United States Department of Labor
Employees' Compensation Appeals Board

R.B., Appellant	)	
and	)	**Docket No. 08-1357**
	)	**Issued: November 20, 2008**
U.S. POSTAL SERVICE, MEMPHIS BULK MAIL CENTER, Memphis, TN, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 7, 2008 appellant filed a timely appeal of the April 4, 2007 merit decision of an Office of Workers' Compensation Programs' hearing representative, affirming the denial of his claim for wage-loss compensation for the period March 24, 2005 through March 21, 2006. 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 he was totally disabled from March 24, 2005 through March 21, 2006 due to his accepted employment-related injury.

FACTUAL HISTORY

On March 4, 2004 appellant, then a 71-year-old group leader, sustained injury to his lower back and leg as a result of moving hampers of mail to strip and wax floors. He stopped work on March 4, 2004. Appellant submitted a December 21, 2004 medical report of Dr. Michael J. Sorensen, a Board-certified physiatrist, who stated that appellant sustained lumbar

degenerative disc disease with pain aggravated with discogenic pain at L4-5 and L5-S1 and left L5 distribution radiculitis causally related to the March 4, 2004 incident. On April 26, 2004 appellant underwent a lumbar surgery which was performed by Dr. Sorensen. He returned to light-duty work on June 15, 2004. The Office accepted appellant's claim for aggravation of lumbar degenerative disc disease.

On March 21, 2006 appellant filed a claim for wage-loss compensation (Form CA-7) for the period March 24, 2005 through March 21, 2006. He submitted form reports dated September 9 and December 8, 2005 of Dr. Marion Barr, an attending internist, who stated that appellant sustained aggravated lumbar disc disease on March 24, 2004. On December 8, 2005 Dr. Barr indicated with an affirmative mark that appellant's condition was caused by the March 24, 2004 work incident. He stated that appellant was totally disabled from March 4 through July 2, 2005. On January 31, 2006 Dr. Barr stated that appellant suffered from dizziness, lumbar disc disease and cervical disc disease with bilateral hand numbness. An April 20, 2004 report of Dr. James V. Ellis, a Board-certified radiologist, provided the results of a computerized tomography (CT) scan of appellant's cervical spine. He reported findings suspicious of left lateral annular tears at L3-4 and L4-5. Dr. Ellis found vertebral canal stenosis at L3-4 and L4-5 related to degenerative facet changes bilaterally.

The Office received medical records from Dr. Edward S. Pratt, a Board-certified orthopedic surgeon, who evaluated appellant between June 8 and August 25, 2004. Dr. Pratt stated that appellant sustained discogenic back and L5 radicular pain and possible foraminal stenosis. He recommended surgery to relieve his back pain.

In reports dated April 27, 2005 to April 25, 2006, Dr. Barr stated that appellant sustained cervical and lumbar disc disease with bilateral hand pain and numbness, dizziness and radiculopathy of the legs.

By letter dated July 6, 2006, the Office requested that appellant submit additional medical evidence to establish his disability for work during the period March 24, 2005 through March 21, 2006.

In a June 23, 2006 report, Dr. Stephen Waggoner, a Board-certified orthopedic surgeon, who reviewed a history of appellant's March 4, 2004 employment injury, medical treatment and family and social background. Dr. Waggoner reported normal findings on physical and neurological examination. He reviewed diagnostic test results. Dr. Waggoner stated that appellant sustained chronic lower back pain with bilateral lumbar radiculopathy, mild spinal stenosis at L4-5 and mild to moderate spinal stenosis at L3-4 secondary to degenerative facet disease. Appellant was status post lumbar discectomy with failed back syndrome. Dr. Waggoner related that appellant's chronic lower back pain with lumbar spinal stenosis at L3-4 and L4-5 were preexisting conditions. He opined that the March 4, 2004 employment injury may have aggravated his preexisting conditions but stated that the acute aggravation should have resolved. Dr. Waggoner found no sign of anatomic change such as, disc herniation. He opined that appellant's current complaints were related to the underlying degenerative changes of his lumbar spine and not due to his March 4, 2004 employment injury.

An August 4, 2006 magnetic resonance imaging (MRI) scan of appellant's lumbar spine was performed by Dr. Clarence G. Herrington, a Board-certified radiologist, who found degenerative changes within the mid-lumbar spine that were most severe at L3, where severe central canal stenosis appeared. Dr. Herrington also found milder central canal narrowing and degenerative changes at L4-5. He stated that no disc herniation or significant enhancing scar was identified. On August 4, 2006 Dr. Herrington also performed an MRI scan of appellant's cervical spine. He reported multi-level spondylosis most severe at C4 resulting in central canal stenosis. Dr. Herrington stated that the changes at this level were asymmetrically prominent on the right. He found no large herniation and there was a three to four millimeter central disc protrusion at C2-3.

In an August 24, 2006 decision, the Office found the medical evidence of record insufficient to establish that appellant was totally disabled from March 24, 2005 to March 21, 2006 causally related to his March 4, 2004 employment injury.

On August 29, 2006 the Office received Dr. Barr's August 8, 2006 response to questions by the employing establishment regarding appellant's condition and disability for work. Dr. Barr stated that appellant had spinal stenosis with aggravated degenerative disc disease of the lumbar spine and low back pain due to the March 4, 2004 employment injury. He stated that appellant's chiropractic treatment did not improve his conditions. Dr. Barr related that appellant's multi-level cervical and lumbar spinal conditions made normal work uncomfortable.

In reports dated September 21, 2006, Dr. Waggoner stated that appellant sustained cervical spinal stenosis at C4-5 and C5-6 with central disc protrusion at C4-5. He released appellant to return to work with restrictions on that date. Dr. Waggoner reiterated his prior opinion that appellant's spinal stenosis was degenerative in nature and not related to his March 4, 2004 employment injury. On September 29, 2006 he prescribed a functional capacity evaluation.

On September 20, 2006 appellant requested a telephone hearing from the August 24, 2006 decision. He did not telephone the Office at the scheduled time of the hearing on November 17, 2007 as he made a mistake about the time zone. By letter dated January 19, 2007, an Office hearing representative denied appellant's request to reschedule the hearing. She advised him that review of the written record would be conducted.

By letter dated February 5, 2007, appellant submitted Dr. Sorensen's June 18 and December 21, 2004 reports. Dr. Sorensen stated that appellant was post lumbar laminectomy with low back pain and left lower extremity complaints. He reiterated his opinion that appellant's lumbar degenerative disc disease, with discogenic pain at L4-5 and L5-S1 and left L5 distribution radiculitis, was causally related to the March 4, 2004 employment injury.

In a June 3, 2004 report, Dr. Barr released appellant to return to light-duty work on that date. In a January 7, 2005 disability certificate, he stated that appellant could return to work on January 18, 2005.

On April 26, 2004 Dr. Pratt performed a CT scan of appellant's lumbar spine which demonstrated findings suspicious of left lateral annular tears at L3-4 and L4-5.

By decision dated April 4, 2007, the Office hearing representative affirmed the August 24, 2006 decision. The evidence submitted by appellant was found insufficient to establish that he was totally disabled from March 24, 2005 to March 21, 2006 due to residuals of his March 4, 2004 employment injury.[1]

LEGAL PRECEDENT

Under the Federal Employees' Compensation Act, the term disability is defined as an inability, due to an employment injury, to earn the wages the employee was receiving at the time of the injury, *i.e.*, an impairment resulting in loss of wage-earning capacity.[2] For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.[3] 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.[4] The fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[5] The Board will not require the Office to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his disability and entitlement to compensation.[6]

ANALYSIS

The Office accepted that appellant sustained an aggravation of lumbar degenerative disc disease on March 3, 2004. The record reflects that he underwent back surgery on April 26, 2004 and returned to limited-duty work on June 15, 2004. On March 21, 2006 appellant sought compensation for wage loss for total disability from March 24, 2005 through March 21, 2006. The Office denied his claim, finding the medical evidence insufficient. Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his claimed disability and the accepted condition.[7]

Appellant submitted several reports of Dr. Barr in support of his claimed employment-related disability. Dr. Barr stated that appellant sustained an aggravation of lumbar disc disease

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[1] The Board notes that, following the issuance of the hearing representative's April 4, 2007 decision, the Office received additional 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. 5 U.S.C. § 8128; 20 C.F.R. § 10.606.

[2] *See Prince E. Wallace*, 52 ECAB 357 (2001).

[3] *Dennis J. Balogh*, 52 ECAB 232 (2001).

[4] *Gary J. Watling*, 52 ECAB 278 (2001).

[5] *Manuel Garcia*, 37 ECAB 767 (1986).

[6] *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

[7] *Alfredo Rodriguez*, 47 ECAB 437 (1996).

and cervical disc disease with bilateral hand numbness, dizziness and radiculopathy of the legs. However, he did not address causal relation or identify any period of disability for work. The Board finds that Dr. Barr's reports do not support appellants claimed employment-related total disability from March 24, 2005 to March 21, 2006.

In a December 8, 2005 report, Dr. Barr indicated with an affirmative mark that appellant's aggravated lumbar disc disease was caused by a March 24, 2004 work incident. He stated that appellant was totally disabled from March 4 through July 29, 2005. However, Dr. Barr failed to provide any medical rationale explaining how or why the accepted March 4, 2004 employment-related injury caused appellant's disability for work from March 4 to July 29, 2005. Further, the Board notes that Dr. Barr incorrectly stated that appellant's employment injury occurred on March 24, 2004 rather than on March 4, 2004. This report is insufficient to establish that appellant sustained any employment-related disability during the claimed period.

On August 8, 2006 Dr. Barr stated that appellant's spinal stenosis was aggravated by degenerative disc of the lumbar spine due to the March 4, 2004 employment injury. He advised that appellant's multi-level cervical and lumbar spinal conditions made normal work uncomfortable. However, Dr. Barr did not address whether appellant was totally disabled from performing limited duty during the claimed period. The Board finds that Dr. Barr's opinion is not sufficient to establish that appellant was totally disabled from March 24, 2005 through March 21, 2006 due to his accepted employment injury. The medical notes that Dr. Barr provided prior to appellant's return to limited-duty work on June 4, 2004 are not relevant to the claimed period of disability.

Dr. Pratt's report found vertebral canal stenosis at L3-4 and L4-5 related to degenerative facet changes bilaterally. During the period June 8 through August 25, 2004, he stated that appellant sustained discogenic back and L5 radicular pain and possible foraminal stenosis. Dr. Pratt did not address disability for work for the period claimed. Dr. Sorensen's June 18 and December 21, 2004 reports stated that appellant was post lumbar laminectomy with low back pain and left lower extremity complaints. He opined that appellant's lumbar degenerative disc disease with discogenic pain at L4-5 and L5-S1 and left L5 distribution radiculitis were causally related to the March 4, 2004 employment injury. Dr. Ellis obtained diagnostic test results in 2004 pertaining to appellant's degenerative disease of the lumbar spine. This evidence is similarly not relevant as it predates the claimed period of total disability. The Board finds that the reports of Dr. Ellis, Dr. Pratt and Dr. Sorensen fail to establish that appellant was totally disabled from March 24, 2005 to March 21, 2006 due to his March 4, 2004 employment injury.

In reports dated June 23 and September 29, 2006, Dr. Waggoner stated that appellant had chronic lower back pain with bilateral lumbar radiculopathy, mild spinal stenosis at L4-5 and mild to moderate spinal stenosis at L3-4 secondary to degenerative facet disease. He also diagnosed and cervical spinal stenosis at C4-5 and C5-6 with central disc protrusion at C4-5. Dr. Waggoner noted that appellant was status post lumbar discectomy with failed back syndrome. He opined that appellant's lumbar spinal stenosis at L3-4 and L4-5 were preexisting conditions that may have been aggravated by the March 2004 employment injury but, if such acute aggravation occurred it had resolved. He did not find any sign of anatomic change such as disc herniation. Dr. Waggoner opined that appellant's current complaints were related to the

underlying degenerative changes in his spine and not to his March 2004 employment injury. He released him to return to work with restrictions on September 21, 2006. However, Dr. Waggoner did not address whether appellant sustained total disability for work during the claimed period causally related to his accepted March 4, 2004 employment injury. The Board finds that his reports are insufficient to establish appellant's claim.

Similarly, Dr. Herrington's August 4, 2006 MRI scans of appellant's lumbar and cervical spines are insufficient to establish that appellant sustained any employment-related disability from March 24, 2005 through March 21, 2006 as they did not address causal relation or identify any period of disability.

Appellant failed to submit sufficient rationalized medical evidence establishing that his total disability from March 24, 2005 through March 21, 2006 was due to residuals of his accepted lumbar degenerative disc disease. The Board finds that he has not met his burden of proof.

CONCLUSION

The Board finds that appellant has failed to establish that he was totally disabled from March 24, 2005 through March 21, 2006, due to his accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the April 4, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 20, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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