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<b>J.F., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 06-1020</b>
	)	<b>Issued: March 15, 2007</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Bayamon, PR, Employer</b>	)	
	)	

### Case Submitted on the Record

Before:  
ALEC J. KOROMILAS, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

On March 20, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated August 8, December 8 and 23, 2005 denying his claims for recurrence of disability and entitlement to wage-loss benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issue is whether appellant is entitled to wage-loss benefits for total disability for any period subsequent to August 21, 2002.

On August 1, 2002 appellant, then a 32-year-old clerk, filed a traumatic injury claim, alleging that he injured his lower back on July 17, 2002 while unloading a truck of cantaloupes while in the performance of duty. His claim was accepted for lumbar strain on May 7, 2003.

Appellant submitted a July 22, 2002 report of a magnetic resonance imaging (MRI) scan of the lumbar spine and physicians' progress notes bearing illegible signatures dated July 30 through August 6, 2002.

In an August 19, 2002 duty status report, Dr. Luis A. Echavarkia Seza, the employing establishment's medical unit physician, indicated that appellant was capable of working six hours per day, with a 15-pound lifting limitation. Appellant returned to limited duty on August 21, 2002. After working several hours, he stopped working due to alleged lower back pain.

Appellant submitted reports from Dr. Tomas Hernandez, a treating physician, including a medical certificate dated August 5, 2002, reflecting a diagnosis of lumbar radiculopathy. Dr. Hernandez stated that appellant was disabled from work from August 2 through 12, 2002. In duty status reports dated August 14 and 22, 2002, he opined that appellant was totally disabled.

On September 11, 2002 the employing establishment controverted appellant's claim for disability, stating that the employing establishment's physician had found him fit for duty.

In a September 9, 2002 attending physician's report, Dr. Julio E. Rosada, a treating physician, opined that appellant was totally disabled due to his work-related low back pain from July 17 to November 30, 2002. In an accompanying duty status report, he provided diagnoses due to injury of a herniated disc and osteoarthritis and recommended surgery. In a January 27, 2003 duty status report, Dr. Rosada again opined that appellant was unable to work.

Appellant submitted a chronology of events from July 17, 2002 through February, 2003, reflecting the facts and the circumstances surrounding his July 17, 2002 injury and treatment thereafter.

On September 11, 2002 appellant submitted a portion of a CA-7 claim for compensation for the period August 31 through November 30, 2002. By letter dated May 12, 2003, the Office informed him that his request could not be processed, in that it was incomplete and requested a completed application.

Appellant submitted a December 22, 2003 clinic report bearing an illegible signature. The report indicated that he was unable to work for six weeks due to a July 17, 2002 accident.

On June 8, 2004 appellant filed a CA-7 claim for compensation for the period December 29, 2002 through June 4, 2004. In a June 4, 2004 attending physician's report, Dr. Rosada indicated that appellant was no longer disabled from his July 17, 2002 injury and would be able to return to light duty on June 5, 2004.

On June 23, 2004 the Office informed appellant that the information submitted was insufficient to establish his claim for benefits beginning August 22, 2002 and advised him to provide evidence to support that he had sustained a recurrence of disability, including a narrative medical report with a diagnosis and a reasoned opinion that his disabling condition was causally related to the accepted injury.

In an August 11, 2004 duty status report, Dr. Seza opined that appellant was able to return to work part time with restrictions. On August 24, 2004 appellant returned to light duty. He stopped working after four hours due to pain in his lower back. Appellant has not returned to work.

The employing establishment scheduled, and appellant failed to attend, work capacity tests on August 25 and September 14, 2004. The employing establishment provided documentation that he had attended college as a full-time student from November 2002 through February 2003.

Appellant submitted an October 21, 2004 report from Dr. Hernandez who opined that he was unable to perform any job due to the accepted July 17, 2002 injury. Dr. Hernandez related the history of appellant's injury and provided diagnoses of large centrally herniated disc secondary to a July 17, 2002 work-related injury and bilateral carpal tunnel syndrome, probably job related. He found mild kyphosis and moderately severe spasms in the neck and both shoulders. In the cervical region, lateral flexion was 45 degrees to the left and 45 degrees to the right, flexion was 45 degrees, extension was 30 degrees, and rotation was 80 degrees to the right and 80 degrees to the left. In the lumbosacral region, extension was 20 degrees and lateral flexion was 20 degrees to the right and 20 degrees to the left. In the thoracolumbar region, anterior flexion was 45 degrees. Dr. Hernandez stated that, as there was no previous history of back injury or disc disease, "it must be concluded that the present problem is related to the incident that occurred on July 17, 2002." He opined that, because his condition was still "active," appellant was unable to perform the duties that his job entails, due to the constant pain aggravated by even mild exertion.

By decision dated January 13, 2005, the Office denied appellant's claim for recurrence of disability beginning August 22, 2002. Noting that he failed to attend work capacity tests and was enrolled as a full-time student, the Office stated that an argument could be made that he had abandoned suitable employment. The Office found that appellant had provided no probative medical evidence establishing a causal relationship between his claimed recurrence and the accepted work injury.

On May 1, 2005 appellant requested reconsideration of the Office's January 13, 2005 decision. He submitted a letter dated April 20, 2005, contending that his claim was not a claim for recurrence of disability as of August 22, 2002, but rather was a claim for compensation for the period December 29, 2002 to June 4, 2004. He also stated that he became a full-time mechanical engineering student in August 2004 and intended to continue working at the employing establishment. Submitting duplicates of Dr. Hernandez' October 21, 2004 report and August 14, 2002 duty status report, as well as a duplicate of Dr. Rosada's September 9, 2002 duty status report, appellant contended that his disability was well documented by his physicians.

By decision dated August 8, 2005, the Office denied modification of its January 13, 2005 decision on the grounds that appellant did not provide contemporaneous medical evidence to establish that a recurrence of disability occurred as of August 22, 2002.

On April 27, 2005 appellant filed a claim for compensation (Form CA-7) for the period July 17, 2002 through April 10, 2005.

Appellant submitted an attending physician's report from Dr. Hernandez dated October 4, 2005, which provided a diagnosis of "lumbar HMP with radiculopathy." Indicating that he was totally disabled from July 17, 2002 through October 4, 2005, Dr. Hernandez stated that he was able to return to limited duty at that time.

On October 14, 2005 appellant filed a claim for recurrence of disability for the period August 21, 2002 through August 24, 2004. He alleged that, after reporting to work at 10:00 a.m. on August 21, 2002, he "had to stop working after 4.19 hours due to intense back pain."

In a memorandum dated October 19, 2005, Ruben Maldonado, customer service supervisor, stated that appellant reported to work on August 24, 2004 and presented a Form CA-17 to his manager outlining his work limitations. Appellant was assigned duties in accordance with his restrictions and completed his shift without incident. In a memorandum dated October 19, 2005, customer service supervisor Anastacio Arce stated that, on August 21, 2002, appellant reported to work and was assigned duties in accordance with restrictions outlined in an August 19, 2002 CA-17 form. He stated that under no circumstances was appellant instructed to perform any task exceeding his limitations.

By letter dated October 27, 2005, the Office informed appellant that the information submitted was insufficient to establish his claim for recurrence of disability as of August 21, 2002. The Office advised him to submit within 30 days evidence supporting that either his light-duty assignment had changed such that it no longer met the restrictions of his doctor or that his condition had worsened to the degree that he could not perform the duties of the job. Appellant was asked to provide a physician's report explaining how he was no longer able to perform the duties of his job due to the accepted employment accident.

On October 14, 2005 appellant submitted a notice of recurrence of disability beginning August 24, 2004. He claimed that he had returned to limited duty on that date, but was instructed by his supervisor to perform regular duties. After 5.45 hours, appellant stopped working due to alleged severe back pain.

By letter dated November 21, 2005, the Office informed appellant that the information submitted was insufficient to establish his claim for recurrence of disability as of August 24, 2004. The Office advised him to submit within 30 days evidence supporting that either his light-duty assignment had changed such that it no longer met the restrictions of his doctor, or that his condition had worsened to the degree that he could not perform the duties of the job. Appellant was asked to provide a doctor's report explaining how he was no longer able to perform the duties of his job due to the accepted employment accident.

By decision dated December 8, 2005, the Office denied appellant's claim for recurrence of disability as of August 21, 2002. Noting that his alleged herniated disc was not an accepted condition, the Office found that the evidence did not support that his claimed recurrence was causally related to the July 17, 2002 work injury.

Appellant submitted a November 29, 2005 report from Dr. Hernandez. The history provided reflected that appellant's condition had worsened when he was "forced to work" on August 21, 2002, even though Dr. Hernandez had found him to be totally disabled. Dr. Hernandez stated that appellant had reinjured his back on August 24, 2004 while lifting a heavy load at work. He provided diagnoses of a large L5-S1 centrally herniated disc resulting from the July 17, 2002 injury and bilateral carpal tunnel syndrome. Dr. Hernandez indicated that appellant continued to experience pain when he tried to bend at the waist or carry anything beyond his 15-pound weight limitation.

On December 8, 2005 appellant filed claims for compensation for the periods April 10 through August 11, 2005 and from August 11 through November 22, 2005.<sup>1</sup> In a November 8, 2005 attending physician's report, Dr. Hernandez again diagnosed lumbar herniated nucleus pulposus (HNP) with radiculopathy and stated that appellant was totally disabled from July 17, 2002 through November 4, 2004.

By decision dated December 23, 2005, the Office denied appellant's claim for recurrence of disability as of August 24, 2004, on the grounds that he had submitted no factual evidence supporting his claim and no medical evidence connecting his current diagnosed conditions to his accepted lumbar strain.

### **LEGAL PRECEDENT**

For each period of disability claimed, appellant has the burden of proving by the preponderance of the reliable, probative and substantial evidence that he is disabled for work as a result of his employment injury.<sup>2</sup> 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 medical evidence.<sup>3</sup> The Board will not require the Office to pay compensation in the absence of medical evidence directly addressing the particular period of disability for which compensation is sought. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.<sup>4</sup>

Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work. Appellant's burden of proving he was disabled on particular dates requires that he 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

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<sup>1</sup> The Board notes that the record does not contain a final decision regarding appellant's claims for compensation for these periods. Therefore, the Board does not have jurisdiction over the merits of the claims. See 20 C.F.R. § 501.2(c) (the Board has jurisdiction to consider and decide appeals from final decisions; there shall be no appeal with respect to any interlocutory matter disposed of during the pendency of the case).

<sup>2</sup> *Fereidoon Kharabi*, 52 ECAB 291 (2001); see also *David H. Goss*, 32 ECAB 24 (1980).

<sup>3</sup> *Fereidoon Kharabi*, *supra* note 2; see also *Edward H. Horton*, 41 ECAB 301 (1989).

<sup>4</sup> *Fereidoon Kharabi*, *supra* note 2.

related to the employment injury and supports that conclusion with medical reasoning.<sup>5</sup> Where no such rationale is present, the medical evidence is of diminished probative value.<sup>6</sup>

### ANALYSIS

Appellant filed claims for compensation alleging that he was totally disabled from working subsequent to August 21, 2002. However, he did not submit any probative medical evidence demonstrating total disability for this period of time due to his accepted condition.<sup>7</sup>

Medical evidence of record includes reports from appellant's treating physician, Dr. Hernandez. On August 5, 2002 Dr. Hernandez diagnosed lumbar radiculopathy and stated that appellant was disabled from August 2 through 12, 2002. In duty status reports dated August 14 and 22, 2002, he opined that appellant was totally disabled. On October 4, 2005 Dr. Hernandez diagnosed lumbar HNP with radiculopathy and opined that appellant was totally disabled from July 17, 2002 through October 4, 2005. He stated that he was able to return to limited duty at that time. The Board has held that a medical opinion not fortified by medical rationale is of diminished probative value.<sup>8</sup> As Dr. Hernandez failed to provide any explanation as to how appellant's alleged disability was related to his accepted lumbar strain, these reports lack probative value. To the extent that Dr. Hernandez attributed appellant's disability to a herniated disc, the Office has not accepted such condition as causally related to the July 17, 2002 incident. Furthermore, his opinion that appellant was able to return to work on October 4, 2005 refutes the claim that appellant was disabled at that time.

On October 21, 2004 Dr. Hernandez opined that appellant was "unable to perform any job" due to the accepted July 17, 2002 injury. He diagnosed a large centrally herniated disc secondary to a July 17, 2002 work-related injury. Dr. Hernandez stated that, as there was no previous history of back injury or disc disease, "it must be concluded that the present problem is related to the incident that occurred on July 17, 2002." He offered no explanation as to how this newly diagnosed condition was related to the accepted lumbar strain, his report lacks probative value. Moreover, Dr. Hernandez's conclusion that the "present problem" was related to the July 17, 2002 incident because there was no previous history of back injury or disc disease, is not well rationalized. Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.<sup>9</sup> Dr. Hernandez is

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<sup>5</sup> *Ronald A. Eldridge*, 53 ECAB 218 (2001).

<sup>6</sup> *Mary A. Ceglia*, 55 ECAB 626 (2004).

<sup>7</sup> The record reflects that appellant received continuation of pay from July 17 to September 1, 2002. As compensation may not be paid while an injured worker is in a continuation of pay status, appellant would not be entitled to compensation benefits for wage loss until September 2, 2002. *See* 20 C.F.R. § 10.401(a).

<sup>8</sup> *Mary A. Ceglia*, *supra* note 6. *See Brenda L. DuBuque*, 55 ECAB 212 (2004); *see also Willa M. Frazier*, 55 ECAB 379 (2004); *David L. Scott*, 55 ECAB 330 (2004).

<sup>9</sup> *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

required to explain how appellant's condition is physiologically related to the July 17, 2002 employment injury, and to provide medical evidence of bridging symptoms between appellant's current condition and the accepted injury which support the conclusion of a causal relationship.<sup>10</sup> He did not provide the required rationale in explaining his opinion on causal relationship. In a November 8, 2005 attending physician's report, Dr. Hernandez again diagnosed lumbar HNP with radiculopathy, and stated that appellant was totally disabled from July 17, 2002 through November 4, 2004. This report also lacks probative value, as it provides no opinion as to the cause of appellant's alleged disability.

On November 29, 2005 Dr. Hernandez provided a diagnosis of a large L5-S1 centrally herniated disc resulting from the July 17, 2002 injury. He stated that appellant's condition had worsened when he was "forced to work" on August 21, 2002, even though he had found him to be totally disabled. Dr. Hernandez also indicated that appellant had reinjured his back on August 24, 2004 while lifting a heavy load at work. As this report fails to explain how the diagnosed herniated disc was causally related to appellant's accepted lumbar strain, it, too, is of diminished probative value. The Board also notes that Dr. Hernandez did not explain how or why appellant's condition worsened on August 21, 2002 nor did he describe the mechanism of appellant's alleged reinjury on August 24, 2004, or its causal relationship to the accepted July 17, 2002 injury.

Dr. Rosada's reports are insufficient to establish that appellant was disabled from work during the period in question. In his September 9, 2002 attending physician's report, he opined that appellant was totally disabled due to his work-related low back pain from July 17, 2002 through November 30, 2002. This report did not provide a specific diagnosis or explain how appellant's condition resulted in total disability. Therefore, it is of diminished probative value. In an accompanying duty status report, Dr. Rosada provided diagnoses due to injury of a herniated disc and osteoarthritis and recommended surgery. However, appellant's claim was not accepted for a herniated disc or osteoarthritis. As Dr. Rosada failed to provide an explanation regarding the causal relationship between his diagnoses and the accepted condition, his report lacks probative value. In a January 27, 2003 duty status report, Dr. Rosada again opined that appellant was unable to work. For reasons stated above, this report is of no probative value. In a June 4, 2004 attending physician's report, Dr. Rosada opined that appellant was no longer disabled from his July 17, 2002 injury. This report does not support appellant's claim that he was disabled at that time.

The remaining medical evidence of record does not support appellant's claim for disability. Appellant submitted physicians' progress notes bearing illegible signatures dated July 30 through August 6, 2002 and a December 23, 2003 clinic report, bearing an illegible signature. These reports, lacking proper identification, cannot be considered as probative evidence.<sup>11</sup> Other medical evidence of record, including reports of MRI scans and x-rays, which do not contain an opinion on causal relationship, are of no probative value. Finally, the reports from Dr. Seza, the employing establishment physician, indicate that appellant was capable of

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<sup>10</sup> *Mary A. Ceglia*, *supra* note 6.

<sup>11</sup> *Merton J. Sills*, 39 ECAB 572 (1988).

working with restrictions during the period in question and, therefore, do not support appellant's claim for disability.

Appellant had the burden of proving by the preponderance of the reliable, probative and substantial evidence that he was disabled for work as a result of his employment injury. For the reasons stated above, the Board finds that he failed to sustain his burden of proof in establishing that he was totally disabled due to his accepted employment condition on or after August 21, 2002.<sup>12</sup>

### **CONCLUSION**

The Board finds that appellant has not established entitlement to wage-loss benefits for any period subsequent to August 21, 2002.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated December 23 and 8 and August 8, 2005 are affirmed.

Issued: March 15, 2007  
Washington, DC

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

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>12</sup> See *Fereidoon Kharabi*, *supra* note 2. (The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the particular period of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.)