United States Department of Labor
Employees' Compensation Appeals Board

B.L., Appellant	)	
and	)	**Docket No. 08-375**
	)	**Issued: May 23, 2008**
DEPARTMENT OF THE ARMY, WOMAC MEDICAL CENTER, FORT BRAGG, NC, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 27, 2007 appellant filed a timely appeal from the September 27, 2006 decision of an Office of Workers' Compensation Programs' hearing representative affirming the denial of her request for wage-loss compensation. 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 was disabled from February 20 to March 14, 2006 due to her accepted employment condition.

FACTUAL HISTORY

On April 1, 2005 appellant, then a 46-year-old librarian, filed an occupational disease claim alleging that repetitive lifting caused injury to her right arm, shoulder, back, neck and leg. She began working light duty on April 4, 2005 and was separated from employment on May 6, 2005. On May 10, 2005 Dr. Christopher Barnes, a Board-certified orthopedic surgeon,

conducted a rotator cuff repair and subacromial decompression surgery on appellant's right shoulder. He kept appellant out of work until October 3, 2005, when he noted near-symmetric range of motion in the shoulders and negative impingement signs. On November 15, 2005 the Office accepted appellant's claim for partial right rotator cuff tear.

On March 1, 2006 appellant filed a compensation claim for leave without pay taken from February 20 to March 14, 2006. She stated that the leave was used to attend therapy, physician visits and illness. Appellant provided a February 13, 2006 note from Dr. Billy Smith, a Board-certified physiatrist, who stated that appellant had a diagnosis of nontraumatic rupture of the rotator cuff tendon and fibromyalgia. Dr. Smith stated that she would be unable to work until she was evaluated on March 14, 2006.

In response to the Office's request for additional information about her claimed disability, appellant submitted diagnostic reports, disability slips, billing records and physical therapy progress notes dated April 2005 to March 2006. On December 5, 2005 Dr. Smith completed a series of disability slips removing appellant from work through April 11, 2006. On these slips he noted the diagnosed conditions of 727.3 (bursitis), 720.2 (inflammation of the sacroiliac joint), 715.16 (lower leg osteoarthritis), 840 (upper extremity sprain/strain), sacroiliac joint pain, shoulder pain and fibromyalgia. There were no medical reports addressing the claimed period of disability.

By decision dated April 27, 2006, the Office denied appellant's claim for compensation on the grounds that the medical evidence was insufficient to establish her disability during the claimed period was due to her accepted condition.

On May 10, 2006 appellant requested a review of the written record before an Office hearing representative. She contended that it was her shoulder injury alone that kept her from working.

On July 13, 2006 appellant submitted a report from Dr. Barnes dated February 1, 2006. Dr. Barnes stated that she had full range of motion with a minimal painful arc, good strength with supraspinatus testing, and mild tenderness on the back of her shoulder and near the scapula. He opined that appellant's right shoulder was at maximum medical improvement and that she had permanent impairment of 15 percent because of the ongoing stiffness.

On August 8, 2006 the employing establishment controverted appellant's claim for compensation. It provided a November 23, 2005 report from Dr. Barnes, who noted that appellant had full range of motion in the right shoulder and good strength with rotator cuff testing, but that she experienced pain with both maneuvers. Dr. Barnes indicated that appellant may have reinjured her right shoulder when she fell on July 4, 2005. He recommended a magnetic resonance imaging (MRI) scan to determine whether the rotator cuff tendon was torn. On November 29, 2005 Dr. Smith advised that appellant had pain in her right shoulder, right hip and both legs. He noted that she was able to work 40 hours per week. Dr. Smith found full functional strength and motion in both upper extremities. On April 5, 2006 Dr. Barnes reported that appellant continued to have pain in the lateral aspect of her right shoulder, but that both x-ray and MRI scan showed normal structures, including a healed rotator cuff tendon. He stated that she had no structural pathology that could be treated with surgery or other aggressive

intervention. Dr. Barnes was unsure whether appellant's fibromyalgia was affecting her shoulder, but suggested that she continue treatment with Dr. Smith to address this problem.

By decision dated September 27, 2006, the Office hearing representative affirmed the April 27, 2006 decision. She found that the medical evidence did not establish that appellant was disabled for work due to residuals of her accepted condition during the claimed period.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of proving the essential elements of his claim by the weight of the evidence presented.[2] Compensation for wage loss is available only for periods during which an employee's accepted condition prevents her from earning her wages.[3] Even if the Office has accepted that appellant sustained an injury in the performance of duty, appellant still has the burden of establishing that her accepted condition resulted in disability during the specific periods for which she is claiming compensation.[4] The duration of a disability is a medical issue that must be proved by a preponderance of the reliable, probative and substantial evidence.[5]

When an employee claims compensation for leave used because of an alleged injury or disability, the Office has the responsibility of determining whether the employee was disabled during those periods.[6] The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the particular periods of disability for which compensation is claimed. To do so would have the effect of allowing employees to self-certify their disability and entitlement to compensation.[7] When dealing with an accepted employment injury, a narrative medical opinion directly addressing the dates of claimed disability is generally sufficient to demonstrate disability for those periods.[8]

ANALYSIS

Appellant's claim was accepted for a partial rotator cuff tear of the right shoulder for which she underwent surgery. She must establish that her torn rotator cuff caused her to be disabled from work for the period February 20 through March 14, 2006.

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[1] 5 U.S.C. §§ 8101-8193.

[2] *Nathaniel Milton*, 37 ECAB 712 (1986).

[3] *Judith A Cariddo*, 55 ECAB 348 (2004); *see also* 20 C.F.R. § 10.500(a).

[4] *Dorothy J. Bell*, 47 ECAB 624 (1996).

[5] *Edward H. Horton*, 41 ECAB 301 (1989).

[6] *Glen M. Lusco*, 55 ECAB 148 (2003); *Laurie S. Swanson*, 53 ECAB 517 (2002).

[7] *Fereidoon Kharabi*, 52 ECAB 291 (2001).

[8] *See William Archer*, 55 ECAB 674 (2004).

On October 2, 2005 appellant was released to work after recovering from her surgery. Dr. Barnes, a Board-certified orthopedic surgeon, found that the range of motion in her shoulders was nearly symmetrical and that she had negative impingement signs. On November 29, 2005 Dr. Smith, a Board-certified physiatrist, stated that appellant was able to work 40 hours per week and had full functional strength and motion in her right shoulder. However, beginning December 5, 2005 he removed appellant from work with the diagnoses of bursitis, upper extremity sprain/strain, torn rotator cuff, shoulder pain, inflammation of the sacroiliac joint, sacroiliac joint pain, lower leg osteoarthritis and fibromyalgia. The Board notes that these conditions have not been accepted by the Office as employment related. Dr. Smith provided no rationalized medical reports addressing appellant's ongoing disability from work. On February 1, 2006 Dr. Barnes stated that appellant's shoulder had full range of motion with a minimal painful arc, good strength, and mild tenderness on the back and near the scapula. He opined that her right shoulder was at maximum medical improvement and had permanent impairment because of ongoing stiffness. Dr. Barnes did not find that appellant was disabled for work.

On review of the record, the Board finds that the only medical evidence directly addressing the claimed period of disability from February 20 to March 14, 2006 is Dr. Smith's February 13, 2006 disability slip. Although Dr. Smith provided diagnoses of a torn rotator cuff and fibromyalgia, he provided no objective findings related to appellant's physical condition and no description of her disability. Further, he did not explain how the accepted torn rotator cuff caused or contributed to her disability during the claimed period. This is important because fibromyalgia, which was also listed on the slip, is not an accepted condition under appellant's claim and any disability related to that condition would not be covered under the Act. As such, appellant has the burden of proof to establish that the fibromyalgia is employment related. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of little probative value on the issue of causal relationship.[9] Because Dr. Smith provided no rationalized opinion as to whether appellant's disability was related to her accepted employment injury, the Board finds that his February 13, 2006 disability slip is insufficient to establish appellant's claim.

Appellant presented no rationalized medical evidence supporting her claim, and therefore has not met the burden of proof to establish a period of employment-related disability.

CONCLUSION

The Board finds that appellant has not established that her claim for disability from February 20 to March 14, 2006 was due to the accepted employment condition.

[9] *Ellen L. Noble*, 55 ECAB 530 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 27, 2006 is affirmed.

Issued: May 23, 2008
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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