United States Department of Labor
Employees' Compensation Appeals Board

H.H., Appellant	)	
and	)	**Docket No. 15-0304**
	)	**Issued: July 28, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Girard, OH, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 24, 2014 appellant, through counsel, filed a timely appeal from a November 3, 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.

ISSUE

The issue is whether appellant established a recurrence of total disability for the period December 4, 2013 to January 14, 2014 causally related to her May 26, 2010 employment injury.

Appellant's counsel argues that OWCP's decision is contrary to fact and law.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 25, 2010 appellant, then a 27-year-old city carrier, filed a traumatic injury claim alleging that on May 26, 2010, she tripped and fell on a driveway while walking on uneven concrete, turned her ankle, and sustained injuries to her left ankle, left hand, and right lower leg. OWCP accepted her claim for left hand contusion, right leg contusion, and sprain of the left ankle.

Appellant underwent an approved left ankle arthroscopy with debridement on March 30, 2012. She stopped work for this surgery and returned to work with restrictions on October 10, 2012. Specifically, appellant's modified assignment was for work as a modified city carrier. Her duties involved casing/pull down for one to two hours, driving/sitting for six to seven hours, walking/standing for two to four hours, and fine manipulation/grasping for four to eight hours. The physical requirements of the modified assignment were walking/standing for two to four hours, driving/sitting for six to eight hours, reaching above shoulder for up to two hours, and lifting/carrying up to 25 pounds for five to six hours.

On November 6, 2013, an internist with an illegible signature, limited appellant to lifting/carrying up to 10 pounds continuously and 25 pounds intermittently. He noted that she could sit eight hours a day; stand continuously two hours a day and intermittently four hours a day; walk continuously for 30 minutes and intermittently for four hours; climb one to two hours a day; kneel one hour a day, bend/stoop one to two hours per day; twist 30 minutes to one hour a day; push/pull for 30 minutes a day; and reach above her shoulder continuously for 15 minutes at a time for four hours a day. He further noted that appellant could perform simple grasping, fine manipulation, and driving a motor vehicle for eight hours a day.

On November 27, 2013 the employing establishment offered a revised modified assignment offer for work as a permanent letter carrier. The position had work hours of 7:30 a.m. to 4:00 p.m., with two days off (Sunday/rotating) a week. In a letter sending appellant the offer, the postmaster noted that she would work two to four hours on casing and/or dismount delivery and one hour of curb line delivery when available. The effective date of the position was listed as December 2, 2013. The postmaster indicated that the employing establishment needed to adhere to twisting restrictions of 30 minutes to 1 hour a day, and that curb-line delivery required continually twisting while making deliveries. Appellant's duties would include two to four hours daily of casing/pulling down, walking/standing/dismounting, and lifting up to 25 pounds intermittently. She would also carry curb-line delivery for 30 minutes to one hour a day.

Appellant signed the form indicating that she accepted the position under protest. She indicated on the form that she would like OWCP to decide if this was an acceptable job offer. Appellant noted that, as an eight-hour employee on a T-6 job, her assignment changes daily, and management has not guaranteed her an eight-hour job offer. She argued that management changed her prior job offer when they falsified information on her Form CA-17. Appellant contended that she was not given an opportunity to update her restrictions and that the employing establishment had refused her any work.

In a December 2, 2013 report, Dr. James D. Solmen, appellant's treating Board-certified orthopedic surgeon, assessed appellant with a history of an ankle sprain status postsurgical debridement *via* ankle arthroscopy now with recurring symptoms in the same location. He noted that although it was not likely for impingement to recur with mild repetitive trauma, it is certainly a possibility and recommended a trial diagnostic injection into the ankle joint. In a December 2, 2013 duty status report, Dr. Solmen returned appellant to work with restrictions similar to the November 6, 2013 report, with the exception of allowing her to stand eight hours a day, twist one to two hours a day, and reach above shoulder two to four hours a day.

In a December 3, 2013 letter, appellant asked the postmaster to consider whether the seat in the long life vehicle (LLV) moved side to side, and that would take away the twisting she would be required to do on curb line.

In a December 26, 2013 duty status report, Dr. Solmen kept the same basic restrictions but now noted that appellant could twist six and one-half hours a day. He noted that she needed five minutes of rest after standing greater than two hours and no use of mailbag.

Appellant submitted time analysis forms. She indicated that on December 3, 2013 she was sent home after working two and one-half hours because there was no work available. Appellant further indicated that there was no work available from December 4, 2013 through January 14, 2014.

In a January 21, 2014 letter to OWCP, appellant advised that she was on vacation from November 22 to December 2, 2013 and that the new job offer arrived while she was on vacation. She argued that this job offer violated her rehabilitation job offer and that she was uncomfortable signing it. Appellant contended that she did not know until she returned to work that it was not a full-time job offer.

In a February 5, 2014 letter, counsel argued that the employing establishment withdrew the limited-duty offer. He argued that the employing establishment was harassing appellant by giving her only very limited hours per day to come in and then send her home.

OWCP paid appellant for intermittent hours lost on December 3, 2013 and for the period January 15 through February 21, 2014.

By decision dated March 4, 2014, OWCP denied appellant's claim for compensation for the period December 4, 2013 through January 14, 2014.

On March 10, 2014 appellant requested a telephone hearing with an OWCP hearing representative. At the hearing, held on September 10, 2014, appellant's counsel argued that the medical evidence established that she was disabled for intermittent periods in December 2013 and January 2014. Appellant testified at the hearing and indicated that she was still receiving Cortisone shots. She indicated that, on December 4, 2013, she was doing full-time, limited-duty rehabilitation employee work with a reasonable accommodation job offer that allowed her to do curb line and milk stopping. Appellant testified that on December 4, 2013 the employing establishment wanted her to carry a mailbag and that she was not allowed to do that because of her other injuries. She testified that when she returned from vacation that the postmaster gave her a new job offer and stated that she had to sign it that day or she would be sent home.

By decision dated November 3, 2014, the hearing representative affirmed OWCP's March 4, 2014 decision.

LEGAL PRECEDENT

OWCP's definition of 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 had resulted from a previous injury or illness without an intervening injury or new exposure. The term also means the 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.[2]

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 establishes that he or she can perform the limited-duty position, the employee has the burden of proof to establish a recurrence of total disability and that he or she cannot perform such limited-duty work. As part of this burden, the employee must show a change in the nature or extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.[3] To establish a change in the nature and extent of the injury-related condition, there must be probative medical evidence of record. The evidence must include a rationalized medical opinion, based on a complete and accurate factual and medical history and supported by sound medical reasoning, that the disabling condition is causally related to employment factors.[4]

ANALYSIS

The Board finds that appellant did not establish a recurrence of total disability for the period December 4, 2013 to January 14, 2014, causally related to the May 26, 2010 employment injury.

Appellant has not submitted rationalized medical opinion evidence that establishes a change in the nature and extent of the injury-related condition.[5] The duty status reports note her limitations, but do not provide any comprehensive explanation of her injury or the alleged recurrence. Dr. Solmen's report of December 2, 2013 is insufficient to establish a recurrence as it is not rationalized and is speculative. Accordingly, appellant has not submitted rationalized medical evidence indicating that she had sustained a recurrence such that she could not perform her work.[6]

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[2] *See John I. Echols*, 53 ECAB 481 (2002); *Terry R. Hedman*, 38 ECAB 222 (1986).

[3] *P.A.*, Docket No. 10-1225 (issued April 20, 2011); *Maurissa Mack*, 50 ECAB 498 (1999).

[4] *Vanessa Young*, 55 ECAB 575 (2004).

[5] *See A.D.*, Docket No. 14-2066 (issued February 11, 2015).

[6] When no such rationale is present, the medical evidence is of diminished probative value. *J.B.*, Docket No. 14-1474 (issued March 13, 2015).

A recurrence can also be found if a work assignment given to appellant to accommodate her restrictions is withdrawn, and she argues that, under this criteria, she sustained a recurrence. This argument is without merit. Although the employing establishment changed the job description, there is no indication that the new position exceeded appellant's limitations. The position offered on November 27, 2013 is similar to the prior job, with the exception that it adds twisting/curb line delivery limited to 30 minutes to one hour. This new limitation was in response to a new duty status report of November 6, 2013 which indicated that appellant could twist only 30 minutes to one hour a day. Dr. Solmen amended the restriction in a December 2, 2013 report wherein he indicated that she could twist for one to two hours a day. In a December 26, 2013 report, he indicated that appellant could twist six and one-half hours a day. Dr. Solmen appeared to increase the twisting allowance based on her desire to perform curb-line delivery. The Board notes that, in a December 3, 2013 letter, appellant asked the postmaster to consider that the seat in the LLV does move side to side and that this would take away the twisting she would do on curb line. However, the employing establishment had previously indicated that it must adhere to her twisting restrictions and that curb-line delivery required continual twisting while making deliveries. All the remaining job requirements indicated that appellant's restrictions would be upheld. Appellant would not have to lift more than 25 pounds intermittently for two to four hours a day, walk/stand/dismount duties limited to two to four hours a day, and stand reach above shoulder for two to four hours a day. All these restrictions were within the limitations set by Dr. Solmen. There is no evidence to support appellant's contention that this was not a full-time job offer as the work hours are listed as 7:30 a.m. to 4:00 p.m. with two days off a week. Given the above evidence, appellant has failed to establish that there was a change in the nature and extent of her light-duty job requirements.[7]

As appellant has not established a changed in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements, she has failed to meet her burden of proof.

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 a recurrence of total disability for the period December 4, 2013 to January 14, 2014 causally related to her May 26, 2010 employment injury.

[7] *See L.B.*, Docket No. 14-140 (issued June 2, 2014).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 3, 2014 is affirmed.

Issued: July 28, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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