

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

B.P., Appellant

and

**U.S. POSTAL SERVICE, LOUISVILLE
PROCESSING & DISTRIBUTION CENTER,
Louisville, KY, Employer**

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**Docket No. 08-907
Issued: September 23, 2008**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 7, 2008 appellant filed a timely appeal from the November 28 and December 31, 2007 merit decisions of the Office of Workers' Compensation Programs that denied his claim for wage-loss compensation from October 11 to December 7, 2006 from August 13 to 16, 2007. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant met his burden of proof in establishing that he was totally disabled for work from October 11 and December 7, 2006 and August 13 and 16, 2007, as a result of his accepted employment-related condition.

FACTUAL HISTORY

On March 1, 2006 appellant, then a 49-year-old driver, filed a traumatic injury claim stating that he sustained a lower back injury as well as bruised ribs on the right side in the

performance of duty on February 27, 2006. He stopped work on the same day and was released to return to work on March 1, 2006. The employing establishment advised that he stepped into a jacked-up trailer and felt immediate back pain. He sought medical treatment from the Veterans Affairs Medical Center in Louisville and was diagnosed with a muscle strain. In a March 9, 2006 attending physician's report, Dr. Matthew Marshbanks, a Board-certified internist, diagnosed severe muscle strain on the right side of the lumbar spine. In a March 2, 2006 report, Dr. W. Paul McKinney, a Board-certified internist, noted appellant's history of acute onset back pain while cranking a trailer at work. He diagnosed back pain due to severe muscle strain of right lumbar musculature at work. The Office accepted appellant's claim for sprain/strain of the lumbar region and sprain/strain of the ribs, right side.

In a December 14, 2006 note, Dr. Marshbanks advised that appellant was under his care on that day and was able to return to work the same day. In a December 15, 2006 report, Dr. Albert Seow, a Board-certified diagnostic radiologist, noted performing a right hip arthrogram. A December 16, 2006 magnetic resonance imaging (MRI) scan of appellant's lumbar spine noted degenerative disc disease at L3-4 and L4-5 with a right foraminal protrusion at L4-5.

By correspondence dated January 5, 2007, appellant claimed a recurrence of disability for which he stopped work on October 11, 2006 and returned to light duty on December 11, 2006. In October 19, 2006 chart notes, Dr. Marshbanks noted that appellant complained of hip pain. He noted that appellant's examination and MRI scan were consistent with arthritis. In a November 13, 2006 chart note, Jeff M. Thomas, a radiology technician, advised that appellant underwent an arthrogram on that day. On November 30, 2006 Dr. Marshbanks advised that appellant was capable of returning to light duty effective December 1, 2006. On December 6, 2006 Dr. Chadwick W. Hatfield, a resident, released appellant to light duty. Appellant submitted chart notes not relevant to the claimed period of disability.

By correspondence dated January 23, 2007, the Office informed appellant that it had received his recurrence of disability claim and noted that his original claim was still open for medical treatment of his work-related injury.

On January 29, 2007 appellant claimed compensation for leave without pay and wage loss from October 11 to December 7, 2006.

In a June 24, 2007 report, Dr. Marshbanks advised that appellant was treated for a back injury which had occurred and was exacerbated at work and that he also had hip pain. An MRI scan performed on October 13, 2006 revealed evidence of degenerative disease of the hip, while an arthrogram conducted in December showed degenerative arthritis of the hip. Dr. Marshbanks also noted that a December 15, 2006 MRI scan diagnosed degenerative disc disease at L3-4 and L4-5 with mild foraminal narrowing. He advised that appellant had been restricted to light-duty work. Appellant also provided a November 15, 2006 note from Dr. Scott A. Klein, an attending orthopedic surgeon, who indicated that he had sustained a "twisting injury" to his right hip while at work approximately three months prior. He noted examining appellant on November 15, 2006 and found tenderness in the right hip. Appellant also provided an October 19, 2006 chart note from Dr. Marshbanks, which did not indicate whether the physician saw or treated appellant on that day.

In a July 30, 2007 form note, Dr. Thomas Frazier, a resident specializing in internal medicine, diagnosed severe degenerative disc disease and disc bulge at the L4-5 levels, with an indefinite recovery time. In a duty status report of the same day, he noted pain and limited range of motion of appellant's spine and diagnosed degenerative disc disease.

On August 16, 2007 appellant filed a claim for compensation for the period August 13 and 16, 2007. He provided an August 13, 2007 note from Dr. Sarah H. Callahan, a Board-certified radiologist, who explained that an unidentified procedure for which appellant was scheduled that day had been postponed until August 15, 2007. Dr. Callahan requested that appellant be excused from work through August 16, 2007.

By decision dated November 28, 2007, the Office denied appellant's claim for wage-loss compensation for the period August 13 to 16, 2007.

Subsequent to the Office's November 28, 2007 decision, appellant submitted progress notes and discharge notes from August 13, 14 and 16, 2007, signed by Lisa A. Evans, a licensed practical nurse.

By decision dated December 31, 2007, the Office denied appellant's claim for compensation for the period October 11 through December 7, 2006.

LEGAL PRECEDENT

For each period of disability claimed, the employee has the burden of proving that he was disabled for work as a result of the accepted employment injury.¹ As used in the Federal Employees' Compensation Act, the term "disability" means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.² Disability is thus not synonymous with physical impairment, which may or may not result in incapacity to earn wages.³ 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.⁴ 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.⁵

¹ *William A. Archer*, 55 ECAB 674 (2004).

² *Patricia A. Keller*, 45 ECAB 278 (1993); 20 C.F.R. § 10.5(f).

³ *See Fred Foster*, 1 ECAB 21 (1947).

⁴ *Fereidoon Kharabi*, 52 ECAB 291 (2001); *see also Edward H. Horton*, 41 ECAB 301 (1989).

⁵ *Sandra D. Pruitt*, 57 ECAB 126, 129 (2005); *William A. Archer*, *supra* note 1; *Fereidoon Kharabi*, *id.*

ANALYSIS

The Board finds that appellant did not meet his burden of proof in establishing that he was disabled from October 11 through December 7, 2006 due to his accepted employment injury. The Office accepted that appellant sustained a lumbar sprain/strain and a sprain/strain of the ribs in the performance of duty on February 27, 2006. He was released to return to work on March 1, 2006. Appellant stopped working again on October 11, 2006 and returned to light duty on December 11, 2006.

Appellant provided insufficient medical evidence to support his claim of disability from October 11 through December 7, 2006. He submitted November 30 and December 14, 2006 chart notes from Dr. Marshbanks, who indicated that appellant was able to return to light-duty work effective December 1, 2006. However, Dr. Marshbanks did not address why appellant became disabled for work during the period claimed. Appellant also submitted a December 6, 2006 chart note from Dr. Hatfield, who indicated that appellant was capable of performing light-duty work at that time. However, Dr. Hatfield did not address the causation of appellant's claimed disability for work during the period at issue. The Board has held that a medical report which does not address causation is not a basis for payment of compensation.⁶ Appellant did not submit any other medical reports addressing his disability for work during the period October 11 to December 7, 2006. The reports of Dr. Marshbanks and Dr. Hatfield are not sufficient to establish that appellant was disabled during the entire period from October 11 to December 7, 2006 as a result of his February 27, 2006 work-related injury. The, other medical records provided by appellant do not contain a physician's opinion supporting that his accepted condition caused any disability for the claimed period. The Board finds that appellant has not met his burden of proof in establishing that he was entitled to compensation for disability during the period claimed.

Appellant also claimed compensation for disability from August 13 to 16, 2007. In support of his claim, he submitted an August 13, 2007 note from Dr. Callahan, who merely advised that appellant had been scheduled to undergo a procedure on that day, which was postponed to August 15, 2007. Dr. Callahan requested that appellant be excused from work through August 16, 2007. However, she did not identify the procedure for which appellant was scheduled or explain how it was related to his February 27, 2006 employment injury. Dr. Callahan did not address why appellant was required to remain off work when the unidentified procedure was postponed. Appellant submitted no other medical evidence addressing his claimed disability for work from August 13 to 16, 2007.⁷ The Board finds that

⁶ See *A.D.*, 58 ECAB ___ (Docket No. 06-1183, issued November 14, 2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

⁷ Appellant also provided notes signed by a nurse. However, nurses are not physicians under the Act and are not competent to render a medical opinion. *G.G.*, 58 ECAB ___ (Docket No. 06-1564, issued February 27, 2007). See 5 U.S.C. § 8101(2) (defines the term "physician").

appellant has not submitted sufficient evidence to establish that he was entitled to compensation for disability during the period August 13 to 16, 2007, due to his accepted work-related injury.⁸

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he was entitled to compensation for total disability during the periods October 11 to December 7, 2006 and August 13 to 16, 2007, due to his accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the November 28 and December 31, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 23, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

⁸ Subsequent to the Office's November 28, 2007 decision denying appellant's claim for compensation for the period August 13 to 16, 2007, appellant submitted additional medical evidence. The Board, however, notes that it cannot consider this evidence for the first time on appeal because the Office did not consider this evidence in reaching its final decision. The Board's review is limited to the evidence in the case record at the time the Office made its final decision. 20 C.F.R. § 501.2(c).