United States Department of Labor
Employees' Compensation Appeals Board

A.B., Appellant **and** **U.S. POSTAL SERVICE, PROCESSING & DELIVERY CENTER, Charleston, WV, Employer**	)))))))))	**Docket No. 17-0223** **Issued: July 7, 2017**

Appearances:
Appellant, pro se
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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On November 28, 2016 appellant filed a timely appeal from an October 31, 2016 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 met her burden of proof to establish a recurrence of disability commencing August 17, 2016 causally related to the August 20, 2014 accepted employment injury.

On appeal appellant contends that she attempted to return to work, but was unable to perform her assigned work duties.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 21, 2014 appellant, then a 36-year-old laborer-maintenance mechanic, filed a traumatic injury claim (Form CA-1) alleging that on August 20, 2014 she was struck in the nose/face area by a lever of a manual battery hoist. She stopped work on August 20, 2014 and returned to full-time, light-duty work on September 28, 2014. OWCP accepted appellant's claim for contusions of the face, scalp, and neck, sprain of neck, sprain of right shoulder and upper arm, and sprain of the lumbar region of the back. Preexisting or concurrent medical conditions included left ankle sprain, right knee subluxation, multilevel thoracic spondylosis, multilevel lumbar degenerative disc disease and facet atrophy, bilateral sacroiliac degenerative joint disease, posterior cervical disc herniation at C5-6, multilevel cervical neural foraminal stenosis, and acromioclavicular joint arthritis.

Appellant stopped work again on November 18, 2014. On December 1, 2014 she filed a recurrence of disability claim (Form CA-2a) alleging a recurrence of her August 20, 2014 injury commencing November 18, 2014.

On December 22, 2014 OWCP received a December 17, 2014 report from appellant's treating physician, Dr. H.S. Ramesh, Board-certified in pain medicine. Dr. Ramesh related that appellant's nose, neck and right shoulder pain, as well as her right upper extremity numbness, had increased since her last visit due to "flare up." He also related that her back pain had decreased. Dr. Ramesh requested authorization for cervical and lumbar facet joint injections. He recommended that appellant return to work on December 18, 2014 performing light, modified duties.

A statement of accepted facts (SOAF) dated January 22, 2015 noted that appellant had not returned to work after her alleged November 18, 2014 recurrence of disability.[2]

OWCP referred appellant to Dr. Paul Bachwitt, a Board-certified orthopedic surgeon to determine appellant's disability status. In a report dated March 3, 2015, Dr. Bachwitt noted appellant's history of injury and history of medical treatment. He also provided extensive examination findings. Dr. Bachwitt diagnosed cervical sprain/strain, right shoulder sprain/strain with a supraspinatus tear, and a lumbar sprain/strain, all related to appellant's August 20, 2014 employment injury. He concluded that appellant had not reached maximum medical improvement and should be allowed to see an orthopedic surgeon for her right shoulder condition. Dr. Bachwitt also concluded that she could perform light-duty work until she saw an orthopedic surgeon.

On July 22, 2015 appellant underwent the following approved procedures: (1) right shoulder arthroscopy with subacromial decompression; (2) bursectomy; and (3) limited intra-articular debridement of partial thickness rotator cuff tear.

In an October 23, 2015 work capacity evaluation, Dr. John Pierson, appellant's treating Board-certified orthopedic surgeon, indicated that appellant was unable to perform her job duties

[2] By decision dated October 5, 2016, OWCP accepted appellant's claim for a recurrence of disability effective November 18, 2014. It apologized that a formal decision had not been previously rendered.

until December 3, 2015 due to an incomplete rotator cuff tear or rupture and impingement syndrome.

On November 6, 2015 OWCP referred appellant to Dr. Saghir R. Mir, a Board-certified orthopedic surgeon, for a second opinion regarding appellant's disability status. In his November 23, 2015 report, Dr. Mir diagnosed cervical strain with mild disc protrusion at C5-6 level; and postoperative rotator cuff debridement and subacromial decompression. He opined that there was a direct causation between her symptoms and the work-related injury of August 20, 2014. Dr. Mir noted that appellant still had residuals from her injury, but was capable of modified work, with no lifting or pushing over 20 pounds. He also noted that she should not perform over the shoulder activity for more than one hour. Dr. Mir indicated that appellant would be able to resume full-duty work on January 2, 2016. He opined that appellant had reached maximum medical improvement, but should be allowed to finish her physical therapy. Dr. Mir noted that she did have some functional or psychological overlay as well.

In a January 13, 2016 report, Dr. Pierson diagnosed impingement syndrome of the right shoulder and incomplete rotator cuff tear or rupture of right shoulder (not specified as traumatic). He recommended that she continue physical therapy and he noted that appellant had been given a right shoulder corticosteroid injection. Dr. Pierson noted that appellant was not yet at maximum medical improvement. He indicated that she could return to some sort of light-duty work, but that appellant was not able to return to full duty with her right upper extremity at that time. Dr. Pierson indicated in a work capacity evaluation that appellant could not perform reaching, pushing, pulling, lifting, squatting, or kneeling. He also noted that she could not perform repetitive movements with her wrists and elbows.

By letter dated February 22, 2016, OWCP referred appellant to Dr. A.E. Landis, a Board-certified orthopedic surgeon, for an impartial medical examination. It noted that there was a conflict between the second opinion physician and appellant's treating physicians as to whether appellant had disabling residuals from the accepted August 20, 2014 injury. OWCP directed Dr. Landis to assess appellant's need for further medical treatment as well as her disability status/work restrictions from the August 20, 2014 injury.

In a March 22, 2016 report, Dr. Landis stated that, based on his review of appellant's history of injury and the medical records available for review, appellant had sustained a facial contusion and mild concussion, which had resolved without the need for any further treatment. He indicated that her subjective complaints were in excess of the objective findings, which are primarily the result of underlying degenerative arthritic changes in the cervical spine and lumbar spine. Dr. Landis opined that appellant had reached maximum medical improvement from her injury. He stated that the only treatment that appellant required was ongoing use of nonsteroidal anti-inflammatory medication and mild analgesics. Dr. Landis noted that appellant might benefit from a corticosteroid injection. He opined that she could return to full modified duty at the employing establishment and he would rate her physical demand level (PDL), based on his examination, at a light level and noted that her capacity might improve in the future to medium PDL. In a March 28, 2016 work capacity evaluation, Dr. Landis indicated that appellant was limited to one to two hours of sitting, walking, standing, reaching, twisting, bending and stooping. He also limited her to pushing, pulling, and lifting 5 to 10 pounds with her right upper extremity.

The employing establishment offered appellant a limited-duty assignment as a modified laborer/custodian effective June 17, 2016. The duties of the position were listed as "manual letter cases." The position required appellant to work four hours a day. The physical requirements of the modified assignment were: intermittent sitting and walking, standing up to two hours per day, intermittent reaching above shoulder, twisting, bending/stooping, and lifting/pushing/pulling up to 10 pounds with right side.

By letter dated June 14, 2016, OWCP informed appellant that the duties and physical requirements of the offered position were in accordance with her medical limitations as set forth by the impartial medical examiner. It provided her 30 days to accept the position without penalty or provide a written explanation of her reasons for failing to accept the position. On August 4, 2016 OWCP informed appellant that it had received notice that she continued to refuse to accept or report to the offered position, that the reasons provided for refusing to accept the position were not valid, and that the employing establishment advised that the position remained available to her. It afforded her 15 additional days to report to the position and advised her that, if she did not accept and report to the position during the allotted period, her entitlement to wage-loss and schedule award benefits would be terminated.

On August 13, 2016 appellant returned to work part-time limited-duty and on August 16, 2016 she officially accepted the suitable work position.

Appellant was seen on August 20, 2016 at the Urgent Care Center for cervical and lumbar pain following an injury while on the job. Dr. Daniel Smith, a physician Board-certified in family medicine, indicated in handwritten notes that appellant stated that she missed work for the past three days due to pain in her neck, back, and right shoulder, and that this pain was in the same areas as before and was aggravated by work. He excused appellant from work from August 18 to 21, 2016 due to pain. In an August 21, 2016 work capacity evaluation, Dr. Michael H. Chancey indicated that appellant could work sedentary duty for four hours a day, with limitations of pushing, pulling, and lifting 10 pounds.

In an August 22, 2016 memorandum, an employing establishment human resource manager, stated that appellant returned to work for part of the day on August 13, 2016, worked a few days for approximately one and one-half hours each, called in for a couple of days, and went to the doctor on August 20 and 21, 2016. She indicated that it was her opinion that appellant could still perform the limited-duty job offer as long as she did not walk more than one hour.

By letter dated August 29, 2016, appellant stated that, due to fear of losing income and health insurance for herself and her son, she attempted to work a modified-duty assignment. However, after attempting to perform this work, she could not continue. Appellant alleged that in order to perform this work, she was required to twist and lift at the waist practically the entire time, and was also required to lean and reach slightly below her waist and to a full stretch above her shoulder. She stated that she underwent surgery on July 22, 2015 and was unable to do the twisting and reaching, so she was constantly standing up, bending down, and stepping in the direction she needed to twist, bend or reach. Appellant also submitted a copy of a letter she wrote to the human resources manager contending that the position was not within her doctor's restrictions. She alleged that, after two hours of trying to perform her modified job, she was in so much pain that she should not stand or sit straight.

On September 8, 2016 appellant filed a recurrence of disability claim (Form CA-2a) alleging a recurrence commencing August 17, 2016 due to the accepted August 20, 2014 injury. She indicated that the amount of pain drastically increased with her work, and the longer she worked, the more she was in pain and the less the pain medication helped. Appellant contended that after working she would be incapacitated for the next one to two days. She alleged that the way she was required to sit and stand at work would immediately aggravate her injury to her back, along with the repetitive movements of twisting, turning, reaching, carrying, and looking up and down.

By letter dated September 9, 2016, OWCP indicated that appellant must submit further information in support of her recurrence claim. It afforded her 30 days to submit this information.

By decision dated October 31, 2016, OWCP denied appellant's claim for a recurrence of disability commencing August 17, 2016. It determined that the evidence of record was insufficient to establish the basis of her 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 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.[3]

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 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.[4] To show a change in the degree of the work-related injury or condition, the claimant must submit rationalized medical evidence documenting such change and explaining how or why the accepted injury or condition disabled the claimant from work on and after the date of the alleged recurrence of disability.[5]

OWCP procedures recognize that, if an alleged recurrence occurs less than 90 days after a return to light or full duty, the claimant is not required to produce the same evidence as for a

[3] *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).

[4] *Albert C. Brown,* 52 ECAB 152, 154-55 (2000); *Barry C. Petterson,* 52 ECAB 120 (2000); *Terry R. Hedman,* 38 ECAB 222, 227 (1986).

[5] *James H. Botts,* 50 ECAB 265 (1999).

recurrence claimed long after apparent recovery and return to work. Therefore, in cases where recurring disability for work is claimed within 90 days or less from the first return to duty, the focus is on disability rather than causal relationship.[6] The attending physician should describe the duties which the employee cannot perform and the demonstrated objective medical findings that form the basis for the renewed disability for work.[7]

ANALYSIS

OWCP accepted that appellant sustained a contusion of the face, scalp, and neck, sprain of the neck, sprain of right shoulder and upper arm, and sprain of the lumbar region of the back causally related to the August 20, 2014 employment accident. On July 22, 2015 appellant underwent a right shoulder arthroscopy and subacromial decompression, bursectomy, and limited intra-articular debridement of partial thickness rotator cuff tear.

Appellant's treating physicians included Dr. Pierson, who noted in an October 23, 2015 work capacity evaluation that appellant was unable to perform all job duties until December 3, 2015 due to an incomplete rotator cuff tear or rupture and impingement syndrome. OWCP referred appellant to a second opinion physician, Dr. Mir, who noted in a November 23, 2015 report that appellant was capable of light-duty work. In a January 13, 2016 report, Dr. Pierson also indicated that appellant as able to perform light-duty work, but with greater restrictions than those set by Dr. Mir. OWCP referred appellant to Dr. Landis for an impartial medical examination. Dr. Landis, in his March 22, 2016 report, indicated that appellant could return to full modified-duty work at the employing establishment. Dr. Landis placed limitations on appellant of one to two hours of sitting, walking, standing, reaching, twisting, bending, and stooping. He indicated that appellant could push, pull, and lift from 5 to 10 pounds.

The employing establishment made a job offer to appellant for a modified assignment effective June 17, 2016. The position was crafted to be within the restrictions set by Dr. Landis and required intermittent sitting and walking, standing up to two hours a day, intermittent reaching above the shoulder, twisting, bending, and stooping up to two hours a day, and intermittent lifting/pushing/pulling up to 10 pounds with right upper extremity. OWCP determined that the duties of the position were within the restrictions as set forth by the impartial medical examiner, and provided appellant with proper notice to accept the position.

Appellant returned to limited-duty work on August 13, 2016. She worked several of hours a day for several days, but stopped work completely on or about August 17, 2016. Appellant alleged a recurrence of disability, commencing August 17, 2016. She indicated that the amount of her pain increased dramatically with her work duties.

The Board finds that there is no credible evidence of record, which substantiates that appellant experienced a change in the nature and extent of the light-duty requirements or was

---

[6] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5(a) (June 2013). *See also J.S.,* Docket No. 16-0922 (issued September 22, 2016).

[7] *B.E.*, Docket No. 16-1480 (issued March22, 2017).

required to perform duties which exceeded the medical restrictions set by the impartial medical examiner.[8]

In support of her recurrence claim, appellant submitted medical notes from an urgent care center. Dr. Smith excused appellant from work from August 18 to 21, 2016 due to pain. However, he did not provide a rationalized medical opinion describing the duties she could not perform, supported by demonstrated objective findings.[9] In an August 21, 2016 work capacity evaluation, Dr. Chancey indicated that appellant could work, but limited her to one hour of walking and four hours of sitting, repetitive movements with her wrists and elbows, and pushing/pulling/lifting limited to 10 pounds. He indicated that appellant could perform sedentary work. As Dr. Chancey's opinion supports that appellant could perform sedentary work within the restrictions of the modified-duty assignment, his report does not support a recurrence of disability.

The Board therefore also finds that appellant has not submitted objective evidence which demonstrates that she was unable to perform her light-duty work after August 13, 2016.[10]

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 August 17, 2016 causally related to the August 20, 2014 accepted employment injury.

[8] *Supra* note 3.

[9] *Supra* note 7.

[10] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 31, 2016 is affirmed.

Issued: July 7, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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