United States Department of Labor
Employees' Compensation Appeals Board

DEBRA WILLIAMS, Appellant	)	
and	)	**Docket No. 05-713**
	)	**Issued: August 9, 2005**
AMERICORPS VISTA, OPERATION HOPE, INC., Baton Rouge, LA, Employer	)	

Appearances:
John B. Lambremont, Sr., Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge

JURISDICTION

On February 3, 2005 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated December 16, 2004, which denied her claim that she was totally disabled for any period caused by her accepted July 10, 2000 acromioclavicular joint strain. Under 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 met her burden of proof to establish that she was totally disabled for any period causally related to her accepted shoulder condition.

FACTUAL HISTORY

On December 10, 2001 appellant, then a 41-year-old administrative assistant, filed a traumatic injury claim, contending that on July 10, 2000 she sustained a neck and right shoulder injury on an Delta Airlines flight while in the performance of duty. She did not stop work but

reported the incident and injury to her supervisor. Appellant had been terminated by the employing establishment on November 1, 2001.

By letters dated February 26 and 28 and March 5, 2002, the Office requested that appellant furnish information regarding her claim. This was to include a description of the incident and a physician's opinion supported by medical rationale regarding the causal relationship between her disability and the reported injury. In a response dated March 19, 2002, but stamped received by the Office on April 1, 2002, appellant furnished a description of the incident, stating that while on a business trip she was injured when the airplane made a hard landing, causing the oxygen masks to deploy. She reported that she then checked into her hotel, called her supervisor and went to the emergency room. Appellant stated that she continued under medical care after her return home. She also submitted a Form CA-7 claim for compensation for the period July 10, 2000 forward.

By decision dated April 1, 2002, the Office denied the claim finding that appellant did not establish that she was injured in the performance of duty. The Office noted that she did not respond to its letters of inquiry. Appellant subsequently submitted medical evidence[1] and on April 18, 2002 requested a hearing.

The medical evidence includes an emergency room report dated July 10, 2000 in which Dr. Gregory A. Pilette noted that appellant was treated for head trauma, cervical strain and chest wall pain. Medication was prescribed. Dr. Douglas W. Davidson, a general practitioner, provided treatment notes dating from August 4, 2000 to April 26, 2001 in which he noted appellant's continued complaints of neck and right shoulder pain. On January 9, 2001 he noted that she had been in a minor motor vehicle accident. Magnetic resonance imaging (MRI) scan of the cervical spine on November 2, 2000 was read by Dr. Reuben Chrestman, a Board-certified radiologist, as normal. MRI scan of the right shoulder, done on January 2, 2001 was read by Dr. Stover Smith, Board-certified in radiology, as demonstrating hypertrophy of the acromioclavicular (AC) joint which could cause some impingement. He further noted no evidence of tendinitis and found the study otherwise unremarkable. In reports dated March 26 and April 12, 2001, Dr. F. Allen Johnston, Board-certified in orthopedic surgery, noted the history of injury, appellant's complaints of right shoulder pain and the MRI scan findings. Physical examination of the shoulder revealed tenderness to palpation of the AC joint and moderately decreased range of motion with decreased cuff strength and muscle spasm in the right trapezius. His impression was degenerative joint disease of the AC joint with strain and recommended medication and physical therapy. On May 23, 2001 Dr. Johnson recommended that appellant have surgery on her right shoulder.

In a statement dated March 19, 2002, Charles Fuller, State Program Specialist with the employing establishment, acknowledged that appellant had been on authorized travel for training when the July 10, 2000 incident occurred.

In a decision dated September 23, 2002, an Office hearing representative remanded the case to the Office for further development regarding whether appellant sustained an injury in the

[1] The medical evidence also includes an undated, unsigned history and physical, a patient registration form dated March 26, 2001 and a prescription for Percocet.

performance of duty. On November 5, 2002 the Office accepted that appellant sustained an employment-related AC joint strain. The Office authorized physical therapy, x-rays and an MRI scan and informed her of her responsibilities for securing medical and compensation payments.

Following inquiry by appellant's congressional representative, by letter dated July 27, 2004, the Office noted the type medical evidence needed to support any claim for wage-loss compensation. On August 6, 2004 she submitted an Office Form EN1043 in which appellant reported that on March 12, 2004 she had received a $30,000.00, third-party settlement from Delta Airlines, with attorney fees of $9,000.00 and court costs of $280.00. On August 9, 2004 Mr. Fuller submitted a description of the position she held with the employing establishment from April 2000 through November 2001.

Appellant's congressional representative again wrote the Office on December 9, 2004 and stated that she had submitted an August 2004 medical report.

By decision dated December 16, 2004, the Office denied appellant's claim for wage-loss compensation due to the July 10, 2000 employment injury, noting that the medical evidence submitted failed to establish that she was disabled from work from July 10, 2000 and continuing.

LEGAL PRECEDENT

Under the Federal Employees' Compensation Act[2] the term "disability" is defined as incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.[3] Disability is thus, not synonymous with physical impairment which may or may not result in an incapacity to earn the wages. An employee who has a physical impairment causally related to a federal employment injury but, who nonetheless has the capacity to earn wages he or she was receiving at the time of injury has no disability as that term is used in the Act[4] and whether a particular injury causes an employee disability for employment is a medical issue which must be resolved by competent medical evidence.[5] Whether a particular injury causes an employee to be disabled for work and the duration of that disability, are medical issues that must be proved by a preponderance of the reliable, probative and substantial medical evidence.[6]

Medical evidence must be in the form of a reasoned opinion by a qualified physician based upon a complete and accurate factual and medical history of the employee whose claim is being considered. A physician's opinion on causal relationship between a claimant's disability and an employment injury is not dispositive simply because it is rendered by a physician. To be

[2] 5 U.S.C. §§ 8101-8193.

[3] *See Prince E. Wallace*, 52 ECAB 357 (2001).

[4] *Cheryl L. Decavitch*, 50 ECAB 397 (1999); *Maxine J. Sanders*, 46 ECAB 835 (1995).

[5] *Donald E. Ewals*, 51 ECAB 428 (2000).

[6] *Tammy L. Medley*, 55 ECAB ____ (Docket No. 03-1861, issued December 19, 2003); *id*.

of probative value, the physician must provide rationale for the opinion reached. Where no such rationale is present, the medical opinion is of diminished probative value.[7]

The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.[8] Furthermore, it is well established that medical conclusions unsupported by rationale are of diminished probative value.[9]

ANALYSIS

In this case, appellant was terminated by the employing establishment on November 1, 2001. On December 10, 2001 she filed a traumatic injury claim. On November 5, 2002 the Office accepted that she sustained an employment-related AC joint strain. The Office, however, found that the medical evidence of record was insufficient to establish that she was totally disabled due to the accepted condition and appellant has never received wage-loss compensation.

The medical evidence in this case addresses the period July 10, 2000 through May 23, 2001. There is no medical evidence that addresses any period subsequent to that time, and appellant continued to work until November 1, 2001. Furthermore, none of the medical reports addresses disability whatsoever and medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[10] By letter dated March 5, 2002, the Office informed appellant of the need to submit medical evidence to include a physician's opinion supported by medical rationale regarding the causal relationship between her disability and the employment injury. In the July 27, 2004 letter to her congressional representative, the Office clearly explained the need for medical documentation regarding the periods of claimed disability. While appellant's congressional representative indicated that she had forwarded an August 2004 medical report to the Office, this is not contained in the case record before the Board.

[7] *Barbara Johnsen (James C. Johnsen)*, 54 ECAB ___ (Docket No. 03-1738, issued September 30, 2003).

[8] *William A. Archer*, 55 ECAB ____ (Docket No. 04-1138, issued August 27, 2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

[9] *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

[10] *Willie M. Miller*, 53 ECAB 697 (2002).

The Board, therefore, finds that the medical evidence of record is insufficient to establish that appellant sustained any periods of total disability subsequent to the July 10, 2000 employment injury and continuing.[11]

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she had any periods of total disability causally related to the July 10, 2000 employment injury

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 16, 2004 be affirmed.

Issued: August 9, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

[11] The Board further notes that section 8132 of the Act provides that an employee who sustains an injury for which compensation is payable under circumstances creating a legal liability in a party other than the United States has the obligation to reimburse to the United States that amount of compensation paid and credit any surplus on future payments of compensation payable to him for the same injury. The purpose underlying this obligation is to prevent a double recovery by the employee. *See Thomas P. Murray*, 51 ECAB 630 (2000). Office regulations, at section 10.711, provide that a beneficiary can retain, as a minimum, one-fifth of the net amount of money or property remaining after a reasonable attorney's fee and the costs of litigation have been deducted from the third-party recovery. The United States shares in the litigation expense by allowing the beneficiary to retain at the time of distribution, an amount equivalent to a reasonable attorney's fee proportionate to the refund due the United States. After the refund owed to the United States is calculated, the beneficiary retains any surplus remaining and this amount is credited, dollar for dollar, against future compensation for the same injury. The Office will resume the payment of compensation only after the beneficiary has been awarded compensation which exceeds the amount of the surplus. 5 U.S.C. § 10.711; *see Alvin Collins*, 54 ECAB ___ (Docket No. 03-141, issued August 13, 2003).