

**United States Department of Labor
Employees' Compensation Appeals Board**

C.F., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
St. Paul, Minnesota, Employer)

**Docket No. 07-1567
Issued: January 17, 2008**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

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

JURISDICTION

On May 22, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated February 22, 2007. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met his burden of proof in establishing that he had intermittent disability from February 13, 2006 to January 18, 2007 causally related to his accepted spinal stenosis.

FACTUAL HISTORY

On December 28, 2005 appellant, then a 55-year-old maintenance janitor, filed an occupational disease claim for back pain while performing his duties. He stopped work on December 29, 2005 and worked intermittently thereafter.

Appellant submitted a November 22, 2005 magnetic resonance imaging (MRI) scan that showed mild congenital spinal canal narrowing from L2-3 and L4-5, mild wedging T12 vertebral

body, mild right and moderate left neural foraminal narrowing at L4-5, mild right and slight left neural foraminal narrowing at L5-S1 and slight left neural foraminal narrowing at L3-4. He came under the treatment of Dr. Daniel Riley, a Board-certified family practitioner. On February 22, 2006 Dr. Riley diagnosed back pain with chronic costochondritis. He advised that appellant did not work on February 22, 2006 and wanted to work half shifts for the next two days. In February 27 and March 6, 2006 notes, Dr. Riley reported that appellant had back pain radiating into his left hip and leg and diagnosed regional back pain with radicular symptoms and obesity. He advised that appellant missed work on February 27 and March 6, 2006 due to back pain. Appellant submitted a February 15, 2006 report from Dr. Ovidiu Ardeleanu, a Board-certified internist, who opined that appellant's back condition was caused by his work duties that required heavy lifting and repetitive bending. Dr. Ardeleanu noted findings of pain on palpation of the left paravertebral muscles in the lumbosacral area and diagnosed low back pain.

In a decision dated March 30, 2006, the Office denied appellant's claim.

Appellant requested reconsideration. In a March 10, 2006 report, Dr. Katarina X. Guzman, a Board-certified internist, reviewed the history and indicated that appellant presented with severe low back pain radiating to his left leg and was unable to walk. She stated that appellant had not worked for three days due to his symptoms and diagnosed chronic low back pain. Reports from Dr. Riley dated March 16 to August 29, 2006 noted left leg and back pain and diagnosed chronic low back, chest pain, obesity and spinal stenosis. On May 18, 2006 Dr. Riley performed a preoperative evaluation for an MRI scan to be performed under anesthesia. An emergency room report dated April 3, 2006 noted appellant's treatment for back pain and radicular symptoms and diagnosed chronic back pain. Subsequent reports from Dr. Ardeleanu, noted low back pain since November 2005 when appellant injured his back performing repetitive bending and lifting at work. He diagnosed low back pain and obesity. Dr. Richard D. Hovland, a Board-certified family practitioner, noted treating appellant for low back pain radiating into the buttocks. He diagnosed chronic low back pain and excused appellant from work on May 9 and 10 and July 18, 2006. A July 13, 2006 report from Dr. Mark V. Larkins, a Board-certified neurosurgeon, noted that appellant had low back and leg pain from performing his janitorial duties. He diagnosed symptomatically preexisting lesions, congenital stenosis present prior to his work-related incident which culminated in November 2005. In a July 20, 2006 addendum, Dr. Larkins clarified that appellant had congenital stenosis that became symptomatic in November 2005 as a result of his work-related activities including repetitive use of a mop and bucket. He indicated that appellant could return to light duty.

On September 26, 2006 the Office accepted appellant's claim for aggravation of lumbar spinal stenosis.

On October 2, 2006 appellant filed a Form CA-7 claiming compensation for intermittent periods from February 15 to July 31, 2006. On October 17, 2006 the Office granted him compensation for the following dates on which he received medical treatment: 4 hours on February 15, March 6 and 16 and April 3, May 1 and 18 and July 31, 2006 and 8 hours on February 27, April 4, May 9, 10, 19 and May 26 and June 5, 9 and 12 and July 5, July 18, 2006 for a total of 116 hours.

On October 13, 2006 appellant filed a claim for intermittent disability from August 1 to October 13, 2006.

Appellant submitted notes from Dr. Riley dated February 2 to 27, 2006. Dr. Riley advised that appellant was unable to work on February 2, 22 and 27, 2006 and could work a four-hour shift on February 23 to 24, 2006. He treated appellant on February 27, 2006 for back pain and diagnosed obesity, chronic costochondritis and back pain and advised that appellant was off work that date. Dr. Riley submitted notes from February 10 to March 16, 2006, advising that appellant could not work on February 10, March 3 to 15, 2006 due to back pain. On April 7, 17 and 20, 2006 he treated appellant for back pain radiating to his legs and advised that he could not work on April 20, 24 and 25, 2006. Dr. Riley submitted several other notes dated April 7 to June 15, 2006, advising that appellant could not work intermittently from April 3 and June 15, 2006 due to a doctors appointment. On June 15, 2006 he treated appellant for low back pain and persistent radiculopathy. Dr. Riley noted that appellant was unable to work on June 16 to 27, 2006. In other notes dated July 31 to October 20, 2006, he advised that appellant could not work half days on July 27 to October 24, 2006 intermittently, due to work-related back pain and lumbar spine syndrome. Dr. Riley also treated appellant on October 20, 24 and 31, 2006 for back pain.

In a February 15, 2006 treatment note, Dr. Ardeleanu noted that appellant could not work from February 13 to 20, 2006. He treated him on June 26, 2006 for low back pain that occurred when appellant lifted heavy objects and bent repeatedly at work. Also submitted was a note from Dr. Jennifer A. Sterrett, a Board-certified family practitioner, who noted that appellant was unable to work from April 3 and 4, 2006. On April 11, 2006 appellant underwent an L4-5 epidural steroid injection performed by Dr. Steve D. Wen, a Board-certified anesthesiologist. Other reports from Dr. Hovland dated May 10 and July 18, 2006, advised that appellant could not work on May 9 and 10 and July 18, 2006, due to low back pain radiating into the leg. On June 19, 2006 a nurse practitioner treated appellant for ongoing symptoms, noting that he could not work on that date.

On October 27 and November 10, 2006 appellant claimed intermittent compensation from October 16 to November 10, 2006. On November 7 and 16, 2006 the Office asked him to submit a comprehensive medical report from his treating physician to support disability during this period.

Appellant submitted a May 9, 2006 nursing note indicating that he could not work beginning May 9, 2006. A July 7, 2006 lumbar MRI scan revealed multilevel degenerative disc changes with protrusions at L5-S1, L4-5 and an annular bulge at L3-4. A September 9, 2006 report from Dr. Ue Thao, a Board-certified plastic surgeon, noted that appellant presented with severe back pain and reported missing work the previous day and requested a doctor's note. He diagnosed back pain. In a report dated October 17, 2006, Dr. Hovland treated appellant for a flare-up of back pain with sciatic pain down the left leg that started October 16, 2006. He diagnosed acute aggravation of his chronic back ache, flare of his left sciatica and obesity.

Appellant filed several CA-7 forms, claiming intermittent compensation for the periods February 13 to December 25, 2006 and January 5, 2007. A November 27, 2006 report from Dr. Riley stated that appellant could work six hours per day subject to restrictions from June 15

to December 15, 2006. On December 4, 2006 he treated appellant for chronic chest and back pain and excused him from work on that day. In notes dated January 8 to 12, 2007, Dr. Riley advised that appellant was unable to work from April 5 to 11, 2006 due to back pain that appeared to be work related. On January 18, 2007 he treated appellant for back pain that was an aggravation of his work-related injury. Reports from Dr. Ardeleanu dated November 15, 2006, January 3 and 24, 2007, noted treatment of appellant on those dates for chronic back pain caused by him lifting heavy objects and bending on his job. He diagnosed low back pain and obesity. In other notes dated December 12, 2006 to January 10, 2007, Dr. Ardeleanu advised that appellant could not work from February 13 to December 21, 2006. Reports from Dr. Lori Ricke, a Board-certified family practitioner, dated November 17 and December 27, 2006, noted appellant's November 2005 back injury and diagnosed degenerative disc disease with bilateral radicular symptoms with a current exacerbation that impeded his ability to walk. She found that appellant could not work on November 17 and December 26, 2006.

In an October 16, 2006 report, Dr. Michael D. McDonald, a Board-certified family practitioner, noted that appellant developed back pain on November 10, 2005 while working as a maintenance mechanic. He diagnosed spinal stenosis with lower extremity symptoms and mechanical low back pain. Appellant submitted a November 28, 2006 report from Dr. Larkin who treated his back pain and discussed potential surgical options. A December 5, 2006 report from Dr. Fozia A. Abrar, Board-certified in preventative medicine, saw appellant for chronic low back pain and congenital stenosis aggravated by a work injury. He diagnosed chronic back pain with radicular symptoms and recommended surgical intervention.

On January 25, 2007 appellant filed a Form CA-7, claim for compensation, for the period January 8 to 19, 2007.

In a February 22, 2007 decision, the Office accepted appellant's claim for compensation for the following dates: four hours for March 6 to November 17, 21, 2006.¹ It denied his claim for compensation for the following dates: four hours intermittently for February 13, 14, 23, 28, March 6, 8, 9, 16, 21, April 3, 7, 17, 20, May 1, 18, July 27, November 17, 21, 2006; eight hours for March 7, 13, April 25, 28, May 2, 15, 16, 30, June 6, 16, 30, July 10, 19, 20, 25, August 1, 2, October 2, 4, 31 and November 15, 2006; two hours for October 5, 6, 10, 12, 13, 19, 23, 25, 26, 27, 30, November 1, 2, 3, 6, 8, 9, 13, 14, 16, 20, 22, December 11 and 22, 2006, on the grounds that the medical evidence was not sufficient to establish that appellant's disability was due to his accepted work injury.

LEGAL PRECEDENT

A claimant has the burden of proving by a preponderance of the evidence that he or she is disabled for work as a result of an accepted employment injury and submit medical evidence for

¹ The Office noted in separate correspondence dated February 22, 2007 that appellant's claim was accepted for four hours on February 15, March 6, 16, April 3, 5, 7, 17, May 1, 18, November 4, 21, 2006; eight hours for February 27, April 4, May 9, 10, 19, 26, June 5, 9, 12, 19, 26, July 5, 18, 28, 31, October 16, 17, 18, 20, 24, December 12, 13, 14, 15, 18, 19, 20, 21, 2006, January 3, 4, 18, 2007; two hours for December 26, 28, 29, 2006, January 9, 10, 11, 12 and 16, 2007.

each period of disability claimed.² Whether a particular injury causes an employee to become disabled for work and the duration of that disability are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence. The Board will not require the Office to pay compensation for disability in the absence of medical evidence directly addressing the particular period of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.³

The Board has long recognized that, under section 8103,⁴ payment of expenses incidental to the securing of medical services encompasses payment for loss of wages incurred while obtaining medical services. An employee is entitled to disability compensation for loss of wages incidental to treatment for an employment injury.⁵

ANALYSIS -- ISSUE 1

The Office accepted appellant's claim for aggravation of lumbar spinal stenosis. The Board notes that the Office accepted that appellant was partially disabled for four hours for February 15, March 6, 16, April 3, 7, 17, May 1, 18, November 17, and 21, 2006. The record also supports that appellant was treated for his accepted injury and received appropriate compensation on April 3, May 1, 2006, November 17 and 21, 2006.

However, the medical evidence submitted in support of the wage-loss compensation claim for other intermittent wage loss claimed from February 13 to December 22, 2006 is insufficient to establish that the claimed disability was due to the accepted employment injury.

Dr. Riley's February 22, 2006 report noted treating appellant for back pain and diagnosed back pain with chronic costochondritis. He advised that appellant did not attend work and requested that he work half shifts for the next two days. In notes dated February 22 and 27, 2006, Dr. Riley advised that appellant was unable to work on February 22 and 27, 2006 and could work a four-hour shift on February 23 to 24, 2006. Even though he noted that appellant had back symptoms, he did not specifically address whether appellant had any employment-related disability beginning February 22, 2006 causally related to his accepted employment condition.⁶ Dr. Riley attributed appellant's disability to the diagnosed conditions of back pain

² See *Fereidoon Kharabi*, 52 ECAB 291 (2001).

³ *Sandra D. Pruitt*, 57 ECAB ____ (Docket No. 05-739, issued October 12, 2005); *Amelia S. Jefferson*, 57 ECAB ____ (Docket No. 04-568, issued October 26, 2005).

⁴ 5 U.S.C. § 8103.

⁵ *Daniel Hollars*, 51 ECAB 355 (2000), *Antonio Mestres*, 48 ECAB 139 (1996), *Henry Hunt Searles, III*, 46 ECAB 192 (1994), *Myrtle B. Carlson*, 17 ECAB 644 (1966); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computing Compensation*, Chapter 2.901.16(a) (December 1995).

⁶ For conditions not accepted by the Office as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not the Office's burden to disprove such relationship. *Alice J. Tysinger*, 51 ECAB 638 (2000).

with chronic costochondritis; however, the Office has not accepted that appellant developed chronic costochondritis as a result of his employment. Therefore, these reports are insufficient to meet his burden of proof.

The record reveals that, on March 6 and 16, April 7, 17 and 20, May 18 and June 5, and 15, October 20, 24 and 31, 2006, Dr. Riley treated appellant for work-related back pain radiating into his left hip and leg and diagnosed work-related regional back pain with radicular symptoms. However, he did not provide a rationalized opinion indicating how the diagnosed back pain with radicular symptoms was causally related to the accepted employment condition. Other notes from Dr. Riley indicated that appellant would be unable to work on intermittent dates at issue from March 3 to October 24, 2006. As noted, however, he did not provide a specific opinion on causal relationship between the claimed disability and the accepted employment condition.

Appellant submitted reports from Dr. Ardeleanu dated February 15, 2006 to January 24, 2007, who diagnosed low back pain and indicated that appellant was unable to work from February 13 to 20, December 12 to 15 and 18 to 21, 2006. Reports from Dr. Hovland, dated May 10 to October 17, 2006, noted that appellant was unable to work May 9, 10, July 18, October 16 and 17, 2006 due to back pain. Likewise, reports from Dr. Ricke dated November 17 and December 27, 2006, advised that appellant was excused from work for November 17 and December 26, 2006. Although Dr. Ardeleanu, Dr. Hovland and Dr. Ricke found that appellant could not work on certain days at issue, they failed to provide a specific and reasoned opinion on causal relationship between the claimed period of disability and the accepted employment injury.

The Board finds that the evidence establishes that appellant attended doctor's appointments for treatment of his work-related injury on April 20, June 16, October 31 and November 15, 2006 and is entitled to a total of 16 hours of compensation for these days.⁷ The medical evidence supports that appellant received treatment for his accepted condition on these dates and should be granted compensation for his wage-loss incidental to such treatment on these dates.⁸

The remainder of the medical evidence, including reports from Dr. McDonald, Dr. Larkin, Dr. Abrar, Dr. Sterrett, Dr. Wen, Dr. Thao and Dr. Guzman failed to provide a specific opinion on causal relationship between the claimed period of disability and the accepted employment injury of November 10, 2005. Consequently, the medical evidence did not establish that the claimed period of disability were due to appellant's employment injury of November 10, 2005.

⁷ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Administrative Matters*, Chapter 3.0900.8 (November 1998) (provides that, in general, no more than four hours of compensation or continuation of pay should be allowed for routine medical appointments).

⁸ See *Daniel Hollars*, 51 ECAB 355 (2000) (an employee is entitled to disability compensation for loss of wages incidental to treatment for an employment injury).

CONCLUSION

The Board finds that appellant has established entitlement for time lost incident to medical treatment on April 20, June 16, October 31 and November 15, 2006 but has not otherwise met his burden of proof for other claimed dates.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 22, 2007 is affirmed as modified.⁹

Issued: January 17, 2008
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

⁹ With his request for an appeal, appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c).