

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

G.P., Appellant)

and)

U.S. POST SERVICE, POST OFFICE,)
Haywood, CA, Employer)

Docket No. 08-1045

Issued: September 3, 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
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 28, 2004 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decisions dated August 16 and December 3, 2007 finding that she had not established disability for work. 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 met her burden of proof in establishing disability on or after May 21, 2007 causally related to her March 28, 2005 employment injury.

FACTUAL HISTORY

On March 28, 2005 appellant, then a 47-year-old mail carrier, filed a traumatic injury claim alleging that she sustained back pain due to sorting and unstrapping mail in the performance of duty. She returned to modified work on April 20, 2005. The Office accepted her claim for sprain/strain of the lumbar region on May 11, 2005.

Appellant filed a claim for compensation on May 20, 2007 requesting leave-without-pay compensation from May 21 to June 2, 2007. She submitted a series of notes from her attending physician, Dr. Alan Hsu. On May 21, 25 and 30, 2007 Dr. Hsu stated that appellant had experienced a “flare-up” in her low back pain and that she needed to be off work to enable her to recover. He indicated that appellant could return to her light-duty position on June 3, 2007. Dr. Hsu completed narrative reports on June 1, 2007 stating that appellant was experiencing a period of increased pain due to her work-related back injury which had started to resolve. He opined that due to a magnetic resonance imaging (MRI) scan on May 29, 2007 her right side low back pain had increased. Appellant also reported significant left side low back pain which she attributed to an attempt to lessen the pain on her right side. Dr. Hsu noted that appellant walked with a cane due to a left leg limp and that the May 29, 2007 MRI scan revealed a new disc herniation at L2-3. He diagnosed low back pain with radiculopathy on the right. Dr. Hsu provided a treatment plan of extending appellant’s total disability from work through June 2, 2007 “to facilitate recovery” and return to normal light-duty work on June 3, 2007.

In a letter dated June 14, 2007, the Office requested additional factual and medical evidence from appellant in support of her claimed period of disability. It allowed 30 days for a response. Appellant submitted a report dated July 16, 2007 from Dr. Hsu noting history of an employment injury on March 28, 2005 and resulting pain in the right side of her low back. Dr. Hsu reported that appellant’s most recent MRI scan revealed a new disc herniation at L2-3 and diagnosed bilateral lumbar pain. He completed an attending physician’s report on June 21, 2007 and diagnosed “low back pain with radiculopathy flare-ups.” Dr. Hsu noted appellant’s employment injury and indicated with a checkmark “yes” that appellant’s condition was caused or aggravated by an employment activity. He provided work restrictions. On July 26, 2007 Dr. Hsu stated that he treated appellant from May 21 through June 2, 2007 due to a “flare-up of he low back pain.” He stated that appellant experienced significant back pain during his period as demonstrated by her slow gait with a limp. Dr. Hsu stated that when appellant’s symptoms improved he released her to return to her normal limited-duty activities. On August 2, 2007 appellant received an injection which significantly reduced her symptoms of low back pain and eliminated radiation of pain down her left leg.

By decision dated August 16, 2007, the Office denied appellant’s claim for compensation finding that the medical evidence was not sufficient to establish that she was totally disabled from May 21 to June 2, 2007.

Appellant requested reconsideration on September 11, 2007. In an August 23, 2007 report, Dr. Hsu listed the objective findings supporting his conclusion that appellant was totally disabled from May 21 through June 2, 2007. He stated, “Although pain was the predominant feature of this flare-up, which is subjective, there have also been objective findings that support that she had a flare-up in low back pain. For example, on February 21, 2007 the patient had tenderness to palpation on the right and left sacral area (whereas before she only had tenderness at the right sacral area on April 25, 2007), that her range-of-motion had decreased to flexion of only 20 degrees (it was 50 degrees on April 25, 2007) and extension of 5 degrees (it was 10 degrees on April 25, 2007).”

The Office referred appellant for a second opinion evaluation on August 22, 2007. In a report dated September 13, 2007, Dr. Juon-Kin Fong, a Board-certified orthopedic surgeon,

noted appellant's history of injury and described her "slight antalgic limp of the right leg." He diagnosed lumbalgia with right leg radiculitis spondylosis and obesity. Dr. Fong found that appellant had back pain which was sufficient to interfere with her work, but no obvious cause on diagnostic examination. He recommended further testing.

By decision dated December 3, 2007, the Office reviewed appellant's claim on the merits and denied modification of the August 16, 2007 decision finding that the medical evidence was not sufficient to support appellant's claim for total disability beginning May 21, 2007.

LEGAL PRECEDENT

A recurrence of disability is the inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment which caused the illness. The term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.¹

For each period of disability claimed, a claimant has the burden of proving by a preponderance of the reliable, probative and substantial evidence that she is disabled for work as a result of her employment injury. Whether a particular injury caused an employee to be disabled for employment and the duration of that disability are medical issues which must be provide by preponderance of the reliable probative and substantial medical evidence.²

Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work. The Board has stated that, when a physician's statements regarding an employee's ability to work consist only of a repetition of the employee's complaints that he or she hurts too much to work, without objective signs of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.³

ANALYSIS

Dr. Hsu, a physician Board-certified in preventive medicine, generally supported appellant's claim for total disability for the period May 21 through June 2, 2007. He noted appellant's history of employment injury and diagnosed "flare-up" of low back pain. Dr. Hsu found that appellant was unable to work, noting that she had a limp as well as decreased range of motion and increased tenderness of the lumbosacral area. However, he did not provide a clear

¹ 20 C.F.R. § 10.5(x).

² *Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

³ *Id.*

opinion explaining how appellant's disability for work was due to her accepted employment injury. Dr. Hsu stated that appellant's most recent MRI scan demonstrated a new herniated disc at L2-3. He further noted that she described increasing pain on the left side of her back as a consequence from protecting her injured right side. Dr. Hsu did not clearly explain how either of these new back conditions caused or contributed to appellant's total disability for the period in question. He also opined with a checkmark "yes" that appellant's condition was due to her accepted employment injury. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such a report is insufficient to establish causal relationship.⁴ Dr. Hsu has not offered adequate explanation for his conclusion that appellant's alleged period of total disability was due to her accepted employment injury. This medical reasoning is especially necessary given the diagnosis of additional back conditions which have not been accepted by the Office as employment related. The record before the Board does not contain a definite opinion with supportive medical reasoning regarding the cause of appellant's total disability beginning May 21, 2007. Appellant has failed to meet her burden of proof and the Office properly denied her claim.

CONCLUSION

The Board finds that the medical evidence is not sufficient to establish that appellant was totally disabled from May 21 to June 2, 2007 due to her accepted employment-related back condition and that the Office properly denied her claim.

⁴ *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

ORDER

IT IS HEREBY ORDERED THAT the December 3 and August 16, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 3, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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