



from a conveyor. Appellant stopped work on May 2, 2003, underwent chiropractic care and continued working intermittently with lifting restrictions, including periods in which Dr. Keith S. Ungar, an attending chiropractor, advised that she was totally disabled. In reports of April 25 and June 27, 2003, Dr. Ungar diagnosed lumbar and sacroiliac sprain/strains and lumbar and sacroiliac subluxations by x-ray and opined that those diagnoses were causally related to the work injury of April 24, 2003. On July 21, 2003 the Office accepted the claim for lumbar and sacroiliac subluxations. Appellant was informed that the only diagnosis which could be accepted by a chiropractic doctor was that of subluxation diagnosed by x-ray.

Appellant filed several CA-7 claims for compensation for intermittent periods from July 23 to November 14, 2003. In an August 29, 2003 letter, the Office advised appellant that the medical evidence from her chiropractor was insufficient to establish a causal relationship between the claimed period of disability and the accepted work-related conditions. The medical evidence referenced by the Office included disability slips diagnosing lumbar and sacroiliac sprain/strains and lumbar and sacroiliac subluxations, a July 22, 2004 disability slip noting a return to light duty with restrictions, and attending physician (Form CA-20) reports, which noted that she was totally disabled from April 25 to August 21, 2003 and able to return to light duty with restrictions on August 19, 2003 along with copies of the original report of April 25, 2003. The Office noted that appellant worked beginning May 22, 2003 and used intermittent days of continuation of pay through June and July 2003 and requested that appellant explain why she was able to work for various periods beginning May 2, 2003 and would then intermittently stop. Appellant was further instructed to provide factual information along with a detailed medical report from her physician which explained how the claimed dates of disability were causally related to the accepted claim and its diagnosis.

In a medical report dated September 2, 2003, Dr. Ungar provided a diagnosis of lumbar subluxation and sacroiliac subluxation. In attending physician's reports dated August 29 and September 8, 2003, Dr. Ungar diagnosed lumbar and sacroiliac subluxations, opined that appellant was totally disabled from April 25 to September 22, 2003 and provided a lifting limitation of no more than 40 pounds. In an attending physician's report of September 30, 2003, Dr. Ungar diagnosed lumbar and sacroiliac subluxations, noted that appellant was totally disabled from April 25 to July 22, 2003 and provided a reduced lifting limitation to no more than 20 pounds for 3 weeks.

In a letter dated September 8, 2003, appellant stated that she returned to light duty operating various machines and that she did not experience a new injury. She further alleged that the employing establishment did not accommodate her light-duty requirements.

The Office referred appellant to Dr. Sheldon Kaffen, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated November 21, 2003, Dr. Kaffen noted his examination findings and reviewed the medical records. He diagnosed a lumbar strain/sprain causally related to the April 24, 2003 work injury. Dr. Kaffen opined, however, that appellant no longer exhibited objective findings to indicate that she had any residuals of the work-related injury and rationalized that a soft tissue injury of the lumbar spine would have healed since the date of injury of April 24, 2003. He noted that appellant's mild degenerative arthritis of the facets of the L4-5 and L5-S1 levels may be the reason for her continued subjective complaints. Dr. Kaffen found that appellant did not have a subluxation of her lumbar or thoracic

spine and opined that no further treatment was needed for her work-related lumbar sprain/strain and she was medically capable of performing her regular duties without restrictions.

On November 20, 2003 appellant filed a Form CA-7 claim for compensation for the date of November 14, 2003. In a letter dated December 12, 2003, the Office again informed appellant that detailed medical and factual evidence was necessary to support her claim for disability.

In a January 5, 2004 report, Dr. Ungar advised that appellant was in the supportive care phase of treatment and had been able to maintain her working status with an imposed restriction of no lifting more than 20 pounds. Dr. Ungar, however, did not provide any diagnoses on appellant's condition and did not render any opinion on appellant's claimed dates of disability.

By decision dated January 14, 2003, the Office denied appellant's claim for compensation for the claimed intermittent periods.

In a letter dated January 19, 2004, appellant requested a hearing of the Office's January 14, 2004 decision, which was held on July 27, 2004. At the hearing, appellant testified that she was told over the telephone that the employing establishment did not have any work available within her restrictions. In a February 4, 2004 report, Dr. Ungar opined that appellant's subluxations existed as evidenced by the January 15, 2004 x-ray report. A February 2, 2004 x-ray report from Dr. Edward J. Dailey, a radiologist, noted an abnormal alignment of the lumbar vertebra which could reflect muscle spasm and/or joint dysfunction. In a January 28, 2004 progress note, Dr. Naim Issa, an internist, noted the April 24, 2003 history of injury and diagnosed a disorder of the sacrum. Dr. Daniel Mazanec, an osteopath, recommended physical therapy on April 15, 2004. However, neither Dr. Dailey, Dr. Issa nor Dr. Mazanec rendered an opinion on the causal relationship of appellant's condition. Appellant also submitted a March 18, 2004 report from Jacalyn Golden, a certified nurse practitioner.

By decision dated November 23, 2004, the Office hearing representative affirmed the Office's January 14, 2004 decision.

### **LEGAL PRECEDENT**

Under the Federal Employees' Compensation Act,<sup>1</sup> the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus not synonymous with physical impairment, which may or may not result in incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury has no disability as that term is used in the Act.<sup>2</sup>

A claimant, for each period of disability claimed, has the burden of proving by the preponderance of the reliable, probative and substantial evidence that he or she is disabled for

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> Cheryl L. Decavitch, 50 ECAB 397 (1999).

work as a result of the employment injury. Whether a particular injury causes an employee to be disabled for employment, and the duration of that disability, are medical issues which must be proved by a preponderance of the reliable, probative and substantial evidence.<sup>3</sup>

### ANALYSIS

The Office accepted appellant's claim for lumbar and sacroiliac subluxations. However, the medical evidence submitted in support of the intermittent wage-loss compensation claims for disability for the period July 23 to November 14, 2003 is insufficient to establish that the claimed periods of disability were caused or aggravated by the accepted employment conditions.

The Board notes that a chiropractor is a physician under the Act only to the diagnosis of subluxations of the spine as shown by x-ray to exist.<sup>4</sup> The medical evidence appellant submitted in support of her claims for disability was from Dr. Ungar, a chiropractor. In his reports of April 25, 2003 and January 5, 2004, Dr. Ungar noted that x-rays were reviewed and diagnosed subluxations. Dr. Ungar is considered a physician in his treatment of spinal subluxations demonstrated by x-ray. However, during the disability period claimed from July 23 to November 14, 2003, Dr. Ungar failed to provide a well-rationalized opinion as to why appellant became totally disabled from the employment-related conditions.<sup>5</sup> In an attending physician's form reports of August 29, September 8 and 30, 2003, Dr. Ungar failed to provide any rationale in support of his opinion that the diagnosed subluxations caused total disability for work as of July 22, 2003. He merely checked a box noting causal relationship. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value, without any explanation or rationale for the conclusion reached, and such report is insufficient to establish causal relationship.<sup>6</sup> Although Dr. Ungar noted that appellant was totally disabled from April 25 to September 22, 2003 interspersed with intermittent dates when she was able to work light duty with restrictions, he failed to provide sufficient medical explanation as to why appellant could work with restrictions on some dates but not on others. Moreover, in his January 5, 2004 report where Dr. Ungar provided a new accompanying x-ray report to support his diagnosis of subluxation, he failed to provide any opinion or medical explanation on the dates of disability during the period claimed or render an opinion with medical rationale as to whether this diagnosis of subluxation was causally related to appellant's work injury of April 24, 2003.

The remaining evidence of record is also insufficient to establish appellant's burden of proof. Drs. Dailey, Issa and Mazenec failed to render an opinion on the causal relationship of

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<sup>3</sup> *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>4</sup> 5 U.S.C § 8101(2).

<sup>5</sup> See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

<sup>6</sup> *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

appellant's condition. A nurse is not a physician under the Act. Therefore, Ms. Golden's March 18, 2004 report does not constitute competent medical evidence.<sup>7</sup>

In a November 21, 2003 report, Dr. Kaffen opined that appellant did not have any subluxations and that she was medically capable of performing her regular work without restrictions as there were no objective findings to support any residuals of her work-related lumbar strain/sprain, which would have healed since the April 24, 2003 injury. The record contains insufficient rationalized medical opinion on the cause of appellant's condition or disability to support her belief that her condition for the claimed intermittent periods from July 23 to November 14, 2003 stemmed from the accepted work-related subluxations. Therefore, appellant has not established with reliable probative medical evidence that she was disabled for work for the claimed intermittent periods from July 23 to November 14, 2003 as a result of accepted work-related conditions.

### **CONCLUSION**

The Board finds that appellant has failed to establish that the intermittent period of disability claimed from July 23 to November 14, 2003 was causally related to the accepted subluxation conditions of April 24, 2003.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 23, 2004 is affirmed.

Issued: July 7, 2005  
Washington, DC

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>7</sup> 5 U.S.C. §§ 8101-8193, 8101(2); *Vicky L. Hannis*, 48 ECAB 538, 540 (1997) (a nurse is not a physician under the Act).