

The issues are: (1) whether appellant met his burden of proof to establish entitlement to wage-loss compensation for total disability for intermittent periods between October 24, 2000 and August 10, 2002, causally related to his accepted November 18, 1997 low back strain; and (2) whether appellant has more than a one percent impairment of the left lower extremity for which he received a schedule award.

FACTUAL HISTORY

On July 16, 2002 appellant, then a 43-year-old commissary storeworker, filed a claim for a traumatic injury alleging that on November 19, 1997 he sustained an injury to his back as a result of lifting cartons of canned dog food for six hours in the performance of his duties. He did not stop work. In support of his claim, appellant submitted treatment notes dated November 19, 1997 from Dr. Lourdes T. Zebell, a family practitioner, noting that appellant sustained low back pain after lifting dry goods for six hours. The Office accepted appellant's claim for a low back strain on August 13, 2002. A magnetic resonance imaging (MRI) scan performed on September 10, 2002 revealed a very small central/right disc herniation at L5-S1.¹

By letter dated October 10, 2002, the Office requested that appellant submit a comprehensive medical report from his treating physician. The Office provided him with a statement of accepted facts and a list of questions to be answered for his physician's use. In response, appellant submitted progress forms from Dr. Pedro G. Palu-ay, a treating family practitioner, dated from August 20 to September 18, 2002, as well as treatment notes from his physical therapist. Dr. Palu-ay diagnosed low back pain and prescribed physical therapy, but did not discuss the cause of appellant's condition or his capacity for work.

On December 3, 2002 the Office received appellant's claim for a schedule award. He completed the form on July 27, 2002 and an employing establishment supervisor signed the claim on August 9, 2002.

By letter dated December 11, 2002, the Office informed appellant that it was still waiting to receive a comprehensive narrative medical report from his treating physician. In response, he submitted a December 10, 2002 report from Dr. Palu-ay, in which the physician stated that appellant had reached maximum medical improvement and had been released from his care. Appellant also submitted an undated report from Dr. Palu-ay, in which the physician noted that appellant had complained of recurrent low back pain since November 1997, had been seen in the physician's office on August 20, September 5 and September 12, 2002 and had reportedly suffered an aggravation of his low back pain approximately three weeks prior to his September 12, 2002 visit. Dr. Palu-ay noted no positive findings on physical examination and listed his diagnosis as lumbar herniated disc at L5-S1. He stated that only conservative treatment was planned, that appellant's condition was temporary, but could recur and that his condition was "probably work related." In a letter dated February 6, 2003 Dr. Palu-ay stated that appellant had a herniated disc that was caused on the job. He did not discuss appellant's capacity for work in either of his reports.

By letter dated March 5, 2003, the Office again provided Dr. Palu-ay with a list of questions to be answered and asked him to evaluate appellant's entitlement to a schedule award. In a response received on March 18, 2003, Dr. Palu-ay provided brief responses to the Office's questions, indicating that the diagnosed condition was a small herniated disc at L5-S1, that the date of injury was November 18, 1997, that the condition was "most likely" causally related to appellant's work, that the condition had not resolved and was most likely permanent, that

¹ The record does not indicate that this condition was accepted by the Office.

appellant had suffered no nonindustrial injuries and that his prognosis was poor. He did not discuss appellant's capacity for work. Dr. Palu-ay also completed a separate schedule award worksheet on May 3, 2003, on which he indicated that appellant had reached maximum medical improvement on May 3, 2003, that appellant had no affected nerve roots and no permanent partial impairment of his lower extremities due to either sensory deficits or loss of strength.

On July 21, 2003 the Office received a Form CA-7 from appellant, signed on July 27, 2002, claiming both a schedule award and wage-loss compensation for intermittent periods between October 24, 2000 and August 10, 2002. The newly submitted CA-7 form appears to be a photocopy of appellant's previously submitted July 27, 2002, CA-7 form, which has been amended to include his claim for wage-loss compensation.

By letter dated August 7, 2003, the Office forwarded the relevant medical evidence of record to an Office medical adviser for a determination as to appellant's entitlement to a schedule award. In a response dated August 11, 2003, Dr. James Bicos, an orthopedic surgeon and Office medical consultant, reviewed the medical evidence and stated that appellant had reached maximum medical improvement on December 10, 2002, when he was released from Dr. Palu-ay's care. He further stated that appellant had a one percent permanent impairment of his left lower extremity for Grade 4 pain from the S1 nerve root, pursuant to Tables 15-15 and 15-18 on page 424 of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

In a separate letter also dated August 7, 2003, the Office informed appellant that the record did not contain any medical evidence which supported his claim for disability for the periods between October 24, 2000 and August 10, 2002 and requested that appellant submit additional medical evidence in support of his claim. In response, appellant submitted an August 19, 2003 letter from Dr. Palu-ay, as well as prescription forms from the physician referring appellant for physical therapy and a neurosurgical consultation. In his August 19, 2003 letter, Dr. Palu-ay stated:

"This letter is in response to your correspondence dated August 7, 2003. The following will serve as your requested medical documentation. [Appellant's] diagnosis is [l]umbar [h]erniated [d]isc at the L5-S1 level. His present problem is related to an injury sustained on November 8, 1992. [Appellant] has had persistent back pain since 1997, further aggravated three weeks prior to my consult with him."

In a decision dated October 14, 2003, after reviewing the available medical evidence, the Office denied appellant's claim for wage-loss compensation for periods between October 24, 2000 and August 10, 2002 on the grounds that the medical evidence of record was insufficient to establish that appellant was disabled for work during that time, causally related to his accepted employment injury.

In a separate decision dated October 20, 2003, the Office issued appellant a schedule award for a one percent permanent impairment of his left lower extremity. The period of the award ran for 2.88 weeks from December 10 to December 30, 2002.

LEGAL PRECEDENT -- ISSUE 1

Once an employee establishes an injury in the performance of duty, he or she has the burden of proof to establish that any subsequent disability for work, for which the employee claims compensation, is causally related to the accepted injury.² In order to establish entitlement to wage-loss compensation for disability from work, appellant has the burden to furnish 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 employment factors and supports that conclusion with sound medical reasoning.³ An award of compensation may not be made on the basis of surmise, conjecture or speculation or on appellant's unsupported belief of causal relation.⁴

ANALYSIS -- ISSUE 1

In this case, appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his claimed total disability for work for intermittent periods between October 24, 2000 and August 10, 2002 and his accepted low back strain.⁵ The Board has held that the mere belief that a condition was caused or aggravated by employment factors or incidents is not sufficient to establish a causal relationship between the two.⁶ As applied to this case, appellant's assertion that his disability for work for periods between October 24, 2000 and August 10, 2002 was causally related to the accepted low back strain must be supported by rationalized medical evidence establishing that relationship. Without supporting medical rationale from a physician, appellant's diagnosed medical conditions and his personal belief that he was totally disabled for work for periods between October 24, 2000 and August 10, 2002 due to work factors, are not sufficient to establish his claim.

In support of his claim, appellant submitted treatment notes dated November 19, 1997 from Dr. Lourdes T. Zebell. As the physician's notes predate the period of claimed disability and, therefore, do not address the relevant period at issue, they are of no probative value in establishing appellant's current claim for wage-loss compensation.⁷ In addition, appellant submitted an MRI scan and x-ray reports dated September 9 and 10, 2002. However, as these reports do not contain any discussion of appellant's ability to work, they are also insufficient to support appellant's claim for wage-loss compensation.⁸ The physical therapy treatment notes of record are also insufficient to support appellant's claim, as a physical therapist is not considered

² *Leon Thomas*, 52 ECAB 202 (2001).

³ *Alfredo Rodriguez*, 47 ECAB 437 (1996).

⁴ *Id.*

⁵ *Leon Thomas*, *supra* note 2.

⁶ *Id.*

⁷ *See Mary L. Henninger*, 52 ECAB 408 (2001).

⁸ *Id.*

a physician under the Federal Employees' Compensation Act and, thus, cannot render a medical opinion.⁹ Finally, appellant submitted medical reports and treatment notes from Dr. Palu-ay, his treating physician, dated August 20, August 21, September 5, September 18 and December 10, 2002 and February 6, March 5, May 3, August 10, August 11 and August 19, 2003. As noted above, however, while Dr. Palu-ay diagnosed low back pain and a herniated disc at L5-S1 and further stated that the diagnosed condition is causally related to appellant's employment, in none of his reports does the physician address appellant's ability to work, either for the claimed periods between October 24, 2000 and August 10, 2002 or any other periods. Therefore, Dr. Palu-ay's reports are of little probative value with respect to the issue of disability for the claimed period and, therefore, are insufficient to establish appellant's claim for wage-loss compensation.

By letter dated August 7, 2003, the Office informed appellant of the necessity of submitting rationalized medical evidence to substantiate that he was disabled for work during for periods between October 24, 2000 and August 10, 2002 due to factors of his federal employment. As appellant failed to submit any medical evidence whatsoever which addresses the relevant issue of whether appellant was disabled for work for periods between October 24, 2000 and August 10, 2002 due to his accepted back condition, the Office properly denied his claim.¹⁰

LEGAL PRECEDENT -- ISSUE 2

Under section 8107 of the Act¹¹ and section 10.404 of the implementing federal regulations,¹² schedule awards are payable for permanent impairment of specified body members, functions or organs. However, the Act does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides*¹³ has been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.¹⁴

⁹ *Vickey C. Randall*, 51 ECAB 357 (2000).

¹⁰ *Franklin D. Haislah*, 52 ECAB 457 (2001).

¹¹ 5 U.S.C. § 8107.

¹² 20 C.F.R. § 10.404 (1999).

¹³ At the time of the October 20, 2003 schedule award, the Office properly utilized the fifth edition of the A.M.A., *Guides* which became effective February 1, 2001. FECA Bulletin No. 01-05 (issued January 29, 2001).

¹⁴ See *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

ANALYSIS -- ISSUE 2

The Board finds that the Office correctly followed standardized procedures for calculating the impairment of appellant's left lower extremity due to spinal nerve involvement. Appellant's treating physician, Dr. Palu-ay, concluded, in his May 3, 2003 report, that appellant had no permanent impairment of his lower extremities due to his diagnosed herniated L5-S1 herniated disc. However, Dr. Bicos, the Office medical consultant, properly applied Dr. Palu-ay's findings regarding appellant's complaints of pain to find that appellant has a one percent permanent impairment of the left lower extremity due to Grade 4 pain, associated with the S1 nerve root, pursuant to Tables 15-15 and 15-18 on page 424 of the fifth edition of the A.M.A., *Guides*.

CONCLUSIONS

The Board finds that appellant failed to meet his burden of proof to establish entitlement to wage-loss compensation for total disability for intermittent periods between October 24, 2000 and August 10, 2002, causally related to his accepted November 18, 1997 low back strain. The Board further finds that appellant failed to establish that he has more than a one percent impairment of the left lower extremity for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated October 20 and October 14, 2003 are affirmed.

Issued: March 3, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member