OWCP issued a loss of wage-earning capacity (LWEC) determination on May 2, 2006, based upon appellant's actual earnings. In a February 4, 2011 decision, it found that she had met one of the criteria for modifying an LWEC, as the original determination was based on a makeshift or odd lot job and was, therefore, issued in error.

her work duties, based upon objective medical findings, and why her current disability was causally related to the accepted employment injury. She was afforded 30 days to submit the necessary evidence.

On December 23, 2019 appellant filed a Form CA-2a for a recurrence of disability, alleging that she had stopped work on December 12, 2019 due to the accepted November 30, 1989 employment injury.

In a letter dated January 9, 2020, Victoria Nunez, a social worker, related that appellant had been admitted to a rehabilitation facility on December 28, 2019.

By decision dated January 16, 2020, 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 has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[5] This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to her 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 the established physical limitations.[6]

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, 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.[7] This burden 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. Where no such rationale is present, the medical evidence is of diminished probative value.[8]

[5] 20 C.F.R. § 10.5(x); *F.D.*, Docket No. 19-1637 (issued February 25, 2021); *S.W.*, Docket No. 18-1489 (issued June 25, 2019).

[6] *Id.*

[7] *K.F.*, Docket No. 19-1846 (issued November 3, 2020) *H.T.*, Docket No. 17-0209 (issued February 8, 2019); *Ronald A. Eldridge*, 53 ECAB 218 (2001).

[8] *A.M.*, Docket No. 19-1870 (issued February 10, 2021); *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 disability, commencing September 28, 2019, causally related to the accepted November 30, 1989 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 from work due to a worsening of her accepted work-related condition.[9]

In support of her claim, appellant submitted return-to-work forms dated September 28, October 12 and 23, 2019 from Dr. Sun diagnosing lower back and lower extremity pain. Read together these forms indicated that appellant was totally disabled from work until November 18, 2019. Although Dr. Sun opined that appellant was totally disabled from work, his opinion was conclusory in nature and failed to explain how the accepted back and lower extremity conditions were responsible for appellant's claimed disability and why she could not perform her limited-duty assignment during the period claimed.[10] OWCP advised appellant in the development letter dated November 6, 2019 that she should submit a narrative report from her treating physician, which explained why she was disabled based upon objective medical findings and which explained why her current condition was a worsening of her accepted employment-related conditions. The reports OWCP received from Dr. Sun merely related that appellant could not return to work due to back and lower extremity pain.[11] Moreover, Dr. Sun did not address whether appellant's current condition was a material worsening of her accepted employment conditions. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's disability is of no probative value on the issue of causal relationship.[12] Therefore, these form notes are insufficient to establish appellant's recurrence of disability claim.

The Board also notes that OWCP received a letter from a social worker dated January 9, 2020, which related that appellant had been admitted to a short-term rehabilitation facility. However, a social worker is not considered a physician as defined by FECA. Therefore, her report does not constitute competent medical opinion evidence regarding the issue of disability and is insufficient to establish the claim.[13]

As none of the medical evidence of record contains a rationalized medical explanation establishing a recurrence of disability, commencing September 28, 2019, causally related to the

[9] *See K.F.*, Docket No. 19-1846 (issued November 4, 2020); *J.P.*, Docket No. 18-1396 (issued January 23, 2020).

[10] *See S.K.* Docket No. 18-1537 (issued June 20, 2019).

[11] Pain is a symptom, not a medical diagnosis. *I.M.*, Docket No. 19-1038 (issued January 23, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020).

[12] *I.M.*, Docket No. 20-0980 (issued February 2, 2021); *See L.B.*, Docket No. 18-0533 (issued August 27, 2018).

[13] Section 8101(2) of FECA provides that physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2). *See C.A.*, Docket No. 18-0824 (issued November 15, 2018).

accepted November 30, 1989 employment injury, the Board finds that appellant 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 September 28, 2019, causally related to the accepted November 30, 1989 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the January 16, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 30, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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