

The issue is whether appellant is entitled to compensation for temporary total disability beginning June 16, 2008.

FACTUAL HISTORY

Appellant, a 47-year-old distribution clerk, has an accepted claim for lumbar strain, which arose on April 29, 2008.¹ She stopped work the day of her injury and received continuation of pay through June 13, 2008. On June 27, 2008 appellant filed a claim (Form CA-7) for temporary total disability beginning June 16, 2008.

Dr. Rajiv Puri, a Board-certified orthopedic surgeon, treated appellant on June 2, 2008.² He noted a history of a recent fall at work on April 29, 2008. Dr. Puri's clinical examination revealed "hurt" lower back and bilateral hips. He also noted tenderness in the thoracic and lumbar spine. Dr. Puri diagnosed thoracic sprain and advised that appellant was temporarily totally disabled until her next scheduled examination on June 23, 2008. He also referred appellant for magnetic resonance imaging (MRI) scans of the thoracic and lumbar spines.

When Dr. Puri next saw appellant on June 23, 2008 he noted that she was very tender with marked limitation of motion. He also noted that a recent MRI scan of the thoracic spine was unremarkable. Dr. Puri diagnosed lumbar sprain and recommended physical therapy and medication. He continued to find appellant temporarily totally disabled pending further evaluation.

In a July 14, 2008 progress report, Dr. Puri noted that appellant still complained of muscle spasm and pain in her low back. He also noted that she had a postural imbalance due to muscle spasm. There was no reported leg pain, but Dr. Puri noted diminished range of motion in the thoracic and lumbar spine at the extremes. He diagnosed lumbar sprain and advised that appellant required medication for pain and physical therapy, including postural exercises. Dr. Puri indicated that appellant could return to part-time, modified duty on August 4, 2008 after she had a couple weeks of physical therapy.

Appellant returned to full-time, limited-duty work on August 4, 2008.

In a decision dated August 8, 2008, the Office denied appellant's claim for temporary total disability beginning June 16, 2008. It found that Dr. Puri's treatment records were insufficient to establish temporary total disability for the claimed period.

The employing establishment sent Dr. Puri a letter on August 12, 2008 inquiring about appellant's employment-related condition. Dr. Puri was asked to provide a work-related diagnosis. The letter also asked if there were any ongoing residuals, and if so, when was appellant expected to recover. Dr. Puri was also asked to provide work restrictions if applicable.

¹ Appellant indicated that she was sore after throwing mail and posting payments. She was in the restroom at work when she reached for a toilet seat cover and felt a sharp pain in her back. Appellant then fell to her knees, striking her elbows on the toilet before coming to rest on the bathroom stall floor. She was treated in the emergency room on April 29, 2008 and received a diagnosis of lumbar strain. On May 2, 2008 appellant was diagnosed with cervicothoracic, lumbosacral and bilateral hip strains and advised to remain off work until she was reevaluated by an orthopedic specialist. X-rays of the hips, pelvis and lumbar spine obtained on May 2, 2008 were all negative.

² Dr. Puri previously treated appellant beginning in 1999 for an employment-related injury to her shoulders (xxxxxx238). He also treated appellant for a 2007 employment injury to her neck and right shoulder (xxxxxx631).

He responded on August 28, 2007, noting a diagnosis of herniated lumbar disc. Dr. Puri also noted that appellant's residuals had not yet resolved and as to her expected recovery date, he responded that he would know better after reviewing the results of appellant's lumbar MRI scan.

A September 7, 2008 lumbar MRI scan revealed a minimal broad-based protrusion at L2-3, without significant central canal or neural foramina stenosis.

Appellant requested a hearing regarding the Office's August 8, 2008 decision. The hearing was held on December 4, 2008.

In a post-hearing the Office received a November 19, 2008 report from Dr. Puri who indicated that appellant had been under his care for quite some time for her work-related injuries. Dr. Puri further indicated that appellant saw him on June 2, 2008 for a new work-related injury to her low back, which she sustained on April 29, 2008 when she fell while at work. He explained that he had evaluated appellant for her recent low back injury, including referrals for x-rays and MRI scans. Dr. Puri noted that he had also prescribed pain medication and placed appellant on temporary total disability starting June 2, 2008. He further stated that, after appellant felt better with treatment, she eventually returned to work on August 4, 2008. Dr. Puri concluded that, based on a review of his records, appellant was temporarily totally disabled from June 2 until August 4, 2008 because of her back injury.

By decision dated February 20, 2009, the hearing representative affirmed the Office's August 8, 2008 decision.

LEGAL PRECEDENT

A claimant has the burden of establishing the essential elements of her claim, including that the medical condition for which compensation is claimed is causally related to the employment injury.³ For wage-loss benefits, the claimant must submit medical evidence showing that the condition claimed is disabling.⁴ The evidence submitted must be reliable, probative and substantial.⁵

ANALYSIS

Proceedings under the Federal Employees' Compensation Act are not adversarial in nature and the Office is not a disinterested arbiter. The claimant has the burden to establish entitlement to compensation, however, the Office shares responsibility in the development of the evidence to see that justice is done.⁶ The Office has accepted that appellant sustained lumbar strain as a result of a fall at work on April 29, 2008. The issue is whether appellant was disabled after June 16, 2008 due to this injury. Dr. Puri, appellant's treating physician continued to find

³ 20 C.F.R. § 10.115(e) (2008); *see Tammy L. Medley*, 55 ECAB 182, 184 (2003).

⁴ 20 C.F.R. § 10.115(f).

⁵ *Id.* at § 10.115.

⁶ *William J. Cantrell*, 34 ECAB 1223 (1983).

appellant disabled until August 4, 2008, based upon her examination findings, which he described as tenderness in the thoracic and lumbar spine, with limitation of motion. While Dr. Puri's various treatment records and reports are insufficient to discharge appellant's burden of proving that the claimed disability is causally related to her federal employment, his opinion is sufficient to require further development of the case record by the Office.⁷

On remand, the Office should refer appellant to an appropriate specialist, along with the case record and a statement of accepted facts. Its referral physician should provide an evaluation and a rationalized medical opinion on whether appellant's lumbar disc herniation is employment related and whether she was totally disabled on or after June 16, 2008 as a consequence of her April 29, 2008 employment injury. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

CONCLUSION

The case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the February 20, 2009 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision.

Issued: December 4, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

⁷ See *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).