United States Department of Labor
Employees' Compensation Appeals Board

M.E., Appellant	)	
and	)	**Docket No. 19-1890**
	)	**Issued: December 23, 2020**
U.S. POSTAL SERVICE, POST OFFICE, Montrose, MN, Employer	)	

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

Case Submitted on the Record

ORDER REMANDING CASE

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

On March 22, 2019 appellant filed a timely appeal from a February 8, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 19-1890.[1]

On February 17, 2015 appellant, then a 62-year-old rural carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on February 13, 2015 she broke her left leg after tripping on a rock when delivering a parcel while in the performance of duty. She stopped work on the date of injury.[2] OWCP accepted the claim for left lower end femur fracture and subsequently expanded acceptance of the claim to include permanent aggravation of left knee degenerative joint

[1] The Board notes that following the February 8, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

[2] On February 15, 2019 appellant underwent open left periprosthetic distal femur fracture with intra-articular splint and left reduction, internal fixation surgery.

disease. It paid appellant wage-loss compensation on the supplemental rolls commencing March 31, 2015 and on the periodic rolls as of February 7, 2016.

Appellant accepted a modified rural carrier associate job offer on August 21, 2018 for eight hours of work per day, effective August 27, 2018. The physical requirements of the position included up to one hour of intermittent standing and walking, up to six hours of sitting, and up to one hour of intermittent fine manipulation and simple grasping.

On September 20, 2018 appellant filed a claim for wage-loss compensation (Form CA-7) for the period August 18 to September 14, 2018. On the employer portion of the Form CA-7, T.S., an employing establishment human resources specialist, challenged appellant's entitlement to 46.98 hours of wage-loss compensation for the period August 18 to September 14, 2018. She checked a box indicating that appellant had returned to work and had gross earnings of $357.76. However, in a narrative challenge statement, T.S. indicated that appellant accepted the job offer on August 21, 2018 and was scheduled to return to limited-duty work effective August 27, 2018, but on August 22, 2018 appellant advised that she was having car trouble and could return to work on August 28, 2018. She asserted that appellant refused the limited-duty job offer on August 28, 2018. T.S. also specifically noted that appellant was not entitled to compensation on August 27, 2018 or after August 29, 2018.

On the attached time analysis form (Form CA-7a) the first date of compensation claimed was noted as August 24, 2018. On this Form CA-7a appellant indicated that she was not claiming compensation for August 27 and 28, 2018 as she had worked on those days. The form recorded appellant's claim for 64.00 hours of leave without pay (LWOP) for 8 hours of LWOP on August 24, 29, 30, September 3, 4, 6, and 7, 2018 was crossed out and changed to 25.98 hours of LWOP based on 1.66 hours of LWOP on August 24 and 29, 2018 and 4.20 hours of LWOP for August 30, September 3, 4, 6, and 7, 2018. On September 21, 2018 T.S. signed the Form CA-7a certifying that the time claimed was accurate.

Appellant submitted a September 11, 2018 report by Dr. Peter Sanders, a Board-certified orthopedic surgeon, in support of her claim for wage-loss compensation due to recurrent disability from work. Dr. Sanders noted that appellant had returned to work, but was only able to work a few days due to severe constant pain.

In a development letter dated October 1, 2018, OWCP requested that appellant submit additional evidence in support of her claim, including a physician's opinion supported by a medical explanation as to the relationship between her claimed disability and accepted injury. It also advised her that her physician must provide a report which explains how her claimed disability from work was due to her original injury. OWCP provided appellant a questionnaire for completion and afforded her 30 days to submit a response.

Appellant submitted a completed questionnaire asserting that her work restrictions were not followed, a comfortable chair was not provided, and working two eight-hour days caused soreness, hip pain, and knee and feet swelling. She also submitted additional medical evidence and diagnostic tests.

By decision dated February 8, 2019, OWCP denied appellant's claim for recurrence of disability. It found that she had not submitted medical evidence from a physician, supported by medical rationale, establishing the causal relationship between her alleged recurrence of disability and the accepted employment injury. OWCP also advised appellant that the medical evidence of record was insufficient to establish that she was disabled from work due to a material change/worsening of her accepted work-related conditions.

The Board, having duly reviewed the case record submitted by OWCP, finds that this case is not in posture for decision.[3]

OWCP's procedures require that, in cases where recurrent disability from work is claimed within 90 days or less from the first return to duty, the claimant is not required to produce the same evidence as for a recurrence claimed long after apparent recovery and return to work.[4] Therefore, in cases where recurring disability from work is claimed within 90 days or less from the first return to duty, the focus is on disability rather than causal relationship.[5] The attending physician should describe the duties which the employee cannot perform and the demonstrated objective medical findings that form the basis for the renewed disability from work.[6]

The Board finds that it is unable to determine the applicability of the 90-day return to work provision since the record is unclear as to whether appellant actually returned to work.

The record contains conflicting evidence from the employing establishment and appellant as to whether she had actually returned to work.

OWCP procedures provide that it is responsible for requesting evidence which clarifies factual questions at issue.[7] These procedures provide that OWCP should specifically request the information needed, tailored to the specifics of the individual case.[8] Accurate factual information regarding whether appellant actually returned to the accepted offered limited-duty assignment is essential to determine whether she sustained a recurrence of total disability within 90 days of a return to work.[9] On remand OWCP shall request that a knowledgeable supervisor or other employing establishment official furnish documentation, such as an earnings and leave statement,

[3] *See T.Z.*, Docket No. 17-0679 (issued May 9, 2019).

[4] *P.D.*, Docket No. 19-0763 (issued November 26, 2019); *R.W.*, Docket No. 17-0720 (issued May 21, 2018).

[5] *K.R.*, Docket No. 19-0413 (issued August 7, 2019).

[6] *P.D.*, *supra* note 4; *A.C.*, Docket No. 17-0384 (issued September 11, 2017); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5 (June 2013).

[7] *Id*. at Chapter 2.800.4(c)(2) (June 2011).

[8] *Supra* note 6 at Chapter 2.800.5. *See also P.D.*, *supra* note 4; *V.R.*, Docket No. 16-1167 (issued December 22, 2016).

[9] *See P.H.*, Docket No. 20-0039 (issued April 23, 2020) (the Board found that accurate information was required to determine whether a recurrence of disability had occurred due to a withdrawal of light-duty work or worsening of the accepted condition); *K.T.*, Docket No. 17-0009 (issued October 8, 2019); *Y.R.*, Docket No. 10-1589 (issued May 19, 2011)

clarifying if appellant actually returned to work during the time period alleged and was paid for her labor. It should also request that appellant furnish documentation of any earnings during this time period, supporting that she returned to work and, thus, whether the wage-loss compensation claim should be considered based upon the 90-day return to work rule. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

IT IS HEREBY ORDERED THAT the February 8, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: December 23, 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