United States Department of Labor
Employees' Compensation Appeals Board

K.A., Appellant	)	
and	)	
DEPARTMENTOF VETERANS AFFAIRS, SOUTHERN ARIZONA VETERANS ADMINISTRATION HEALTHCARE SYSTEMS, Tucson, AZ, Employer	)	**Docket No. 19-0679** **Issued: April 6, 2020**

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 7, 2019 appellant filed a timely appeal from September 13 and December 19, 2018 merit decisions 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.[2]

[1] 5 U.S.C. § 8101 *et seq*.

[2] Appellant also indicated that she was filing an appeal from an OWCP April 24, 2018 decision. Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from April 24, 2018, was October 21, 2018, a Sunday; consequently, the period for filing the appeal ran to the next business day, Monday, October 22, 2018. *See* 20 C.F.R. § 501.3(f)(2). As appellant filed the appeal on February 7, 2019, the Board is without jurisdiction to review the April 24, 2018 decision.

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish a recurrence of disability commencing May 19, 2016 causally related to her accepted lumbar conditions; and, (2) whether she met her burden of proof to establish entitlement to wage-loss compensation on May 11, 2017 due to attendance at a medical appointment.

FACTUAL HISTORY

On August 4, 2011 appellant, then a 45-year-old registered nurse, filed an occupational disease claim (Form CA-2) alleging that factors of her federal employment including continual lifting, pulling, turning, and cleaning patients caused lumbar pain. She indicated that she first realized she had the condition and its relationship to her federal employment on May 1, 2010. Appellant stopped work on August 15, 2011. On September 12, 2011 Dr. Timothy K. Putty, a Board-certified neurosurgeon, performed lumbar surgery. OWCP accepted aggravation of synovial cyst, aggravation of acquired spondylolisthesis, and aggravation of spinal stenosis, lumbar region. It paid retroactive compensation, effective September 1, 2011. Appellant returned to work in a full-duty capacity on August 14, 2012. On March 1, 2013 Dr. Putty provided a 25-pound lifting restriction. On March 19, 2013 appellant accepted a modified position within Dr. Putty's restrictions.[3]

On February 5, 2015 Dr. Putty limited appellant's activity to lifting 25 pounds maximum, with frequently and/or carrying objects up to 15 pounds. He limited standing and sitting to two hours with no bending.

On June 13, 2016 appellant filed a notice of recurrence (Form CA-2a). She indicated that the recurrence occurred on May 19, 2016, noting that her low back pain had been increasing, that she had moderate carpal tunnel syndrome, and that she had a mental breakdown related to workplace stress because management requested that she work outside her restrictions and changed her job assignment. K.I., a workers' compensation manager with the employing establishment, wrote on the claim form that appellant had been working modified duty and was never asked or required to work outside her restrictions. She indicated that appellant was transferred to a sedentary position making telephone calls on February 8, 2016 because her former position required someone who could perform work outside appellant's restrictions. K.I. noted that appellant stopped work that day and returned on May 19, 2016 when she had exhausted her leave. She noted that appellant had provided a note from a mental health provider indicating that she could only work part time due to stress, and she also provided a note from her primary care physician indicating that she could only work four-hour days. Appellant continued to work four-hour days.[4] She has not received FECA compensation.

In an April 29, 2016, Maria-Luanna Bozzolo, Ph.D., a licensed clinical psychologist noted appellant's complaint that her job was administrative with no nursing duties, and that she had been

[3] Dr. Putty continued to treat appellant, but did not see her from November 25, 2013 to February 5, 2015.

[4] In addition to the Form CA-2a, appellant also filed claims for compensation (Form CA-7) for the period May 19, 2016 to June 10, 2017.

harassed. She further noted that her employment injury, which caused chronic back pain, led to her mental health symptoms causing her to take leave under the Family and Medical Leave Act (FMLA). Dr. Bozzolo indicated that appellant further reported that her anticipated return to work caused anxiety, noting that she felt that her psychological symptoms were a result of her accepted employment injury. She diagnosed persistent depressive disorder, unspecified anxiety disorder, and provisional borderline personality features.

In reports dated May 23, 2016, Dr. Putty advised that appellant should maintain her current restrictions, but decrease work to part time, 20 hours per week. He indicated that her chief complaint was lower back pain which, she indicated, was related to stress at work, and asked that she be able to work part time. Dr. Putty noted that appellant told him that she continued regular nursing duties without modifications, and this was making her condition worse. He also reported that she had problems with bilateral hand numbness and paresthesias, advised that a recent lumbar magnetic resonance imaging (MRI) showed no lesion requiring surgery, and described physical examination findings. Dr. Putty diagnosed spinal stenosis, lumbar region with chronic back pain, made worse with stress, and bilateral carpal tunnel syndrome. He recommended follow up in one year.

In correspondence dated June 6, 2016, K.I., an employing establishment program manager, noted that she had reviewed Dr. Putty's report and disagreed with appellant's description that the employing establishment had not accommodated her restrictions. She wrote that until February 2016, appellant was performing modified duty in the urology department, but that the needs for that work unit increased and a full-duty nurse was needed. Therefore, in February 2016, appellant was moved to a temporary position in the gastrointestinal unit, until she could be placed in a permanent light-duty job. However, when appellant was moved on February 8, 2016, she immediately took 12 weeks of FMLA leave, and as the time approached for that to end, near mid-May, she began to complain of stress and anxiety about returning to work and also reported that she had been diagnosed with severe carpal tunnel syndrome. K.I. indicated that when appellant returned to work, the employing establishment's occupational health unit cleared her return, but appellant told the occupational health nurse practitioner that, due to anxiety and stress, she needed four-hour workdays. Appellant was allowed to work four-hour days for only two weeks and then presented a note from her doctor who cited carpal tunnel syndrome, stress, and back pain, and advised that she needed a 20-hour workweek. K.I. further indicated that appellant requested two eight-hour days and one four-hour day, not five four-hour days, and she wanted to work beginning at 10:00 a.m., maintaining that her anxiety, stress, and back pain were worse in the mornings. She wrote that the employing establishment must consider its staffing needs and, therefore, appellant was offered a four-hour workday. K.I. attached a job offer that appellant did not accept. She noted that appellant was "perfectly happy" before she was assigned to her current light-duty location in February 2016.

On June 9, 2016 appellant, through counsel, contacted OWCP and requested that the acceptance of her claim be expanded to include emotional conditions of persistent depressive disorder, unspecified anxiety disorder, and provisional borderline personality features.

In a development letter dated June 22, 2016, OWCP advised appellant of the deficiencies of her recurrence claim and informed her of the type of factual and medical evidence needed. It

provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the requested evidence.

In a development letter dated July 8, 2016, OWCP advised appellant that the evidence of record was insufficient to support that her additional psychiatric diagnoses were related to the accepted employment injury. It informed her of the type evidence needed to support that her emotional condition was a consequence of the accepted lumbar conditions and afforded her 30 days to submit the requested evidence.

Appellant thereafter submitted medical evidence dated from October 26, 2010 to April 27, 2016. She also submitted a statement indicating that her stress was from multiple causes, including work.

A functional capacity examination (FCE) was completed on July 26, 2016. In an August 9, 2016 work capacity evaluation (Form OWCP-5c), Dr. Putty referenced the FCE, provided limitations to appellant's physical activity, and advised that she should only work modified-duty for four to six hours a day.

By decision dated August 23, 2016, OWCP denied appellant's recurrence claim, finding that she had not established that she was disabled or further disabled due to a material change or worsening of her accepted lumbar conditions.

On March 20, 2017 appellant, through counsel, requested reconsideration of OWCP's August 23, 2016 decision that denied her recurrence claim.

Medical evidence submitted subsequent to the August 13, 2016 decision included a November 29, 2016 report in which Dr. Putty requested that appellant be allowed to work a flexible schedule due to pain, but that she could work an eight-hour day.

In a January 26, 2017 report, Dr. Putty indicated that a lumbar spine MRI scan revealed lumbar stenosis at the level adjacent to appellant's September 12, 2011 surgery. He noted that pain was her primary problem and was "directly proportional to the amount of physical activity that she does." Dr. Putty advised that, if appellant kept her physical exertion and activities low, she could improve her pain, which was why he recommended part-time hours. He reiterated his physical restrictions and provided a copy of the July 26, 2016 FCE, which he signed on August 9, 2016.[5] In a second report of that date, Dr. Putty described examination findings and diagnosed cervical stenosis and chronic cervical and lumbar back pain with left-sided sciatica. He also completed a work restriction evaluation Form OWCP-5c on January 26, 2017 wherein he noted that appellant should be limited to four hours of work per day indefinitely. Dr. Putty also noted pushing, pulling, and lifting restrictions.

On February 13, 2017 Dr. Putty noted that appellant had been his patient since November 7, 2010. He described the history of injury, her medical treatment, and her complaints of radiating low back pain, weakness, and fatigue. Dr. Putty diagnosed lumbar spinal stenosis, chronic lumbar pain with left sciatica, lumbar synovial cyst, and acquired spondylolisthesis. He

[5] This indicated that from a physical perspective appellant could work full time.

opined that appellant's chronic pain began before 2010 and had slowly worsened over time, exacerbated by the physical requirements of her work, which led to partial disability and a reduction in work hours on May 23, 2016. Dr. Putty provided physical restrictions and indicated that he did not foresee that appellant could return to full-time work.

In a letter dated February 14, 2017, Dr. Stephen Streitfeld, a Board-certified psychiatrist, advised that he had seen appellant for psychiatric evaluation on November 21, 2016. He wrote that she reported that her supervisor had harassed her because she had refused to do certain duties outside her work restrictions, and that she had been harassed by an employing establishment physician for a number of years. Dr. Streitfeld diagnosed major depressive disorder and anxiety disorder, and opined that these conditions were aggravated by the stress at work and by appellant's chronic lumbar back pain.

In correspondence dated May 4, 2017, K.I. noted that appellant had been working light duty for approximately six years of her approximate seven and one-half years of employment. She maintained that appellant had never been forced to work outside her restrictions. K.I. also submitted several reports of contact between appellant and various employing establishment managers.

On June 9, 2017 appellant submitted additional claims for compensation (Forms CA-7) for the period May 4 to 26, 2017. This included a claim for four hours on May 11, 2017 to attend pain management treatment.

By decision dated June 16, 2017, OWCP denied modification of its August 23, 2016 decision. It found the medical evidence of record was insufficient to establish a recurrence of disability.

In a development letter dated June 16, 2017, OWCP referenced appellant's claim for compensation for receiving medical care on May 11, 2017. It indicated that she had submitted no medical documentation to support this claim and advised her of the evidence needed. OWCP afforded appellant 30 days to submit the requested evidence.

By decision dated August 18, 2017, OWCP denied appellant's claim for expansion, finding that the evidence of record did not establish that the claimed emotional conditions were related to the lumbar injury.

On September 14, 2017 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review from the August 18, 2017 decision.

In a letter dated September 26, 2017, Dr. Putty indicated that appellant continued to have back pain and muscle spasms dating to a May 2010 injury that led to September 2011 surgery. He opined that her symptoms were exacerbated by activity and that they traced back to the original injury, and thus they were causally related.

A telephonic hearing was held before an OWCP hearing representative on February 14, 2018. Appellant testified that she was harassed at work due to her accepted back injury. She stated that after her surgery she returned to work and was doing well until 2015 when a doctor began harassing her. The hearing representative informed appellant of the medical

evidence needed to establish her claim and held the record open for 30 days. Appellant did not submit additional evidence.

By decision dated April 24, 2018, OWCP's hearing representative affirmed the August 18, 2017 decision, finding the evidence of record insufficient to establish that appellant's claimed emotional conditions were causally related to the accepted lumbar conditions.[6]

In a report dated May 29, 2018, Dr. Putty indicated that appellant continued to have back pain and spasms, which were made worse by bending, twisting, or activity. He noted that she was working four hours per day, five days per week. Dr. Putty diagnosed chronic bilateral low back pain with left-sided sciatica.

On June 14, 2018 appellant, through counsel, requested reconsideration of OWCP's June 16, 2017 decision denying her recurrence claim.

In correspondence dated June 30, 2018, Dr. Putty indicated that appellant's accepted conditions had a natural course of slow progression, which increased disability, and made it difficult for her to sustain her work performance over long periods.

By decision dated September 13, 2018, OWCP denied modification of its prior decisions, finding that she had not established a recurrence of disability on May 19, 2016.

By decision dated December 19, 2018, OWCP denied appellant's claim for compensation on May 11, 2017 due to time lost from work to obtain medical care for her accepted work-related conditions finding that she had not submitted necessary medical documentation required to support this claim for wage loss.

LEGAL PRECEDENT -- ISSUE 1

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 that had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. The term also means an inability to work when a light-duty assignment made specifically to accommodate an employee's physical limitations due to the 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.[7]

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden to establish by the weight of reliable, probative and substantial evidence a recurrence of total disability. As part of this

[6] Appellant did not file a timely appeal with the Board from the April 24, 2018 decision. *See supra* note 2.

[7] 20 C.F.R. § 10.5(x); *see D.T.*, Docket No. 19-1064 (issued February 20, 2020).

burden of proof, the employee must show either a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the limited-duty requirements.[8]

An employee who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires 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 reasoning.[9]

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish a recurrence of total disability commencing May 19, 2016 causally related to her accepted lumbar conditions.

In support of her claim for disability, appellant submitted a series of reports from Dr. Putty from 2016 to 2018 who repeatedly diagnosed chronic bilateral low back pain with left-sided sciatica. He consistently opined that appellant's accepted lumbar conditions and postoperative pain sequelae had been exacerbated by a requirement that she had to perform duties outside of her physical restrictions. Appellant, however, submitted no evidence supporting this contention, and K.I. explained that appellant had been working modified duty within her restrictions for years.

Dr. Putty further opined that as a result of this chronic pain and ongoing exacerbation, she had been rendered partially disabled such that he reduced her work hours to part time in May 2016. While he provided an opinion regarding disability, he did not sufficiently explain how she became partially disabled on or after May 19, 2016 such that she was unable to perform full-time sedentary duties due to a worsening of her accepted lumbar conditions or specifically explain whether she sustained a recurrence of disability.[10] A cursory opinion without explanation is of limited probative value.[11] Without such an explanation, these reports are insufficient to establish a recurrence of disability, as alleged. Furthermore, Dr. Putty exhibited no awareness of appellant's actual job duties. Appellant began a sedentary position in February 2016 in which she made telephone calls, yet Dr. Putty indicated on May 23, 2016 that she reported that she continued regular nursing duties without modifications. On January 26, 2017 he advised that if she kept her physical activities and exertion low, she could improve her pain. As Dr. Putty did not discuss how appellant's sedentary duties impacted her accepted lumbar condition such that she could only work part time, his reports are therefore insufficient to meet appellant's burden of proof.[12]

The Board therefore finds that the record does not contain a medical opinion of sufficient rationale to establish a recurrence of disability commencing May 19, 2016 causally related to

[8] *See R.N.*, Docket No. 19-1685 (issued February 26, 2020); *Terry R. Hedman*, 38 ECAB 222 (1986).

[9] *Id*.

[10] *See J.P.*, Docket No. 18-1396 (issued January 23, 2020).

[11] *See L.B.*, Docket No. 07-1861 (issued December 13, 2007).

[12] *Supra* note 8.

appellant's accepted lumbar conditions.[13] Therefore appellant has not met her burden of proof to establish her recurrence claim.[14]

LEGAL PRECEDENT -- ISSUE 2

OWCP's procedures provide that wages lost for compensable medical examination or treatment may be reimbursed.[15] A claimant who has returned to work following an accepted injury or illness may need to undergo examination, testing, or treatment and such employee may be paid compensation for wage loss while obtaining medical services or treatment, including a reasonable time spent traveling to and from the medical provider's location.[16] Wage loss is payable only if the examination, testing, or treatment is provided on a day which is a scheduled workday and during a scheduled tour of duty. Wage-loss compensation for medical treatment received during off-duty hours is not reimbursable.[17] The evidence should establish that a claimant attended an examination or treatment for the accepted work injury on the dates claimed in order for compensation to be payable. For a routine medical appointment, a maximum of four hours may be allowed. However, longer periods of time may be allowed when required by the nature of the medical procedure and/or the need to travel a substantial distance to obtain medical care.[18]

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met her burden of proof to establish entitlement to wage-loss compensation on May 11, 2017 due to attendance at a medical appointment.

In a letter dated June 16, 2017, OWCP indicated that appellant had submitted no medical documentation to support her claim for disability compensation on May 11, 2017 and advised her of the evidence needed. Although it afforded her 30 days to submit the requested evidence, she did not respond.

Thus, as there is no evidence of record establishing that appellant underwent medical treatment on May 11, 2017, the Board finds that she is not entitled to wage-loss compensation on that day.[19]

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[13] *Id*.

[14] Appellant's recurrence claim was denied as to a claimed emotional condition, as an emotional condition was not accepted in her prior claim. This decision of the Board does not preclude her from filing a claim for an emotional condition based upon new factors of her federal employment.

[15] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Wages Lost for Medical Examination or Treatment*, Chapter 2.901.19 (February 2013).

[16] *Id*. at Chapter 2.901.19a; *M.B.*, Docket No. 19-1049 (issued October 21, 2019).

[17] *Id*. at Chapter 2.901.19a(2).

[18] *Id*. at Chapter 2.901.19c.

[19] *V.H.*, Docket No. 19-0807 (issued December 3, 2019).

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 total disability commencing May 19, 2016 causally related to her accepted lumbar conditions, and that she has not met her burden of proof to establish entitlement to wage-loss compensation on May 11, 2017 due to attendance at a medical appointment.

ORDER

IT IS HEREBY ORDERED THAT December 19 and September 13, 2018 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 6, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board