United States Department of Labor
Employees' Compensation Appeals Board

D.V., Appellant	)	
and	)	**Docket No. 09-1036**
	)	**Issued: December 8, 2009**
U.S. POSTAL SERVICE, POST OFFICE, White Plains, NY, Employer	)	

Appearances:
Robert A. Taylor, Esq., for the appellant
No appearance, for the Director

Oral Argument September 17, 2009

DECISION AND ORDER

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

JURISDICTION

On March 12, 2009 appellant filed a timely appeal from a December 1, 2008 decision of the Office of Workers' Compensation Programs affirming an April 21, 2008 decision which denied his claim for disability compensation. Pursuant to 20 C.F.R. § 501.2(c) and 501.3, the Board has jurisdiction over this claim.

ISSUE

The issue is whether appellant has established employment-related disability on October 20, November 13 and 21 through 25, 2006, due to his March 30, 2001 employment injuries.

FACTUAL HISTORY

On March 30, 2001 appellant, then a 33-year-old mail handler, injured his low back in the performance of duty. He stopped work on March 31, 2001.[1] The Office accepted the claim for

[1] The record reflects that appellant received continuation of pay through May 14, 2001. On May 15, 2001 he began receiving compensation for lost wages due to continued temporary total disability.

lumbosacral sprain. Appellant returned to a limited-duty position for eight hours a day on November 20, 2001. The Office accepted his claim for a recurrence of disability on October 3, 2003. The record reflects that appellant was totally disabled from December 16, 2004 to February 4, 2005. The Office also accepted claims for a recurrence of disability on December 18, 2004, December 27, 2005 and July 10, 2006.[2] Appellant received appropriate compensation benefits.

In a June 5, 2006 attending physician's report, Dr. Stephen Andrus, Board-certified in pain medicine, diagnosed left sacroiliitis and chronic low back pain and radiculitis. He advised that appellant could perform light duty, four hours per day with no lifting over 40 pounds and continued to treat appellant. In a September 8, 2006 duty status report, Dr. Andrus diagnosed lumbar radiculopathy and advised that appellant could continue to work four hours per day with a 40-pound lifting restriction.

On December 21, 2006 appellant filed a Form CA-2a, notice of recurrence, for 20 hours of total disability on October 20, November 13 and 21 through 25, 2006. He alleged that his condition was chronic in nature, and that he experienced episodes of chronic and severe pain. In a letter dated January 22, 2007, appellant noted that November 21, 2006 was a nonscheduled workday. He alleged that on November 22, 2006 he made an effort to report to work but had to leave after 15 minutes.

On January 13, 2007 appellant was removed from his employment for violation of a last chance agreement that he signed on September 21, 2006. He returned to duty at another employing establishment in September 2007 in a full-time regular mail handler position effective October 13, 2007.

On September 14, 2007 appellant also completed a Form CA-7 requesting 20 hours of wage-loss compensation for total disability on October 20, November 18, 22, 23 and 25, 2006. The employing establishment noted that appellant was previously paid four hours per day for the aforementioned dates due to a loss of wage-earning capacity determination made on March 31, 2001. Appellant was now seeking payment for the additional four hours of pay for time missed on those dates. In a letter dated October 1, 2007, appellant's representative noted that appellant was seeking compensation for four hours a day for the dates in question.

Appellant submitted a December 4, 2006 disability certificate from Dr. Andrus who diagnosed lumbar radiculopathy and placed appellant off work on October 20, November 13 and 21 to 25, 2006. Dr. Andrus indicated that appellant could resume limited duties from December 4, 2006 to January 30, 2007. In a separate attending physician's report of December 4, 2006, he checked the box "yes" that he believed appellant's condition was caused or aggravated by an employment activity. Dr. Andrus prescribed no lifting over 40 pounds and no bending for no more than four hours a day. He noted that appellant was partially disabled from February 24 to December 4, 2006. Dr. Andrus advised that appellant had chronic intermittent low back pain which varied in intensity and "may cause episodic periods of incapacity and is chronic in nature."

[2] Appellant also received compensation for wage loss for the period July 10 to August 13, 2006.

In reports dated May 1 and 25, 2007, Dr. Andrus noted that appellant was out of work and disabled on October 20, November 13 and 21 through 25, 2006. In a June 4, 2007 report, he noted that appellant was able to resume light-duty work on March 7, 2006. In an August 2, 2007 report, Dr. Andrus opined that appellant was partially disabled from February 24 to December 4, 2006.

In a letter dated January 2, 2008, the Office advised appellant that additional factual and medical evidence was needed and that a physician's reasoned opinion was crucial to his claim. On February 1, 2008 the employing establishment controverted the claim and alleged that appellant's inability to work was due to a disciplinary action.

In reports dated February 12 and 15, 2008, Dr. Andrus noted that appellant was seen for follow up due to pain in his lower back, left buttocks and mid thigh. He diagnosed left sacroiliac and chronic strain spasm and lumbar radiculopathy. Dr. Andrus placed appellant off work from January 2, 2007 to February 12, 2008. He continued to treat appellant and submit reports.

By decision dated April 21, 2008, the Office denied appellant's claim for compensation. It found that the evidence failed to show that there was a change in the claimant's light-duty assignment or a change in his accepted work- related conditions.

On May 14, 2008 appellant's representative requested a hearing, which was held on September 23, 2008.[3]

On July 8, 2008 Dr. Andrus noted that appellant was seen for a lumbar strain and opined that he could return to work with restrictions for the period July 8 to August 14, 2008. He opined that appellant was partially disabled on October 20, November 12, 22, 24 and 25, 2006 due to the lumbar strain as a direct result of his work-related injury on March 30, 2001. Dr. Andrus also noted that appellant was partially disabled from January 12, 2007 to July 8, 2008.

In a September 15, 2008 report, Dr. Andrus noted that appellant originally had a diagnosis of lumbar strain and lumbar disc displacement. He noted that, after multiple examinations, he also determined that appellant had chronic left sacroiliitis and left lumbar radiculopathy. Dr. Andrus explained that the nature of these diagnoses resulted in appellant having a chronic condition with intermittent exacerbations, which limited him to working four hours per day, five days a week. He opined that, while appellant was on limited duty, his position required lifting, twisting and reaching, and these activities contributed to an exacerbation of his symptoms which forced appellant to go out on full disability on October 20, November 18, 22, 24 and 25, 2006.[4] Dr. Andrus noted that appellant's most recent evaluation

[3] During the hearing, appellant and his representative alleged that appellant's medical condition and work factors had changed. He alleged that the employing establishment violated appellant's weight restriction of 40 pounds by directing him to push an all-purpose container (APC) weighing 250 pounds. Appellant's representative noted that appellant had previously requested leave for the dates of November 24 to 25, 2006 in order to winterize his home in upstate New York. However, because of his injuries, he was unable to perform the project and had to hire someone. Appellant also alleged that he could not get an earlier appointment because his physician's wife had a child and he was out for a few weeks.

[4] The physician also referred to later dates.

was July 8, 2008. He opined that appellant aggravated and worsened his condition by work he did at the employing establishment prior to October 26, 2006 and from November 26 to January 13, 2007. Dr. Andrus opined that appellant's duties "directly resulted in an exacerbation of his underlying chronic lumbar spine condition." He explained that, because of these work-related exacerbations, appellant had full disability and could not work on October 20, November 18, 22, 24 and 25, 2006. Dr. Andrus opined that appellant was likely to continue to have a chronic lumbar spine condition which should be considered a moderate partial permanent disability related to his lumbar spine. He indicated that appellant could not return to full duty; however, appellant should be able to return to his light-duty position for four hours per day, five days a week. Dr. Andrus continued to treat appellant and submit reports.

On October 17, 2008 appellant's representative contended that appellant had submitted rationalized medical evidence and that the employing establishment did not adhere to appellant's medical restrictions. He submitted a copy of an arbitration decision issued on August 19, 2006. The decision found that appellant pushed a heavy mail container in violation of his medical restriction that limited his pushing, pulling and lifting of more than 40 pounds. In an October 10, 2008 statement, Steven Rodriquez, a coworker, indicated that he worked with appellant from August through December 2006. He noted that, on a daily basis, he observed appellant pushing and pulling postal containers, hampers and racks, weighing in excess of 200 pounds. Mr. Rodriguez indicated that appellant was performing these tasks under direction of the employing establishment.

By decision dated December 1, 2008, the Office hearing representative affirmed the April 21, 2008 decision.

LEGAL PRECEDENT

A claimant seeking benefits under the Federal Employees' Compensation Act[5] ("Act") has the burden of proof to establish the essential elements of his claim by the weight of the evidence,[6] including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.[7]

As used in the Act, the term "disability" means incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury.[8] When the medical evidence establishes that the residuals of an employment injury are such that, from a medical

[5] 5 U.S.C. §§ 8101-8193.

[6] *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

[7] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[8] *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.5(f).

standpoint, they prevent the employee from continuing in his employment, he is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.[9]

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.[10] Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work. When a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that he hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.[11] The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.[12]

ANALYSIS

The Office accepted appellant's claim for lumbosacral sprain. Appellant requested compensation for disability for 20 hours of disability on October 20, November 13 and 21 through 25, 2006. On January 2, 2008 the Office advised appellant of the evidence needed to establish his claim. Appellant, however, did not submit sufficient reasoned medical evidence to establish that his disability for the 20 hours claimed was causally related to his accepted injury. He did not submit a medical report in which his treating physician explained how his disability was related to the accepted injury.

Dr. Andrus provided a December 4, 2006 disability certificate which diagnosed lumbar radiculopathy. He advised that he had placed appellant off work on October 20, November 13 and 21, to 25, 2006 and that appellant could resume limited duties from December 4, 2006 to January 30, 2007. The Board notes that Dr. Andrus did not address why appellant was unable to perform any type of work on these dates. To establish causal relationship, a claimant must submit a physician's report in which the physician reviews the employment factors identified by the claimant as causing the claimed condition and, taking these factors into consideration as well as findings upon examination, states whether the employment injury caused or aggravated the diagnosed conditions and presents medical rationale in support of his or her opinion.[13] Moreover, Dr. Andrus did not address whether he had actually examined appellant on the dates of disability claimed. His December certificate does not list any findings from physical examination in October or November 2006.

[9] *Bobby W. Hornbuckle*, 38 ECAB 626 (1987).

[10] *See Fereidoon Kharabi*, 52 ECAB 291, 293 (2001); *Edward H. Horton*, 41 ECAB 301, 303 (1989).

[11] *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008); *see Huie Lee Goal*, 1 ECAB 180, 182 (1948).

[12] *G.T., supra* note 11; *Fereidoon Kharabi, supra* note 10.

[13] *D.D.*, 57 ECAB 734 (2006).

In a separate report also dated December 4, 2006, Dr. Andrus checked the box "yes" that he believed appellant's condition was caused or aggravated by an employment activity. He noted that appellant was partially disabled from February 24 to December 4, 2006. The Board has held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.[14] Dr. Andrus did not offer a rationalized medical opinion as to how appellant's employment caused or aggravated his condition and caused disability for the 20 hours claimed.

In reports dated May 1, 25, August 2, 2007 and July 8, 2008, Dr. Andrus reiterated his opinion that appellant was disabled on the aforementioned dates. He opined that appellant was partially disabled on the above dates due to the lumbar strain as a direct result of his work-related injury on March 30, 2001. The Board notes that these reports are also insufficient as Dr. Andrus did not provide a fully rationalized medical opinion,[15] nor did he address whether he had examined appellant in October or November 2006 to support his opinion on disability.

In a September 15, 2008 report, Dr. Andrus noted that he originally diagnosed a lumbar strain and lumbar disc displacement and later determined that appellant had chronic left sacroiliitis and left lumbar radiculopathy. He noted that appellant's position required lifting, twisting and reaching, and these activities contributed to an exacerbation of his symptoms which forced appellant to go out on full disability on October 20, November 18, 22, 24 and 25, 2006. Dr. Andrus opined that appellant's duties "directly resulted in an exacerbation of his underlying chronic lumbar spine condition." The Board notes that, while he attempted to address in 2008 how appellant had exacerbated his symptoms in 2006, he did not provide any contemporaneous examination findings or a reasoned explanation as to how he arrived at his conclusion.[16] This is particularly important in light of the additional diagnoses of chronic left sacroiliitis and left lumbar radiculopathy.[17] The Board notes that there are no contemporaneous findings pertaining to the aforementioned periods. Dr. Andrus noted that his most recent examination was in July 2008. The Board finds that this opinion is insufficient to establish disability on the 20-hour periods in 2006.

Other reports contained in the record did not address the period or disability or offer a specific opinion on causal relationship. Medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof.[18]

In the instant case, none of the medical reports submitted by appellant contained a sufficiently rationalized opinion to establish that he could no longer perform the duties of his

[14] *Sedi L. Graham*, 57 ECAB 494 (2006).

[15] *Id.*

[16] *See supra* note 11.

[17] The Board notes that the record is unclear as to whether these conditions are accepted.

[18] *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

light-duty position or his disability on October 20, November 13, 21 through 25, 2006. The Board finds that appellant has failed to submit rationalized medical evidence establishing that his disability for the 20 hours claimed in 2006 was causally related to his accepted employment injury. Appellant has not met his burden of proof.

The Board notes that, while the present case only pertains to the 20 hours of disability claimed, further development is needed by the Office to clarify certain aspects of appellant's claim. For example, the statement of accepted facts indicates that appellant's claim was accepted for a lumbar strain; however, the Office hearing representative noted that appellant's accepted conditions included a herniated disc and sacroiliitis. It appears that appellant is alleging a change in the nature and extent of his injury-related condition or conditions on other dates, which has not been adjudicated by the Office. The record suggests that there was a change in the nature and extent of appellant's duties. The August 16, 2006 arbitration decision indicates that appellant worked beyond his restrictions. It appears that further development of the record is required in order to ascertain whether there was a change in the nature and extent of the injury-related condition or in the light-duty position.

Appellant's representative contended at oral argument that appellant had established his claim for disability for the 20 hours claimed. However, as noted, appellant did not meet his burden of proof in regard to this period of disability.

CONCLUSION

The Board finds that appellant failed to establish an employment-related disability on October 20, November 13, 21 through 25, 2006, due to his March 30, 2001 employment injuries.

ORDER

IT IS HEREBY ORDERED THAT the December 1, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 8, 2009
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