United States Department of Labor
Employees' Compensation Appeals Board

C.L., Appellant	)	
and	)	**Docket No. 10-2100**
	)	**Issued: June 7, 2011**
U.S. POSTAL SERVICE, POST OFFICE, San Francisco, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On August 17, 2010 appellant filed a timely appeal from a May 4, 2010 merit decision of the Office of Workers' Compensation Programs which denied his claim for a recurrence. Pursuant to the Federal Employees' Compensation Act[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether appellant has established a recurrence of disability commencing July 18, 2009 causally related to his employment injury.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the issuance of the May 4, 2010 Office decision and on appeal, appellant submitted new evidence. However, the Board is precluded from reviewing evidence which was not before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1). Appellant may resubmit this evidence, together with a written request for reconsideration to the Office, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606.

FACTUAL HISTORY

On August 13, 2007 appellant, then a 45-year-old postal clerk, filed an occupational disease claim (Form CA-2) alleging that he sustained right lateral epicondylitis due to factors of his federal employment.

On August 17, 2007 the Office accepted appellant's claim for right lateral epicondylitis.[3]

On March 25, 2008 appellant accepted a limited-duty job offer as a postal clerk with the following restrictions: no lifting or carrying more than 15 pounds for more than eight hours a day, no pulling or pushing more than 15 pounds for more than four hours a day and no simple grasping of letters for more than four hours a day.

On October 31, 2008 the employing establishment notified appellant of a reduction of workload and appellant provided his signature in acknowledgement thereof.

On April 21, 2009 appellant elected to remain in his installation as a part-time clerk, instead of being reassigned to another office as a full-time employee, effective July 18, 2009.

On August 6, 2009 the employing establishment offered appellant a limited-duty assignment as a mail processing clerk restricted to standing, lifting, carrying, casing, simple grasping and fine manipulation for two hours a day.

On August 6, 2009 appellant filed a notice of recurrence (Form CA-2a) commencing on July 18, 2009. He stated that he was reassigned to a position that would require him to violate his medical restrictions. Appellant stopped work on July 18, 2009.

On August 13, 2009 the Office requested additional factual and medical information from appellant. It allotted appellant 30 days to submit additional evidence and respond to its inquiries.

Appellant submitted medical reports dated July 9 and September 29, 2009 by Dr. Robert J. Harrison, Board-certified in internal and occupational medicine, who released appellant to modified work on both dates.

By decision dated October 29, 2009, the Office denied appellant's claim for a recurrence on the grounds that he did not submit sufficient evidence to establish causal relationship.

In a September 28, 2009 medical report, Dr. Harrison opined that appellant's chronic low elbow pain was aggravated by repetitive use at work. He placed appellant under permanent restrictions to limit the amount of repetitive hand use and forceful grasping of the right upper extremity. Dr. Harrison reported that appellant's light-duty assignment changed and became more demanding as the employing establishment was unable to meet his work restrictions.

[3] On June 17, 2009 appellant filed a claim for compensation (Form CA-7) for 120 hours of leave without pay from May 9 to June 5, 2009. On August 6, 2009 appellant filed a claim for compensation (Form CA-7) for 168 hours of leave without pay from July 18 to August 18, 2009. The Office denied both of these claims on October 29, 2009.

On November 6, 2009 appellant requested an oral hearing. He submitted an October 15, 2009 medical report by Dr. Harrison who indicated that appellant was no longer able to perform his work requirements and stopped work due to his employment-related condition.

An oral hearing was held on February 24, 2010. Appellant was represented by his union representative. He testified that he was reassigned to the automation area and then stopped work because he believed that his duties would not comply with his limited-duty restrictions. Appellant testified that he had no conversations with the employing establishment regarding his work requirements prior to stopping work.

By decision dated May 4, 2010, an Office hearing representative denied appellant's claim for a recurrence on the basis that the medical evidence submitted was insufficient to establish that he sustained a recurrence of disability commencing on July 18, 2009, causally related to the accepted employment injury.

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.[4] 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 his or 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 his or her established physical limitations.[5]

When an employee who is disabled from the job he held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that he 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 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.[6]

ANALYSIS

On August 17, 2007 the Office accepted appellant's claim for right lateral epicondylitis. Appellant returned to work following the acceptance of the employment injury in a limited-duty capacity. The issue on appeal is whether appellant has established a recurrence of total disability commencing July 18, 2009 causally related to the accepted employment injury. Appellant

[4] 20 C.F.R. § 10.5(x). *See T.S.*, Docket No. 09-1256 (issued April 15, 2010).

[5] *Id.*

[6] *See A.M.*, Docket No. 09-1895 (issued April 23, 2010). *See also Joseph D. Duncan*, 54 ECAB 471, 472 (2003); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

therefore has the burden of proof to show a change in the nature and extent of his injury-related condition or a change in the nature and extent of his limited-duty job requirements.

Appellant was working in a light-duty position when he stopped working on July 18, 2009 for a reason unrelated to his accepted condition: his belief that the duties of his reassignment would exceed his medical restrictions. On September 28, 2009 Dr. Harrison reported that appellant's chronic low elbow pain was aggravated by repetitive use at work and placed appellant under permanent restrictions to limit the amount of repetitive hand use and forceful grasping of the right upper extremity. He also reported that appellant's light-duty assignment changed as it became more demanding due to the employing establishment's inability to meet his work restrictions. In an October 15, 2009 medical report, Dr. Harrison indicated that appellant was no longer able to perform his work requirements.

Although Dr. Harrison reported on September 28, 2009 that appellant's light-duty assignment had changed and indicated on October 15, 2009 that appellant was no longer able to perform his work requirements, the evidence of record does not establish that the employing establishment had taken any formal action to cause any change in the nature and extent of appellant's light-duty job requirements. When a claimant stops working at the employing establishment for reasons unrelated to his employment-related physical condition, he has no disability within the meaning of the Act.[7] The Board finds that there is no evidence substantiating that appellant was required to perform duties that exceeded his medical restrictions.[8] Appellant's inability to continue in his employment was based on his nonperformance of job duties. As noted, this is not a basis for finding a recurrence of disability.[9] Dr. Harrison did not indicate a specific date of a recurrence of disability, nor did he note a particular change in the nature of appellant's physical condition arising from the employment injury, which prevented him from performing his light-duty position.[10] The record contains other reports from Dr. Harrison but these reports do not specifically address a recurrence of total disability commencing July 18, 2009.

The Board finds that the evidence submitted by appellant lacks adequate rationale to show a change in the nature and extent of his accepted condition or a change in the nature and extent of his limited-duty job requirements. Therefore, appellant did not meet his burden of proof to establish disability as a result of a recurrence.

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.

[7] Office regulations indicate that there is no recurrence of disability when withdrawal of light duty occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force. 20 C.F.R. § 10.5(x). Regarding the Act, *see* 5 U.S.C. §§ 8101-8193.

[8] *See Richard A. Neidert*, 57 ECAB 474 (2006).

[9] *See T.S.*, *supra* note 4. *Cf. K.S.*, Docket No. 08-2105 (issued February 11, 2009) (where the Board found that appellant's position withdrawn as part of a national reassessment process was a basis of recurrence).

[10] *See Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

CONCLUSION

The Board finds that appellant failed to establish that he sustained a recurrence of disability commencing July 18, 2009 causally related to the employment injury.

ORDER

IT IS HEREBY ORDERED THAT the May 4, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 7, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board