United States Department of Labor
Employees' Compensation Appeals Board

S.S., Appellant	)	
and	)	**Docket No. 10-540**
	)	**Issued: September 27, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Harrisburg, PA, Employer	)	

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 22, 2009 appellant filed a timely appeal from the November 12, 2009 merit decision of the Office of Workers' Compensation Programs denying her recurrence of total disability claim. Pursuant to 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 that she sustained a recurrence of total disability on or after February 19, 2009 due to her April 23, 2003 work injury.

FACTUAL HISTORY

The Office accepted that on April 23, 2003 appellant, then a 45-year-old mail processing clerk, sustained incomplete uterovaginal prolapse, urinary frequency, fecal incontinence, other bilateral ovarian dysfunction and changes in skin texture due to the constant pulling and pushing required by her job. On November 5, 2003 she underwent surgery consisting of vaginal hysterectomy, bilateral oophorectomy (surgical removal of ovaries), culdoplasty (surgical

procedure to remedy relaxation of the vagina) and anterior and posterior colporrhaphy (surgical repair of a defect in the vaginal wall) for symptomatic pelvic relaxation, cystocele/rectocele uterine prolapse and stress urinary incontinence. The surgical procedures were authorized by the Office.

Appellant returned to limited-duty work on January 6, 2004 and to regular-duty work on January 10, 2004. Beginning in June 2007 she reported to Dr. Margaret Hawn, an attending Board-certified gynecologist, that she had skin problems that were diagnosed as vulvar erythema and other conditions. Dr. Hawn told appellant that she did not know if her skin problems were related to the authorized surgery. Appellant also sought treatment from Dr. Christopher Moyer, an attending osteopath and Board-certified family practitioner, for urinary incontinence during the prior six months, specifically with activities, coughing, laughing or sneezing. Dr. Moyer diagnosed mixed urinary incontinence and placed her on medication.

On February 20, 2009 appellant filed a claim alleging that on February 19, 2009 she sustained a recurrence of total disability due to her April 23, 2003 work injury. She described the repetitive duties she performed on mail machines, including a barcode sorting machine and asserted that the required repetitive motion was putting her health at risk.

In a February 18, 2009 statement, appellant noted that from March 2004 to February 19, 2009 she worked in a training technician position that required minimal physical labor and she did not return to the job of delivery barcode sorter where she was injured. The employing establishment advised her that there was no work for her within her work restrictions.[1] In a March 6, 2009 statement, Pam Youch, a human resource management specialist for the employer, controverted appellant's recurrence of disability claim. She indicated that, after appellant submitted a December 23, 2003 note which returned her to regular-duty work, the employing establishment had not received further medical evidence to establish that she could not continue regular-duty work.

In a March 9, 2009 report, Dr. Moyer stated that appellant reported that she experienced urgency and frequency of urination, but was doing well with regard to her history of stress incontinence. Appellant stated that the employing establishment wanted her to go back to a job where she lifted heavy items and she felt this might cause problems with incontinence. On examination Dr. Moyer noted that she had some mild mobility of her urethra, bladder neck and bladder, but no stress incontinence. He stated:

> "It is possible that [appellant] may develop it again or develop problems. If she does start lifting heavy things and straining, I recommended to make sure [that] she does not develop constipation. I also told [appellant] to continue with Kegel exercises and no excessive heavy lifting."

In another March 9, 2009 report, Dr. Moyer advised that appellant was able to perform routine physical activity, but he was concerned that heavy lifting might aggravate her cystocele/rectocele hypermobility. He posited that if this aggravation took place her

[1] The record contains a January 29, 2009 letter indicating that appellant's position was being abolished effective March 6, 2009. Other documents explained the process for bidding on new jobs.

incontinence might return. Dr. Moyer restricted appellant from lifting more than 20 to 30 pounds. In a March 11, 2009 letter, the employing establishment asked him whether the restrictions he placed on her were to prevent an injury and/or recurrence of an injury? On March 11, 2009 Dr. Moyer checked "yes" in response to this question.

By letter dated April 27, 2009, the Office asked the employing establishment to provide a description of the job of training technician and the job appellant was offered in February 2009.

In May 5 and 6, 2009 statements, counsel asserted that in February 2009 the employing establishment required appellant to work on a barcode sorting machine, the same type of machine on which she worked when she originally was injured. Counsel asserted that the employer tricked Dr. Moyer into stating that appellant's work restrictions were prophylactic. In a May 8, 2009 letter, Ms. Youch provided a description of the training technician job, which indicated that such job required little physical effort. She stated that, in February 2009, appellant was offered a job that required heavy lifting of up to 70 pounds but that she could ask for help if a load was too heavy.

In a June 11, 2009 decision, the Office denied appellant's claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained a recurrence of total disability on or after February 19, 2009 due to her April 23, 2003 work injury. It found that Dr. Moyer's opinion was based on the fear of future injury rather than supporting a recurrence of total disability.

Appellant requested a review of the written record by an Office hearing representative. In a June 22, 2009 report, Dr. Moyer wrote that she "has a slight questionable recurrence of her stress incontinence, although I had problems reproducing it.... [Appellant] is also having urgency and frequency." He diagnosed mixed incontinence, but did not provide any statement about her ability to work.

In an August 6, 2009 report, Dr. Jeanne Larson, an attending Board-certified family practitioner, discussed the sling procedure appellant underwent at the same time as her hysterectomy in November 2003. She stated that the reason for the bladder sling surgery was that appellant's bladder had prolapsed together with her uterus in April 2003 following some very heavy and repetitive filing at work. The surgery gave appellant relief of her stress incontinence until June 2007. Dr. Larson stated:

> "Now, [appellant] has the stress incontinence symptoms again along with urinary urgency, which makes sense because the bladder sling surgery is not effective permanently but usually fails after a few years. Her current symptoms of stress urinary incontinence are thus directly related to the original injury which involved prolapse of the uterus as well as the bladder due to heavy lifting at work.
>
> "[Appellant] needs to have permanent restriction of lifting to 10 pounds maximum because of her bladder prolapse. In other words, the recurrence of her stress incontinence relates directly to the original work injury of 2003."

In a November 12, 2009 decision, the Office hearing representative affirmed the June 11, 2009 decision.

LEGAL PRECEDENT

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.[2] This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical rationale.[3] Where no such rationale is present, medical evidence is of diminished probative value.[4]

ANALYSIS

The Office accepted that on April 23, 2003 appellant sustained incomplete uterovaginal prolapse, urinary frequency, fecal incontinence, other bilateral ovarian dysfunction and changes in skin texture due to the constant pulling and pushing required by her job. On November 5, 2003 appellant underwent authorized surgery including a vaginal hysterectomy. She returned to limited-duty work on January 6, 2004 and to regular-duty work on January 10, 2004. Appellant stopped work on February 19, 2009 and filed a claim alleging that she sustained a recurrence of total disability commencing February 19, 2009 due to her April 23, 2003 work injury.

The Board finds that appellant did not submit sufficient medical evidence to establish that she sustained a recurrence of total disability on or after February 19, 2009 due to her April 23, 2003 work injury.

In a March 9, 2009 report, Dr. Moyer, an attending osteopath and Board-certified family practitioner, advised that appellant reported that she had urgency and frequency of urination, but that she was doing well with regard to her history of stress incontinence. Appellant told him that the employing establishment wanted her to go back to a job where she lifted heavy items and she believed that this might cause problems with incontinence.[5] Dr. Moyer noted on examination that she had some mild mobility of her urethra, bladder neck and bladder, but no stress incontinence. He advised that appellant was able to perform routine physical activity, but noted concern that heavy lifting might aggravate her cystocele/rectocele hypermobility. Dr. Moyer posited that, if such aggravation took place, her incontinence might return. He restricted appellant from lifting more than 20 to 30 pounds.

Although Dr. Moyer recommended work restrictions for appellant's work but the Board finds that his recommendations are based on the possibility of future injury than on establishing

[2] *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

[3] *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

[4] *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

[5] Appellant suggested that she had already returned to a more physically demanding job at the time she stopped work on February 12, 2009. However, a review of the record reveals that the move to another job was only a proposal at that point.

total disability for work as of February 19, 2009 due to residents of her accepted injury. It is well established that the possibility of future injury constitutes no basis for the payment of compensation.[6] Dr. Moyer was not able to observe stress incontinence during his examination or identify objective signs that any of the accepted conditions from April 23, 2003 caused a recurrence of total disability as of February 19, 2009. He later clarified that his work restrictions were prophylactic in nature. In a March 11, 2009 letter, the employing establishment asked Dr. Moyer, "Are the restrictions you placed on [appellant] to prevent an injury and/or recurrence of an injury?" On March 11, 2009 he responded "yes" to this question.[7] On June 22, 2009 Dr. Moyer again stated that he had problems reproducing stress incontinence on examination. His reports do not establish that appellant sustained a work-related recurrence of total disability as alleged.

In an August 6, 2009 report, Dr. Larson, an attending Board-certified family practitioner, discussed the sling procedure appellant underwent at the same time as her vaginal hysterectomy in November 2003. She stated that such sling procedures eventually fail and asserted that the surgery gave appellant relief of her stress incontinence up until around June 2007. Dr. Larson recommended a 10-pound lifting restriction and stated, "[Appellant's] current symptoms of stress urinary incontinence are thus directly related to the original injury which involved prolapse of the uterus as well as the bladder due to heavy lifting at work." Her opinion is of limited probative value on the relevant issue of the present case because she did not identify specific findings on examination and diagnostic testing to show that the sling surgery actually failed in appellant's case and that the accepted April 23, 2003 work injury caused total disability from work on or after February 19, 2009.[8]

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.[9] She failed to submit rationalized medical evidence establishing that her claimed recurrence of disability is causally related to the accepted employment injury and therefore the Office properly denied her claim for compensation.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a recurrence of total disability on or after February 19, 2009 due to her April 23, 2003 work injury.

[6] *Gaeten F. Valenza*, 39 ECAB 1349, 1356 (1988).

[7] While counsel asserted that Dr. Moyer was tricked into providing this answer, but he did not adequately explain the basis for this contention.

[8] On appeal, counsel argued that appellant's recurrence claim should be accepted because her type of prolapse condition never resolves itself. However, he did not identify rationalized medical evidence showing that any of the accepted April 23, 2003 conditions actually caused total disability on or after February 19, 2009.

[9] *See Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).

ORDER

IT IS HEREBY ORDERED THAT the November 12, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 27, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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