United States Department of Labor
Employees' Compensation Appeals Board

K.B., Appellant	)	
and	)	**Docket No. 11-376**
	)	**Issued: June 4, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Dowagiac, MI, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 9, 2010 appellant filed a timely appeal of a November 3, 2010 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 the case.

ISSUE

The issue is whether appellant established that she sustained a recurrence of disability from April 17 to June 30, 2010, causally related to her March 5, 2007 employment injuries.

FACTUAL HISTORY

On May 20, 2007 appellant, then a 47-year-old full-time rural carrier associate, sustained a right shoulder injury after performing repetitive lifting and carrying duties. OWCP accepted her claim for bicipital tendinitis of the right shoulder and expanded her claim to include right

[1] 5 U.S.C. § 8101 *et seq.*

rotator cuff tear, sprain of the right shoulder and upper arm, superior glenoid labrum tear, adhesive capsulitis of the right shoulder and right C6 cervical radiculopathy. Appellant stopped work on March 16, 2007 and returned to a light-duty job on August 31, 2007. She stopped work on September 14, 2007 to undergo authorized right shoulder surgery.

On September 14, 2007 Dr. James Grannell, a Board-certified orthopedist, performed an arthroscopic repair of a right superior labral from anterior to posterior (SLAP) tear of the superior glenoid labrum, debridement of partial rotator cuff and arthroscopic subacromial decompression. He diagnosed SLAP tear, right shoulder, small partial tear of the rotator cuff and chronic bursitis.

On April 9, 2009 appellant underwent a second authorized surgery performed by Dr. Kenneth Edwards, a Board-certified orthopedist. Under anesthesia Dr. Edwards performed right shoulder manipulation, diagnostic arthroscopy for debridement of a type one SLAP lesion and subacromial decompression. He diagnosed grade 1 SLAP lesion, right shoulder supraspinatus tendinitis, adhesive capsulitis and grade 3 chondromalacia of the humeral articular surface. In a May 29, 2009 duty status report, Dr. Edwards returned appellant to work full time with restrictions of lifting/carrying, standing, twisting, simple grasping and fine manipulation for eight hours per day, sitting and reaching above the shoulder for five hours per day, walking and driving a vehicle for six hours per day, climbing for two hours per day, kneeling and pulling and pushing for one hour a day and bending and stooping for four hours per day, all subject to a 20-pound lifting restriction.

On June 4, 2009 the employing establishment offered appellant a part-time limited-duty job as a rural carrier/clerk/custodian effective June 4, 2009 with duties of casing and delivering mail for 8 hours 35 minutes per day; sort, maintain, file, prepare and label mail and dispatch empty equipment for 2 hours and 50 minutes; sweep, mop, dust and vacuum for 1 hour per day. The restrictions were subject to a 20-pound lifting restriction for 23 hours per week. Appellant accepted the position on June 4, 2009.

Appellant submitted a July 20, 2009 prescription note from Dr. Edwards who returned her to work with restrictions of no overhead lifting and no lifting greater than 20 pounds. In a July 20, 2009 report, Dr. Edwards noted her complaints of soreness in the neck and upper right arm. On examination, the right shoulder revealed good range of motion with diffuse tenderness with impingement. Dr. Edwards continued appellant's restrictions of no overhead activity and lifting up to 20 pounds. In a July 29, 2009 duty status report, he diagnosed right shoulder impingement syndrome and noted that appellant could return to work with restrictions of lifting/carrying, standing, twisting, simple grasping and fine manipulation for eight hours per day, sitting and driving a vehicle for five hours per day, no reaching above the shoulder, walking for six hours per day, climbing for two hours per day, kneeling and pulling and pushing for one hour a day and bending and stooping for four hours per day, all subject to a 20-pound lifting restriction.

On August 24, 2009 the employing establishment offered appellant a part-time limited duty job as a rural carrier/clerk/custodian effective August 24, 2009 with duties of casing and delivering mail within restrictions for 8 hours 35 minutes per day; sort, maintain, file, prepare and label mail and dispatch empty equipment for 4 hours and 40 minutes; and sweep, mop, dust

and vacuum for 1 hour per day, subject to restrictions of standing sitting, walking and driving up to 8 hours and 35 minutes subject to a 20-pound lifting restriction for 34 hours per week. Appellant accepted the position on August 24, 2009.

In a duty status report dated September 9, 2009, Dr. Edwards noted that appellant could return to work full time with restrictions of no reaching above the shoulder and lifting limited to 35 pounds. In a September 14, 2009 report, he noted her complaints of difficulty lifting her right arm over her head while delivering mail. Dr. Edwards noted examination of the right shoulder revealed well-healed surgical scars, full range of motion, no weakness, negative impingement sign with diffuse tenderness about the shoulder. In a work capacity evaluation dated September 23, 2009, he returned appellant to work with permanent restrictions of no reaching above the shoulder and lifting limited to 35 pounds.

On December 23, 2009 the employing establishment offered appellant a part-time limited-duty job as a clerk effective December 26, 2009 with duties of lobby director for 2 hours 10 minutes a day; answering telephones, assisting customers, sorting mail, maintaining files and stamping envelopes for 3 hours and 30 minutes daily, subject to a 35-pound lifting restriction and no lifting above the shoulder for 34 hours per week. Appellant accepted the position on December 23, 2009.

Appellant was treated by Dr. Mathew Kuiper, an osteopath on February 1 and March 15, 2010 who performed trigger point injections. In a February 4, 2010 work release form, Dr. Edwards treated her for neck and shoulder pain and continued her work restrictions of no lifting over 35 pounds and no overhead reaching. On March 15, 2010 he noted tenderness over the scapula, normal range of motion and diffuse tenderness about the shoulder. Dr. Edwards recommended an electromyogram (EMG) and opined that the paresthesias was unlikely related to appellant's right shoulder. In work release forms dated February 17 and March 11, 2010, a physician's assistant continued appellant's work restrictions. Appellant submitted an April 15, 2010 report from Dr. Robert C. Ward, a Board-certified neurologist, who diagnosed right C6 radiculopathy with normal EMG findings, narrowing of the C5-6 level and right shoulder pain independent of the right cervical radiculopathy. In a return to work slip dated April 15, 2010, Dr. Ward noted treating her on April 15, 2010 and advised that she could return to work on April 16, 2010.

On April 15, 2010 the employing establishment offered appellant a modified assignment (limited-duty) job as a stand by (no productive work available) for eight hours daily on Tuesday, Friday and Saturday and for five hours daily on Wednesday and Thursday, effective April 17, 2010. The physical requirement of the job was listed as "sit." Appellant refused the job offer noting "this is not a job offer." In an attachment the employing establishment noted that there was no productive work for her within her medical restrictions and she would be placed on standby time. The employing establishment noted the intent of the offer of modified assignment was to accommodate appellant's medical restrictions of not being able to reach above the shoulders and a 35-pound lifting restriction. It was noted that appellant would be paid a total of 34 hours per week for the duration of the assignment. The attachment was signed by appellant on April 15, 2010.

In a letter dated April 16, 2010, the employing establishment postmaster noted that on April 13, 2010 appellant was offered a modified assignment effective April 17, 2010. The offer would provide appellant with work within her medical restrictions, provided productive work was available. The employing establishment further noted that there was presently no productive work available but she would be paid to report to work and be in stand by status. The notice indicated that if appellant refused to accept the offer, she would no longer be able to report to work after the current limited-duty offer expired on April 16, 2010.

On April 20, 2010 appellant, through her representative, asserted that the job offer of April 17, 2010 was not valid because it did not list the job duties or the physical requirements of the job, rather, indicated that there was no productive work available for her. She asserted that employing establishment withdrew the limited-duty position.

In an April 30, 2010 OWCP telephone log, the claims examiner acknowledged receipt of appellant's refusal of the job offer on April 15, 2010 and advised her that her reason for refusing the job offer was not sufficient for entitlement to compensation as the employing establishment was offering her work that did not exceed her physical requirements.

In May 24, 2010 correspondence, OWCP informed appellant that the limited-duty job offer dated April 17, 2010 was not a permanent job offer and no suitability ruling was appropriate. It further noted that the April 17, 2010 job offer accommodated her medical restrictions of no reaching above the shoulder and no lifting greater than 35 pounds. OWCP noted that the employer was providing appellant work within her restrictions and she was responsible for reporting to work and was not entitled to compensation.

Appellant submitted a Form CA-7, claim for compensation, for the period April 10 to 16, 2010, requesting two hours of leave without pay; for the period April 17 to 23, 2010, 34 hours of leave without pay; for the period April 24 to May 7, 2010, 34 hours of leave without pay; and for the period May 8 to 21, 2010, 34 hours of leave without pay. She also submitted CA-7a, time analysis forms. On June 1, 2010 appellant, through her representative, continued to assert that the employing establishment withdrew her limited-duty position on April 17, 2010. She contended that the employing establishment was not providing limited-duty work or a temporary assignment, rather, it instructed her to stay in the work area until work within her restrictions came along. Appellant submitted a duty status report from Dr. Ward dated May 6, 2010 who diagnosed cervicalgia and radiculopathy and noted that she could work eight hours a day with a lifting restriction of 35 pounds and no overhead activity. Dr. Ward noted that the restrictions would apply for two months.

In June 23, 2010 correspondence, OWCP granted appellant two hours of leave without pay for April 15, 2010 to attend a physician's appointment. It advised her that her request for leave without pay for the period beginning April 17, 2010 was not payable. OWCP indicated that the employing establishment extended a limited-duty job offer on April 15, 2010 effective April 17, 2010 which she refused. It indicated that the April 17, 2010 limited-duty job accommodating appellant's permanent restrictions on reaching above the shoulder and lifting over 35 pounds. OWCP noted that the employer provided her work within her restrictions and she was responsible for reporting to work and was not entitled to compensation beginning April 17, 2010. It allowed appellant 30 days to submit additional information.

On July 7, 2010 appellant submitted a Form CA-2a, notice of recurrence of disability, asserting that she had a recurrence of disability on April 17, 2010 causally related to her March 5, 2007 work injury. She noted that the employing establishment withdrew her limited-duty job offer.

Appellant submitted CA-7 forms, claims for compensation, for the periods June 19 to July 2, 2010 and July 3 to 16, 2010. She submitted a July 8, 2010 duty status form from Dr. Ward who diagnosed cervical radiculopathy and noted that she could return to work part time, four hours per day, subject to a 35-pound lifting restriction.

In correspondence dated July 16, 2010, OWCP acknowledged receipt of her CA-2a form claiming a recurrence of disability on April 17, 2010. It indicated that the employing establishment extended a limited-duty job offer on April 15, 2010 effective April 17, 2010 which she refused. OWCP indicated that the April 17, 2010 limited-duty job accommodated appellant's permanent medical restrictions of no reaching above the shoulder and no lifting over 35 pounds. It noted that the employing establishment provided her work within her restrictions and she was responsible for reporting to work and was not entitled to compensation beginning April 17, 2010. OWCP allowed appellant 30 days to submit additional information to support her recurrence of disability.

In a letter dated July 1, 2010, the employer noted that a search was undertaken to find necessary tasks meeting appellant's medical restrictions in all crafts and on all tours within the facility and throughout the local commuting area and it was unable to identify any available necessary tasks within her medical restrictions. The employing establishment advised appellant that she should not report back for duty unless she was contacted and informed that necessary work tasks had been identified within her medical restrictions.

On July 23, 2010 OWCP accepted a recurrence of disability on July 1, 2010.

Appellant submitted reports from Dr. Ward dated July 8 to September 21, 2010, who diagnosed right C6 radiculopathy with narrowing of the C5-6 interspace, modest compression of the thecal sac and right shoulder pain independent of the right cervical radiculopathy likely both related to work issues. Dr. Ward noted that a March 26, 2010 EMG revealed no evidence of radiculopathy, plexopathy or mononeuropathies in the right upper extremity. A September 10, 2010 report from Dr. Edwards noted treating appellant for right shoulder pain.

In a decision dated November 3, 2010, OWCP denied appellant's claim for a recurrence of disability from April 17 to June 30, 2010.

LEGAL PRECEDENT

A claimant has the burden of establishing the essential elements of her claim, including that the medical condition for which compensation is claimed is causally related to the claimed employment injury.[2] For wage-loss benefits, the claimant must submit medical evidence

[2] 20 C.F.R. § 10.115(e) (2007); *see Tammy L. Medley*, 55 ECAB 182, 184 (2003).

showing that the condition claimed is disabling.[3] The evidence submitted must be reliable, probative and substantial.[4]

If an employee can resume regular federal employment, she must do so.[5] However, if she cannot return to the job held at the time of injury, but has recovered enough to perform some type of work, the employee must seek work.[6] Where the employer has specific alternative positions available for partially disabled employees, the employer should advise the employee in writing of the specific duties and physical requirements of those positions.[7]

ANALYSIS

The Board finds that OWCP improperly adjudicated appellant's claim for wage-loss compensation for the period April 17 to June 30, 2010. OWCP adjudicated the matter as a recurrence of disability claim and found that appropriate light duty was made available to appellant which she refused.[8] But its decision is not consistent with its regulations regarding an employee's return to work.

Appellant's July 7, 2010, CA-2a form, notice of recurrence of disability, asserted that her modified-duty position was withdrawn on April 17, 2010. For the period beginning February 4, 2010, the record indicates that she was unable to perform her regular duties as a rural letter carrier. However, Dr. Edwards, in a report dated February 4, 2010 and Dr. Ward in a report dated April 15, 2010, explained that appellant was not totally disabled. During this time frame, Dr. Edwards, appellant's treating physician imposed specific work restrictions, which she timely submitted to the employing establishment. These restrictions included no lifting over 35 pounds and no reaching overhead. According to the employing establishment, as set forth in an April 17, 2010 job offer, limited-duty work was available for appellant as a stand by (no productive work available) for 34 hours a week effective April 17, 2010 with a physical requirement of sitting for up to eight hours. However, appellant refused the job offer noting "this is not a job offer."

In its November 3, 2010 decision, OWCP denied appellant's recurrence of disability finding that the evidence was insufficient to establish that her wage loss was due to a withdrawal of a modified-duty assignment. However, it did not sufficiently address whether the employing

[3] *Id.* at § 10.115(f).

[4] *Id.* at § 10.115.

[5] *Id.* at § 10.515(a).

[6] *Id.* at § 10.515(b).

[7] *Id.* at § 10.505(a). A similar written requirement is imposed with respect to offers of suitable work. *See* 20 C.F.R. § 10.507(c) and (d).

[8] *Id.* at § 10.5(x). Recurrence of disability 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 or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.

establishment properly identified any available limited-duty work. The regulations require that appellant be provided a written description of the type of limited-duty work available. However, there is no evidence that the employing establishment provided her a written description of the specific duties and physical requirements of the limited-duty position it claimed was available in compliance with 20 C.F.R. § 10.505. The job offer noted limited-duty work was available for appellant as a stand by (no productive work available) in which she was to sit for eight hours a day on three days and five hours a day on two other days, effective April 17, 2010. Appellant raised this particular point in her April 20, 2010 letter to OWCP. OWCP responded to her April 20, 2010 letter on May 24, 2010, noting only that the April 17, 2010 job offer accommodated her restrictions of no reaching above the shoulder and no lifting over 35 pounds. The employing establishment did not otherwise present evidence that a written job offer had been provided to appellant which listed specific duties and physical requirements and clearly listed duties that did not breach her restrictions. The Board finds that she is entitled to wage-loss compensation for the period April 17 to June 30, 2010.[9] The record establishes that appellant was unable to perform her regular letter carrier duties at the time and there is no indication that the employing establishment provided her with a written limited-duty job offer in accordance with the applicable regulations.[10]

CONCLUSION

The Board finds that OWCP improperly adjudicated appellant's claim for wage-loss compensation for the period April 17 to June 30, 2010.

[9] *See M.N.*, Docket No. 07-671 (issued April 17, 2008) (where the Board held that appellant was unable to perform her regular letter carrier duties and the employing establishment failed to provide her with a written limited-duty job offer in accordance with the applicable regulations, 20 C.F.R. § 10.505; *C.S.*, Docket No. 06-2033 (issued August 6, 2007) (where the Board found that appellant did not receive a written description of the light-duty position prior to OWCP's determination that the position offered was medically suitable to his physician's restrictions).

[10] 20 C.F.R. § 10.505.

ORDER

IT IS HEREBY ORDERED THAT the November 3, 2010 decision of the Office of Workers' Compensation Programs is reversed.

Issued: June 4, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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