

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

B.O., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Parma, OH, Employer**

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**Docket No. 09-2171
Issued: October 15, 2009**

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 October 27, 2008 appellant filed a timely appeal of the August 22, 2008 merit decision of the Office of Workers' Compensation Programs finding that she had not established disability causally related to her federal employment. 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 sustained disability on April 22, 2008 due to her accepted employment injuries such that she could no longer work eight hours a day.

FACTUAL HISTORY

On May 10, 2008 appellant, then a 54-year-old rehabilitation clerk, filed an occupational disease claim alleging that she developed severe pain and depression beginning on April 22, 2008. She first realized her condition was related to her employment on May 2, 2008. Appellant noted that her original work injury was January 6, 1986 and that she sustained a back strain on January 3, 1995. She underwent back surgery in November 1988 and disc surgery in

February 2000. Appellant was diagnosed with degenerative disc disease, arthritis of the spine, sciatic nerve damage and severe pain in her hips and legs. She stated that she had chronic back pain and depression and that her physician reduced her work hours to four hours a day. Appellant still experienced pain at the end of the four-hour workday.

On November 16, 2007 Dr. Hong Shen, Board-certified in physical medicine and rehabilitation, reported appellant's complaints of acute onset of low back pain radiating down both legs at work. He noted that she was bent over picking up paper when she experienced an acute stabbing pain across her lower back and into her legs. Dr. Shen diagnosed aggravated low back pain from a work-related lumbar sprain/strain.

The employing establishment submitted appellant's modified-duty assignment, which consisted of lifting under 20 pounds for one hour and sitting, standing, walking, reaching and simple grasping for three hours.

In a note dated January 31, 2008, Dr. Shen diagnosed lumbosacral joint sprain, degenerative disc disease and noted that he last examined appellant in November 2007. He examined her on February 27, 2008 and diagnosed chronic low back pain, lumbosacral joint sprain and degenerative disc disease. Dr. Shen again examined appellant on April 2, 2008 and diagnosed lumbosacral joint sprain and degenerative disc disease. On May 2, 2008 he diagnosed degenerative disc disease and recurrent depression. Dr. Shen noted that appellant was tired after eight hours of work. On May 7, 2008 he diagnosed chronic low back pain, lumbosacral joint sprain, degenerative disc disease and depression. Dr. Shen opined that appellant's condition was due to her original injury, as her pain had never ceased. He attributed appellant's condition to bending, twisting and lifting eight hours a day.

By letter dated June 20, 2008, the Office requested additional factual and medical evidence in support of appellant's claim. Dr. Shen completed a note on June 11, 2008 and reduced appellant's work hours to four hours a day. He requested additional diagnostic testing.

Colleen Hanic, a coworker, completed a statement on June 23, 2008 and asserted that in November 2007 she witnessed appellant bend over to pick up a few letters and cry out in pain. Ms. Hanic reported that appellant was in tears and stated that her "back went out."

Dr. E. Brightman, a Board-certified orthopedic surgeon, performed a coccygectomy on November 3, 1988 due to a malunion fracture of the coccyx. Appellant also submitted excerpts from medical publications in support of her claim.¹ She submitted a duty status report dated June 4, 2008 diagnosing chronic lumbosacral pain, sciatica, depression and leg pain. In a July 20, 2008 narrative statement, appellant attributed her current symptoms to her accepted conditions under separate claims.

¹ The Board has held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the causal relationship between a claimed condition and an employee's federal employment as such materials are of general application and are not determinative of whether the specific condition claimed is related to the particular employment factors alleged by the employee. *George A. Johnson*, 43 ECAB 712, 718 (1992).

By decision dated August 22, 2008, the Office denied appellant's claim finding that she had not met her burden of proof in establishing that she could no longer work eight hours a day.

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.²

Appellant for each period of disability claimed, 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.³

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.⁴

ANALYSIS

Appellant has accepted low back conditions, for which she receives ongoing medical benefits. She filed an occupational disease claim on May 10, 2008 alleging that she developed severe pain and depression beginning on April 22, 2008. Appellant first realized that her condition was related to her employment on May 2, 2008. She submitted reports from Dr. Shen, Board-certified in physical medicine and rehabilitation. Dr. Shen noted appellant's complaints of increased pain beginning in November 2007 through May 7, 2008 and diagnosed chronic low back pain, lumbosacral joint sprain and degenerative disc disease. He completed a note on June 11, 2008 and reduced appellant's work hours to four hours a day.

Dr. Shen did not provide any findings from physical examination in support of appellant's increased disability. He merely repeated his prior diagnoses of chronic low back

² 20 C.F.R. § 10.5(x).

³ *Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

⁴ *Id.*

pain, lumbosacral joint sprain and degenerative disc disease and that appellant was tired after eight hours of work. Dr. Shen's statements regarding appellant's ability to work consist largely of a repetition of her complaint that she hurt too much and became tired after eight hours of work. He did not address objective signs of disability or present a medical opinion on the issue of disability to support payment of compensation. Appellant has not submitted the necessary medical opinion evidence to establish that she had increased disability on or after June 11, 2008 entitling her to additional compensation benefits.

CONCLUSION

The Board finds that appellant has not submitted the necessary medical opinion evidence to meet her burden of proof and establish disability for work beginning June 11, 2008.

ORDER

IT IS HEREBY ORDERED THAT the August 22, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 15, 2009
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