United States Department of Labor
Employees' Compensation Appeals Board

P.E., Appellant	)	
and	)	**Docket No. 15-334**
	)	**Issued: May 18, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Loganport, IN, Employer	)	

Appearances:
Joseph E. Allman, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 26, 2014 appellant, through counsel, filed a timely appeal from a May 30, 2014 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.

ISSUES

The issues are: (1) whether appellant established complex regional pain (CRPS) syndrome of the left foot and ankle due to employment factors; and (2) whether appellant sustained a recurrence of disability on and after November 2, 2010 causally related to an accepted January 13, 2010 occupational injury.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This is the second appeal before the Board in this case. By decision issued October 10, 2012,[2] the Board found that appellant had not established a recurrence of disability beginning November 2, 2010 causally related to the accepted bilateral knee and leg contusions which she sustained in a January 13, 2010 occupational motor vehicle accident. The Board further found that appellant had not established CRPS of the left foot and ankle related to the accepted contusions. The law and the facts of the case as set forth in the Board's prior decision are incorporated by reference.

By letter dated October 2, 2013, appellant, through counsel, requested reconsideration. He asserted that the January 13, 2010 motor vehicle accident caused CRPS also known as reflex sympathetic dystrophy syndrome (RSDS). Counsel submitted additional medical evidence.

Dr. Julian Ungar-Sargon, an attending Board-certified neurologist, provided a June 26, 2013 report noting that clinical findings and electrodiagnostic studies supported that appellant "developed CRPS due to repetitive trauma." He opined that there was a "direct causal relationship between the patient's complaints, her injuries, the repetitive stress to her lower extremities and the direct causal relationship between that and CRPS." Dr. Ungar-Sargon noted that appellant functioned "fully and normally" until the January 13, 2010 accident "which resulted in CRPS."

Dr. Michael Mull, an attending Board-certified family practitioner, provided a September 15, 2013 report summarizing his treatment of appellant beginning January 14, 2010. He noted that appellant developed redness, hyperesthesia, and difficulty with heat and cold tolerance in the left lower leg. Dr. Mull explained that complex regional pain syndrome was a "mysterious" condition of unknown etiology. He also opined that the January 13, 2010 motor vehicle accident caused CRPS because appellant was asymptomatic prior to the accident.

In an October 9, 2013 report, Dr. Mull noted that CRPS was a diagnosis of exclusion, based on physical findings and test results excluding other conditions. He opined that based on appellant's clinical presentation, subjective complaints, and objective rapid changes in skin color and temperature in the left leg, appellant had severe Type 1 CRPS, "directly causally related from her injury to her leg suffered while delivering the mail on January 13, 2010." Dr. Mull explained that Type 1 CRPS could arise at any time after trauma and may not appear directly related to it. "There was no intervening separate injury or problem that caused her continuing problem after this. Dr. Mull noted that appellant was able to return to work on light duty following the January 13, 2010 injury, but became totally disabled on an unspecified date. He opined that appellant was currently disabled for work due to CRPS, anxiety, depression, and the side effects of prescription pain medications.

By decision dated May 30, 2014, OWCP denied modification, finding that the additional evidence submitted did not support that the accepted injuries resulted in CRPS or RSDS. It

[2] Docket No. 12-662 (issued October 10, 2012). Appellant, a then 49-year-old rural mail carrier, filed a claim for recurrence of disability due to her accepted bilateral knee and lower leg contusion which she experienced when her delivery vehicle was struck by a truck. OWCP accepted these conditions.

found that neither Dr. Ungar-Sargon nor Dr. Mull presented sufficient medical rationale to establish a causal relationship between the accepted injuries and the claimed neurologic conditions. OWCP further found that the medical evidence did not support a spontaneous worsening of the accepted lower extremity contusions as of November 2, 2010. According to evidence submitted on the first appeal, Dr. Ungar-Sargon renewed work restrictions on October 23, 2010 but did not find a worsening of the accepted injuries.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA has the burden of establishing 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 filed within the applicable time limitation; that an injury was sustained while 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.[3] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[4]

An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift.[5] To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.

The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medial certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[6]

[3] *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

[5] 20 C.F.R. § 10.5(q).

[6] *Solomon Polen*, 51 ECAB 341 (2000).

ANALYSIS -- ISSUE 1

Appellant claimed that she sustained CRPS of the left foot and ankle due to accepted left knee and lower leg contusions sustained in a January 13, 2010 motor vehicle accident. OWCP denied appellant's claim for CRPS by decision dated January 26, 2011, affirmed by OWCP's Branch of Hearing and Review on August 5, 2011.

By decision and order issued October 1, 2012, the Board affirmed the hearing representative's August 5, 2011 decision, finding that appellant's physicians had not provided adequate medical rationale explaining how and why the accepted injuries would progress into a neurologic condition.

Counsel requested reconsideration on October 2, 2013 and submitted additional medical evidence. OWCP denied modification by decision dated May 30, 2014, finding that the new medical evidence did not contain sufficient medical rationale explaining how and why the accepted injuries would cause CRPS.

In support of his request for reconsideration, counsel submitted new medical reports from attending physicians Dr. Ungar-Sargon, a Board-certified neurologist, and Dr. Mull, a Board-certified family practitioner. Both physicians opined that the January 13, 2010 motor vehicle accident caused CRPS because appellant was asymptomatic prior to that time. In his October 9, 2013 letter, Dr. Mull noted that Type 1 CRPS could arise at any time after trauma. However, the Board has held repeatedly that a temporal relationship alone is insufficient to establish causal relationship.[7] The occurrence of CRPS after the accepted injuries is inadequate on its own to prove a pathophysiologic connection between the two.

An additional difficulty in establishing causal relationship between the claimed condition and the accepted injuries is that both physicians attributed appellant's CRPS to unknown factors or to causes not accepted by OWCP. Dr. Mull acknowledged that CRPS was a "mysterious" condition of uncertain etiology, diagnosed by excluding other conditions. Dr. Ungar-Sargon attributed CRPS to a history of "repetitive trauma" and "repetitive stress to her lower extremities," factors not accepted by OWCP.

These remarks cast additional doubt on a causal relationship between the January 13, 2010 injuries and CRPS. Under these circumstances, the Board finds that the additional medical evidence submitted on reconsideration is insufficient to meet appellant's burden of proof. Therefore, OWCP's May 30, 2014 decision denying appellant's claim for CRPS was proper under the law and facts of the case.

On appeal, counsel contends that OWCP erred by referring to the accepted injuries as affecting only appellant's knees, whereas OWCP also accepted bilateral lower leg contusions. He hypothesized that OWCP mistakenly denied appellant's occupational disease claim because it affected the left foot and ankle and not the left knee. The Board notes, however, that OWCP was well aware of the accepted conditions, stating in the May 30, 2014 decision that it accepted "contusion of the knee and lower leg, bilateral." Counsel also contended that Dr. Ungar-Sargon

[7] *Louis R. Blair, Jr.*, 54 ECAB 348 (2003).

provided sufficient medical rationale to establish that appellant sustained CRPS due to the accepted injuries, as he based his opinion on clinical examinations and diagnostic studies. However, the issue is not whether the condition was clinically present, but whether it was related to the accepted injuries. As stated above, Dr. Mull and Dr. Ungar-Sargon did not provide sufficient rationale supporting causal relationship.

LEGAL PRECEDENT -- ISSUE 2

OWCP's implementing regulations define a recurrence of disability as "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."[8] When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden 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 light duty. 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 light-duty job requirements such that the position exceeds the employee's physical limitations.[9] An award of compensation may not be based on surmise, conjecture or speculation or on appellant's unsupported belief of causal relation.[10]

ANALYSIS -- ISSUE 2

Following the accepted January 13, 2010 injuries, appellant returned to light-duty work. She stopped work on November 2, 2010 and did not return. OWCP interpreted appellant's claims for wage loss as a claim for a recurrence of disability while on light duty. It denied the recurrence by decision dated January 26, 2011, affirmed by OWCP's Branch of Hearings and Review on August 5, 2011. The Board affirmed this denial in its October 10, 2012 decision and order.

Counsel submitted additional evidence from Dr. Mull, an attending Board-certified family practitioner, regarding the alleged recurrence of disability. In September 15 and October 9, 2013 letters, Dr. Mull noted that appellant was able to return to light-duty work following the January 13, 2010 motor vehicle accident. Appellant then became totally disabled on an unspecified date and remained disabled due to CRPS, anxiety, depression, and medication side effects. However, Dr. Mull did not opine that the accepted injuries worsened on November 2, 2010 such that appellant was unable to perform her light-duty job. Dr. Ungar-Sargon, an attending Board-certified neurologist, did not address the claimed recurrence of disability in his September 26, 2013 letter. Neither physician provided medical reasoning

[8] 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2(b) (June 2013). *See also Philip L. Barnes*, 55 ECAB 426 (2004).

[9] *J. F.*, 58 ECAB 124 (2006); *Carl C. Graci*, 50 ECAB 557 (1999); *Mary G. Allen*, 50 ECAB 103 (1998); *see also Terry R. Hedman*, 38 ECAB 222 (1986).

[10] *Alfredo Rodriguez*, 47 ECAB 437 (1996).

supporting a change in the nature and extent of the accepted bilateral knee and lower leg contusions on or about November 2, 2010 such that she could no longer work. In the absence of such opinion, appellant did not meet her burden of proof to establish the claimed recurrence of disability. The Board therefore finds that OWCP's May 30, 2014 decision denying the recurrence claim was proper under the law and facts of the case.

On appeal, counsel asserts that OWCP should have accepted the claimed recurrence of disability because Dr. Mull and Dr. Ungar-Sargon both supported a causal relationship between CRPS and the accepted injuries. However, OWCP did not accept CRPS as related to the accepted injuries. Also, neither physician opined that the accepted injuries worsened on November 2, 2010, such that appellant was disabled for work.

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 established CRPS/RSDS of the left foot and ankle. The Board further finds that appellant has not established disability for work on and after November 2, 2010 causally related to the accepted January 13, 2010 occupational injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 30, 2014 is affirmed.

Issued: May 18, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board