United States Department of Labor
Employees' Compensation Appeals Board

STACEY L. ALEXANDER, Appellant	)	
and	)	**Docket No. 04-2235**
	)	**Issued: May 2, 2005**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Houston, TX, Employer	)	

Appearances:
Stacey L. Alexander, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On September 15, 2004 appellant filed a timely appeal from a merit decision dated March 29, 2004 of the Office of Workers' Compensation Programs' hearing representative affirming the Office's October 30, 2003 decision. In the October 30, 2003 decision, the Office denied appellant's claim for wage-loss compensation for the period beginning August 26, 2003. The record also contains a merit decision dated June 10, 2004 in which the Office denied appellant's request for modification. Pursuant to 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 has established that she is entitled to wage-loss compensation for total disability beginning August 26, 2003 due to her August 25, 2003 employment injury.

FACTUAL HISTORY

On August 25, 2003 appellant, then a 31-year-old transportation security screener, filed a traumatic injury claim alleging that on that date she strained her back while lifting a bag. She stopped work on August 25, 2003.

The Office received reports dated September 22 and 24, 2003 that were initialed by "M" regarding appellant's chiropractic care. An August 26, 2003 report from Dr. Jack T. Barnett, a chiropractor, indicated that appellant sustained a lumbar and thoracic injury while lifting on August 25, 2003. He diagnosed "847.2" and "847.1" and ruled out "722.1." Dr. Barnett stated that appellant was disabled for work from August 26 until September 8, 2003. A September 18, 2003 medical report from Dr. Donna N. Canlas, a Board-certified family practitioner, noted appellant's complaints of low back and thoracic pain and her medical and social background. She reported her findings on physical examination and ruled out a lumbar disc injury. Dr. Canlas diagnosed a Grade 2 lumbar sprain/strain.

On October 2, 2003 appellant filed claims for compensation (Form CA-7) for the period of disability from October 10 through November 10, 2003. She submitted Dr. Barnett's report dated August 26, 2003 which revealed a history of her August 25, 2003 injury and medical background. Dr. Barnett noted appellant's complaints of pain in her back and extending to her thighs and knee. He reported his findings on physical examination and diagnosed herniated nucleus pulposus, lumbar radicular neuralgia and a Grade 2 thoracic sprain/strain. Dr. Barnett placed appellant off work for two weeks. In an October 1, 2003 attending physician's report, Dr. Barnett reiterated the history of appellant's August 25, 2003 injury and her diagnoses. He indicated with an affirmative mark that her conditions were caused by an employment activity. Dr. Barnett further indicated that appellant was totally disabled from August 25 through October 31, 2003.

The Office received unsigned reports dated September 3, 4 and 5, 2003 regarding appellant's chiropractic treatment.

By letter dated October 14, 2003, the Office requested that appellant submit medical evidence establishing disability for work during the entire period claimed. The Office stated:

> "The medical documentation should include dates of examination and treatment, a detailed description of objective findings that should include the physician's clinical courses of treatment and is supported with all dates of total disability. The medical evidence should support the physician's opinion for dates of disability and explain the relationship between the incident caused or aggravated by the reported work injury. This information is crucial to your claim for compensation."

In a letter of the same date, the Office advised appellant that the evidence submitted regarding chiropractor care was insufficient to authorize such treatment. The Office noted that a diagnosis of subluxation as demonstrated by x-ray was required for authorizing chiropractic care. The Office requested that appellant obtain responses to the enclosed questions about her treatment from her chiropractor.

In an October 14, 2003 letter, the Office advised appellant that her claim had been accepted for a lumbar strain.

The Office received several reports regarding appellant's chiropractic treatment on intermittent dates from August 26 through October 17, 2003 that were either initialed by "M" or unsigned An August 29, 2003 report was initialed by Dr. Barnett and revealed his findings on physical examination.[1] In an October 10, 2003 report, Dr. Barnett noted appellant's complaints of back pain and his findings on physical examination. He diagnosed a Grade 2 lumbar sprain/strain and Grade 2 thoracic sprain/strain. He ruled out lumbar herniated nucleus pulposus. Dr. Barnett concluded that appellant will remain off work.

By decision dated October 30, 2003, the Office denied appellant's claim for compensation. The Office found that Dr. Canlas did not report that appellant was disabled due to the August 25, 2003 employment injury and the chiropractic reports lacked probative value because they did not diagnose subluxation as demonstrated by x-ray.

The Office received Dr. Canlas's November 3, 2003 report wherein she stated that appellant was currently off work until approximately December 1, 2003 and that she was to follow-up with her on November 6, 2003. Dr. Canlas recommended that appellant undergo a lumbar magnetic resonance imaging (MRI) scan. She noted that appellant's x-rays were attached. A September 9, 2003 x-ray report from Dr. Edward C. Fritsch, Jr., a radiologist, revealed no fracture or destructive bone disease of the lumbar spine, asymmetrical L5 transitional segment (partial sacralization) and left convex functional thoracolumbar scoliosis. In a December 3, 2003 report, Dr. Canlas indicated that appellant suffered from "722.10" and "847.2" and that she was disabled from December 2, 2003 through March 1, 2004.

The Office also received reports that were either initialed by "M" or unsigned indicating that appellant received chiropractic treatment on intermittent dates from October 21 through November 18, 2003. Dr. Barnett's November 10, 2003 report indicated that appellant was treated for back pain on that date. His October 30, 2003 report provided a diagnosis of "722.10" and "724.4" and that appellant was disabled from October 30 through December 1, 2003.

On November 10, 2003 appellant requested a review of the written record by an Office hearing representative. On October 31, 2003 she submitted CA-7 forms covering the period of disability from November 11 through December 7, 2003. The Office received reports that were either initialed by "M" or unsigned revealing that appellant received chiropractic treatment on intermittent dates from December 8, 2003 through January 23, 2004. A January 15, 2004 report of Dr. David L. Singleton, an internist, revealed a history of appellant's back injury and medical, family and social background. He reported his findings on physical and neurological examination. Dr. Singleton diagnosed 722.10 - lumbar disc displacement, 724.4 -- lumbar radiculopathy and 723.4 -- cervical radiculopathy.

[1] The Board notes that, although the August 29, 2003 chiropractic report was actually initialed by "B," it appears that it was initialed by Dr. Barnett as he is appellant's chiropractor.

On December 9, 2003 appellant filed CA-7 forms for the period of disability from December 8, 2003 through January 4, 2004. On December 19, 2003 she filed CA-7 forms for the period of disability from November 11, 2003 through February 21, 2004.

The Office received Dr. Canlas's February 3, 2004 report in which she provided her findings on physical examination and reviewed diagnostic test results. She diagnosed lumbar disc injury and lumbar pain with radiculopathy. Dr. Canlas stated that appellant should remain off work until further notice. Reports that were either initialed by "M" or unsigned indicated that appellant received chiropractic treatment on intermittent dates from January 26 through February 29, 2004. A January 27, 2004 report regarding appellant's chiropractic treatment is signed with an illegible initial. In a January 27, 2004 report, Dr. Rezik A. Saqer, a Board-certified anesthesiologist, noted a review of appellant's employment injury and medical background. He provided his findings on physical and neurological examination. Dr. Saqer diagnosed right lumbar radiculopathy, right sacroilitis, right lumbar facet arthropathy and myofascial pain syndrome. In an undated report, Dr. Canlas reiterated the diagnosis of "722.10" and "847.2 and indicated that appellant was disabled through December 1, 2003.

On March 19, 2004 appellant submitted CA-7 forms for the period of disability from February 22 through March 6, 2004. She also submitted Dr. Canlas's December 3, 2003 report which reiterated her previous diagnosis. Appellant stated that appellant was disabled from December 2, 2003 through March 1, 2004.

By decision dated March 29, 2004, the Office hearing representative affirmed the Office's October 30, 2003 decision. Appellant requested reconsideration in a May 25, 2004 letter. She submitted a description of several jobs including a baggage handler. Appellant also submitted several reports from Dr. Canlas. In an April 27, 2004 report, Dr. Canlas diagnosed lumbar intervertebral disc without myelopathy and lumbar sciatic/radicular neuralgia. She noted that she placed appellant off work on her initial visit and that she remained unable to perform any job duties due to her August 25, 2003 employment injury. In a March 23, 2004 report, Dr. Canlas diagnosed low back pain with radiculopathy and stated that appellant should continue her treatment with Dr. Barnett three times a week. Her March 9, 2004 report provided a diagnosis of elevated blood pressure secondary to the August 25, 2003 employment injury and pulmonary valve gradient secondary to pain and low back pain with radiculopathy. Dr. Canlas stated that appellant remained off work until further notice. Her February 3, 2004 report revealed a diagnosis of a lumbar disc injury and lumbar pain with radiculopathy. Dr. Canlas noted appellant's medication for her depression, a condition she stated was secondary to the August 25, 2003 employment injury. She further noted that appellant remained off work until further notice. In a December 9, 2003 report, Dr. Canlas reported that a lumbar disc injury had been ruled out and that appellant had a lumbar sprain/strain and lumbar back pain with radiculopathy. She noted that appellant should continue with her physical therapy with Dr. Barnett. Dr. Canlas reiterated that a lumbar disc injury was ruled out and that appellant had a Grade 2 lumbar sprain/strain in her August 28, 2003 report.

Appellant submitted several reports from Dr. Barnett. In an April 13, 2004 functional capacity evaluation report, Dr. Barnett reported that appellant had an MRI scan performed on January 15, 2004 which revealed discal derangement at L4-5 resulting in a broad-based right parasagittal traumatic protrusion with an annular tear measuring two to three millimeters and

abutting against the traversing right L5 nerve root with associated epidural edema inflammation caudad to the protrusion. The MRI scan also revealed focal posterocentral subligamentous protrusion at L5-S1 with an associated annular tear abutting against the traversing left S1 nerve root sleeve which demonstrated traumatic characteristics. Cinical correlation was advised. Dr. Barnett provided his findings on examination and stated that appellant tested positive for depression and recommended further evaluation. He diagnosed 722.10 -- a herniated nucleus pulposus and 724.4. -- radicular neuralgia. Based on test results, Dr. Barnett opined that appellant did not exhibit the ability to work and noted her physical limitations. Dr. Barnett's October 10, 2003 report revealed a diagnosis of 847.2 -- Grade 2 lumbar sprain/strain, 847.1 -- Grade 2 thoracic sprain/strain and 722.1 -- a lumbar herniated nucleus pulposus was ruled out. He stated that appellant will remain off work. Dr. Barnett's November 10, 2003 and February 27, 2004 reports indicated that appellant received chiropractic treatment for her back. His September 5 and 29, 2003 reports reiterated a diagnosis of "722.10," "724.4" and "847.1" and indicated that appellant was disabled from September 5 through October 31, 2003.

Appellant submitted a laboratory report dated March 16, 2004 and the results of the April 13, 2004 functional capacity test. She submitted duplicate copies of Dr. Canlas's September 18, November 3 and December 3, 2003 reports, Dr. Barnett's August 26 and October 30, 2003 reports, Dr. Saqer's January 27, 2004 report and Dr. Fritsch's September 9, 2003 x-ray report.

Unsigned treatment notes covering intermittent periods from December 17, 2003 through April 16, 2004 indicated that appellant received chiropractic treatment. Reports that were initialed by "M," unsigned and contained an illegible signature also indicated that appellant received chiropractic treatment for low back pain on intermittent dates from September 8, 2003 through April 12, 2004.

A report from Dr. Morris E. Berk, a radiologist, revealed the findings of the January 15, 2004 MRI scan.

By decision dated June 10, 2004, the Office denied appellant's request for modification based on a merit review of her claim.[2]

LEGAL PRECEDENT

As used in the Federal Employees' Compensation Act,[3] the term "disability" means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.[4] Disability is, thus, not synonymous with physical impairment which may

[2] Following the issuance of the Office's June 10, 2004 decision, the Office received additional medical evidence. The Board may not consider evidence for the first time on appeal which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). Appellant can submit this evidence to the Office and request reconsideration under 5 U.S.C. § 8128 and 20 C.F.R. § 10.606.

[3] 5 U.S.C. §§ 8101-8193.

[4] *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.5(f).

or may not result in an incapacity to earn wages.[5] An employee who has a physical impairment causally related to her federal employment, but who nonetheless has the capacity to earn the wages she was receiving at the time of injury, has no disability as that term is used in the Act and is not entitled to compensation for loss of wage-earning capacity.[6] When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for any loss of wages.[7]

To meet this burden appellant must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factor(s). The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[8]

ANALYSIS

In this case, the Office accepted that appellant sustained a lumbar strain on August 25, 2003. Appellant, however, has failed to establish that her accepted condition resulted in disability for work and medical treatment during the specific claimed period, August 26, 2003 through the present. Appellant submitted several reports from her chiropractor, Dr. Barnett which offered several diagnoses related to her back and found that she was totally disabled for work on intermittent dates during the claimed period. He did not note that any x-rays were taken. The Board finds that these reports have no probative medical value in establishing appellant's claim as they failed to diagnose subluxation as demonstrated by x-ray. Section 8101(2) of the Act[9] defines the term "physician," to include chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.[10]

---

[5] *See Fred Foster*, 1 ECAB 21 at 24-25 (1947) (finding that the Act provides for the payment of compensation in disability cases upon the basis of the impairment in the employee's capacity to earn wages and not upon physical impairment as such).

[6] *See Gary L. Loser*, 38 ECAB 673 (1987) (although the evidence indicated that appellant had sustained a permanent impairment of his legs because of work-related thrombophlebitis, it did not demonstrate that his condition prevented him from returning to his work as a chemist or caused any incapacity to earn the wages he was receiving at the time of injury).

[7] *Bobby W. Hornbuckle*, 38 ECAB 626 (1987).

[8] *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

[9] 5 U.S.C. § 8101(2).

[10] *See* 20 C.F.R. § 10.400(e) (defining reimbursable chiropractic services). *See Marjorie S. Geer*, 39 ECAB 1099, 1101-02 (1988).

In an April 13, 2004 report, Dr. Barnett advised that appellant had an MRI scan which showed discal derangement at L4-5 resulting in a broad-based right parasagittal traumatic protrusion with an annular tear measuring two to three millimeters and abutting against the traversing right L5 nerve root with associated epidural edema inflammation caudad to the protrusion. The MRI scan also revealed focal posterocentral subligamentous protrusion at L5-S1 with an associated annular tear abutting against the traversing left S1 nerve root sleeve which demonstrated traumatic characteristics. Dr. Barnett diagnosed a herniated nucleus pulposus and radicular neuralgia and opined that appellant was not able to work. Although Dr. Barnett noted the MRI scan results, he did not diagnose subluxation as demonstrated by x-ray. Therefore, his report has no probative medical value in establishing appellant's claim.

Dr. Canlas's reports ruled out a lumbar disc injury and provided several diagnoses regarding appellant's employment-related back injury. In addition, Dr. Canlas found that appellant was disabled on intermittent dates during the claimed period. However, she did not discuss or provide any opinion on whether appellant's disability was causally related to the August 25, 2003 employment injury. In other reports, Dr. Canlas did not address whether appellant was totally disabled.

In a February 3, 2004 report, Dr. Canlas diagnosed a lumbar disc injury and lumbar pain with radiculopathy. She also diagnosed depression secondary to appellant's employment injury and stated that appellant should remain off work until further notice. Her March 9, 2004 report revealed that appellant's elevated blood pressure was secondary to the August 25, 2003 employment injury and that she had pulmonary valve gradient secondary to pain and low back pain with radiculopathy. She stated that appellant should remain off work until further notice. The Board notes that appellant's claim has not been accepted for either depression or high blood pressure. Further, Dr. Canlas did not discuss or provide an opinion on the causal relationship between appellant's disability during the claimed period and the August 25, 2003 employment injury in her February 3 and March 9, 2004 reports.

The treatment notes and reports covering the period August 26, 2003 through April 12, 2004 indicated that appellant received chiropractic treatment were unsigned, initialed by "M" and contained an illegible signature. These treatment notes and reports are insufficient to establish appellant's burden of proof because it is not clear that they are from a physician.[11]

Dr. Fritsch's x-ray report found no fracture or destructive bone disease of the lumbar spine, asymmetrical L5 transitional segment (partial sacralization) and left convex functional thoracolumbar scoliosis. Dr. Singleton noted a history of appellant's employment injury and diagnosed lumbar disc displacement, lumbar radiculopathy and cervical radiculopathy. Dr. Saqer reported a history of appellant's August 25, 2003 employment injury and medical background. He diagnosed right lumbar radiculopathy, right sacroilitis, right lumbar facet arthropathy and myofascial pain syndrome. The Board finds that the reports of Dr. Fritsch, Dr. Singleton and Dr. Saqer are insufficient to establish appellant's burden of proof because they did not discuss or provide an opinion on whether appellant was totally disabled during the claimed period due to the August 25, 2003 employment injury. Similarly, the March 16, 2004 laboratory report and the

[11] *Vickey C. Randall*, 51 ECAB 357 (2000); *Merton J. Sills*, 39 ECAB 572 (1988) (reports not signed by a physician lack probative value).

April 13, 2004 functional capacity test results failed to address a causal relationship between appellant's disability during the claimed period and her accepted employment injury.

As appellant has failed to submit rationalized medical evidence establishing that her disability resulted from the effects of the August 25, 2003 employment injury, she has not met her burden of proof.

CONCLUSION

The Board finds that appellant has failed to establish that she is entitled to wage-loss compensation for total disability beginning August 26, 2003 due to her August 25, 2003 employment injury as she has not provided a sufficiently rationalized medical opinion to support that her disability for work during the period in question was causally related to her August 25, 2003 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the June 10, 2004 and October 30, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 2, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member