

Appellant worked light duty until November 26, 2005 when he became totally disabled and stopped working. On February 16, 2006 the Office placed appellant on the periodic rolls. On June 20, 2006 appellant underwent an anterior cervical discectomy with decompression of the spinal cord and nerve root with osteophyctomy at C5-6 and C6-7 and arthrodesis at C5-6 and C6-7. On February 5, 2008 he underwent a removal of anterior cervical plates, discectomy with decompression of spinal cord and nerve roots, arthrodesis at C6-7 and an application of intervertebral biomechanical device.

On May 15, 2008 appellant underwent a functional capacity evaluation, which indicated that he could return to light duty. In a May 22, 2008 work capacity evaluation, his treating physician, Dr. Jamshid Saleh, a Board-certified neurologist, indicated that appellant could work full-time limited duty and provided permanent work restrictions. On June 9, 2008 the employing establishment offered appellant a light-duty position. Appellant accepted the position on June 17, 2008 and returned to work on June 24, 2008. On July 14, 2008 he stopped working.

On July 28, 2008 appellant filed a claim for compensation (Form CA-7) for the period July 15 through 18, 2008.¹

In a July 14, 2008 report, Dr. Saleh reported appellant's complaints of developing neck pain while driving to work. He stated that appellant's driving duration was recreating symptoms of neck pain and that he was placing appellant off work for the time being. Dr. Saleh opined that appellant should undergo vocational training for a less strenuous and demanding vocation. In a separate July 14, 2008 note, he stated that appellant was placed off work immediately until further notice.

By letter dated August 1, 2008, the Office notified appellant of the deficiencies in his claim and requested that he provide additional evidence.

In an August 11, 2008 medical report, Dr. Saleh related appellant's claims that he only experienced neck pain when driving for a length of time or when making sudden movements of his neck. Appellant stated that because his job was transient and likely to terminate in another month, he did not believe he should have to drive the distance required. He also stated that if he were offered a stable and permanent job he would relocate closer to avoid driving far.

By decision dated October 16, 2008, the Office denied appellant's claim for compensation for the period July 15 through 18, 2008 on the grounds that he did not submit sufficient medical evidence to establish that he was unable to work light duty during this period.

On November 18, 2008 appellant filed a request for a review of the written record by an Office hearing representative.

Appellant subsequently submitted medical reports dated November 4 through December 8, 2008 from Dr. Edward Dolchi who reported that appellant had three neck surgeries and that he continued to experience limited range of motion and shooting pain down his arms

¹ Appellant also subsequently filed several claims for compensation for the period July 20 through December 6, 2008. He also filed a claim for a schedule award.

especially while turning his head. Dr. Dolchi opined that appellant had a limited ability to work and that his condition was permanent and stationary. He stated that appellant had trouble driving back and forth from his position. Dr. Dolchi opined that the commute of five to six hours round trip was too much for appellant to drive every day. He diagnosed cervical herniated disc with successful repair and stated that appellant's disability was from an injury while performing his job with the U.S. Postal Service.

By decision dated March 26, 2009, an Office hearing representative affirmed the October 16, 2008 decision on the grounds that he did not submit rationalized medical evidence establishing that he was disabled from July 15 through 18, 2008 due to his employment injury.

LEGAL PRECEDENT

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.² 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.³ 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.⁴

ANALYSIS

The Office accepted that appellant sustained a strain of the right wrist and hand and cervical radiculitis due to his employment factors. Appellant worked light duty until November 26, 2005. He returned to light duty from June 17 through July 14, 2008. The issue is whether appellant established that he was totally disabled from July 15 through 18, 2008 due to his employment injury.⁵ The Board finds appellant has not met his burden of proof.

In support of his claim for disability compensation, appellant submitted medical reports dated July 14 and August 11, 2008 from Dr. Saleh. In the July 14, 2008 medical report,

² See *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001); *Edward H. Horton*, 41 ECAB 301, 303 (1989).

³ *G.T.*, 59 ECAB ____ (Docket No. 07-1345, issued April 11, 2008). See *Huie Lee Goal*, 1 ECAB 180, 182 (1948).

⁴ *G.T.*, *id.*; *Fereidoon Kharabi*, *supra* note 2.

⁵ When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative, and substantial evidence a recurrence of total disability and show that she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements. *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

Dr. Saleh stated that he was placing appellant off work. He reported appellant's complaints of neck pain, which developed while driving and opined that appellant's driving duration to work was recreating symptoms of neck pain. Dr. Saleh recommended that appellant undergo vocational training for a less strenuous vocation. Further, in the August 11, 2008 medical report, he related appellant's claims that he only experienced neck pain while driving or making sudden moves with his neck. Appellant also stated that he did not believe he should be required to drive a distance for a transient position.

The Board finds that Dr. Saleh's medical reports are insufficient to establish appellant's claim. Although he stated that he was taking appellant off work, he did not provide a compensable diagnosis of appellant's current condition or explain how this condition caused appellant to be totally disabled from work.⁶ Further, Dr. Saleh did not describe how appellant's current condition was related to his accepted employment injuries but rather appeared to relate appellant's current disability to new factors of driving after his return to work.⁷ Therefore, the Board finds that Dr. Saleh's medical reports fail to establish appellant's total disability from July 14 through 18, 2008.

Appellant further submitted medical reports dated November 4 through December 8, 2008 from Dr. Dolchi. There, Dr. Dolchi reported that appellant continued to experience limited range of motion and arm pain, especially while turning his head, after undergoing three neck surgeries. He stated that appellant's limited ability to work was permanent and stationary. Dr. Dolchi opined that appellant's five or six hour commute was too much for him to drive every day and that appellant experienced trouble driving back and forth to his position. He diagnosed cervical herniated disc with successful repair and stated that appellant's disability was due to his injury while performing his job with the U.S. Postal Service.

The Board finds that Dr. Dolchi's medical reports are also insufficient to establish appellant's claim. Although he related appellant's current disability to the surgical repair for his employment injuries, it does not appear as though the report was based on an accurate factual background as the doctor incorrectly opined that appellant's injuries were caused by his work at the U.S. Postal Service.⁸ Further, Dr. Dolchi did not address any period of disability or specifically opine that appellant was disabled from July 14 through 18, 2008.⁹

Therefore, the Board finds that appellant did not submit sufficient medical evidence to establish that he was totally disabled from July 15 through 18, 2008.¹⁰

⁶ See *G.T.*, *supra* note 3.

⁷ See *Tammy L. Medley*, 55 ECAB 182 (2003).

⁸ See *S.S.*, 59 ECAB ___ (Docket No. 07-579, issued January 14, 2008).

⁹ See *id.*; *G.T.*, *supra* note 3.

¹⁰ See *Laurie S. Swanson*, 53 ECAB 517 (2003) (Appellant has the burden of proving by the preponderance of the reliable, probative and substantive evidence that he was disabled for work as the result of the employment injury).

CONCLUSION

The Board finds that appellant did not establish that he was totally disabled during the period July 15 through 18, 2008 due to his employment injury.

ORDER

IT IS HEREBY ORDERED THAT the March 26, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 27, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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