United States Department of Labor
Employees' Compensation Appeals Board

J.B., Appellant	)	
and	)	**Docket No. 07-1279**
	)	**Issued: December 6, 2007**
DEPARTMENT OF VETERANS AFFAIRS, DENVER VETERANS ADMINISTRATION MEDICAL CENTER, Denver, CO, Employer	)	

Appearances:
Gregory A. Hall, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 10, 2007 appellant, through counsel, filed a timely appeal of May 2, 2006 and January 10, 2007 merit decisions of the Office of Workers' Compensation Programs, denying her claim for wage-loss compensation for total disability during the period February 17 to August 7, 2005. 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 established that she was totally disabled from February 17 to August 7, 2005 due to her accepted employment injury.

FACTUAL HISTORY

On October 20, 2004 appellant, then a 38-year-old licensed practical nurse, filed a traumatic injury claim alleging that on October 18, 2004 she experienced lower back pain as a result of lifting a patient from a bed to a gurney at work. She stopped work on October 20, 2004.

By letter dated November 3, 2004, Judy Schriver, a workers' compensation program manager, advised Dr. Linda M. Tetor, an attending Board-certified family practitioner, that the employing establishment wished to offer appellant light-duty work. Dr. Tetor was advised to complete an accompanying work capacity evaluation (Form OWCP-5c) after examining appellant. On November 9, 2004 the Office received an October 20, 2004 OWCP-5c form from Dr. Tetor who stated that appellant could not perform her regular work duties but that she could work eight hours per day with restrictions until October 26, 2004. In a prescription dated November 8, 2004, Dr. Tetor reiterated that appellant could work four hours per day starting on November 9, 2004. In an OWCP-5c form also dated November 8, 2004 and a November 9, 2004 report, she stated that appellant was temporarily restricted from bending, skipping, twisting and lifting, pushing and pulling more than 10 pounds and squatting, kneeling and climbing with more than 10 pounds due to her back injury. Dr. Tetor recommended 15-minute breaks.

In a November 8, 2004 letter, appellant advised the employing establishment that she was resigning effective November 9, 2004 because she had a bulging disc in her lower sacrum and she could no longer lift total care and heavy patients. She stated that she could not work in a light-duty position at the employing establishment's hospital because she would have to park her car six blocks away every day.

By letter dated January 6, 2005, the Office accepted appellant's claim for lumbar strain.

In a September 12, 2005 letter, the employing establishment stated that appellant resigned on November 6, 2004 from a position that was designed to accommodate her limited-duty restrictions. An accompanying notice of personnel action indicated that her resignation was effective November 9, 2004.

On March 11, 2006 appellant filed a claim for wage-loss compensation (Form CA-7) for the period February 17 to August 7, 2005. She submitted Dr. Tetor's November 8, 2004 prescription. In a July 12, 2005 form report, Dr. Tetor stated that appellant sustained an injury on October 20, 2004. She diagnosed low back pain and indicated with an affirmative mark that this condition was caused by an employment activity. Appellant was released to light-duty work on November 8, 2004. In a March 23, 2005 report, Dr. Hang T. Nguyen, a chiropractor, reviewed the history of the October 18, 2004 employment injury. Appellant related to Dr. Nguyen that she had to resign from her nurse position due to the nature of her employment-related back injury. Dr. Nguyen found that appellant sustained lumbar sprain/strain with associated lumbar joint dysfunction, lumbar disc syndrome with mild radiculopathy, cervical joint dysfunction with associated myofascial pain syndrome and thoracic joint dysfunction.

By letter dated March 22, 2006, the Office advised appellant that the record did not contain any medical evidence establishing that she was temporarily totally disabled from February 17 to August 7, 2005 due to her accepted employment-related injury. Appellant was afforded 30 days to submit such evidence.

In a letter dated March 26, 2006, appellant stated that she was awaiting discharge orders from the medical command of the Army Reserve. She did not earn any income during the period February 17 to August 7, 2005 because she was unable to work due to her work-related back injury. Appellant contended that she did not sustain a recurrence of disability during the claimed

period as she was continuously disabled. She submitted a survey which she completed on March 22, 2005 for Dr. Joel P. Carmichael, a chiropractor, regarding her neck and back pain. On July 21, August 30 and September 12 and 26, 2005 appellant also completed a survey for Dr. Jones concerning her neck and back pain. His July 21, 2005 report and September 12, 2006 treatment note and report indicated that appellant moved in a guarded manner in light of a recent motor vehicle accident, that her conditions included back spasms and limited range of motion and that she required physical therapy. A February 3, 2005 report of Dr. John A. Odom, Jr., a Board-certified orthopedic surgeon, found that appellant sustained Bertolotti's syndrome and a L5 and L6 degenerative disc with pressure on the S1 nerve root on the left. Dr. Nguyen's treatment notes covering intermittent dates from March 23 to April 25, 2005 and addressed appellant's neck and back pain. Appellant's wage and tax statements from 2004 and 2005 revealed that she was employed at the Defense Finance and Accounting Service. A March 24, 2006 letter from the Department of the Army stated that appellant was honorably discharged from the Army Reserve effective April 20, 2006.

On May 2, 2006 the Office issued a decision, denying appellant's claim, on the grounds that the evidence of record failed to establish that she was totally disabled from February 17 to August 7, 2005 due to her accepted October 18, 2004 employment injury.

By letter dated May 30, 2006, appellant, through counsel, requested an oral hearing before an Office hearing representative. An April 19, 2006 report from a physician's assistant whose signature is illegible found that appellant sustained a cervical strain, myofascial pain and fibromyalgia.

In a declaration signed by appellant, on May 31, 2006, she provided her work duties as a licensed practical nurse at the employing establishment and further described the October 18, 2004 employment injury. She stated that, after she accepted the employing establishment's job offer for light-duty sedentary administrative work on November 8, 2004, Ms. Schriver advised her that the position was no longer available and that she would have to work in ambulatory care since she was a nurse. On November 9, 2004 appellant resigned due to her medical inability to perform the duties of the offered nurse position.

An April 14, 2006 treatment note of Robert Mathewson, a physical therapist, stated that appellant sustained a recurrence of cervical myofascial pain with restricted movements at C3-4 and C4-5 with hypertonicity of the rotators and levator. Also on April 14, 2006 Dr. Jones stated that appellant tolerated trigger point injections well. In a mostly illegible report dated August 30, 2006, he recommended self-massage.

Following the November 6, 2006 hearing, appellant submitted Dr. Jones's April 19, July 13 and August 30, 2006 reports which found that she sustained discogenic lumbar spine pain with minimal neurologic symptoms, no progressive neurologic loss, lumbar spine dysfunction with degenerative disc disease, worsening radiculopathy, coexisting sacroiliac joint dysfunction and resultant functional deficit, and coexisting but unrelated cervical spine and scapular dysfunction due to a motor vehicle collision.

By decision dated January 10, 2007, the Office hearing representative affirmed the May 2, 2006 decision, denying appellant's claim for compensation for the period February 17 to August 7, 2005.

LEGAL PRECEDENT

Under the Federal Employees' Compensation Act, the term disability is defined as an inability, due to an employment injury, to earn the wages the employee was receiving at the time of the injury, *i.e.*, an impairment resulting in loss of wage-earning capacity.[1] For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.[2] Whether a particular injury causes an employee to become disabled for work and the duration of that disability are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.[3] The fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[4] The Board will not require the Office to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his disability and entitlement to compensation.[5]

ANALYSIS

The Office accepted that appellant sustained a lumbar strain on October 18, 2004 in the performance of duty. On March 11, 2006 appellant sought compensation for wage loss for total disability from February 17 to August 7, 2005. The Office, by decisions dated May 26, 2006 and January 10, 2007, found that appellant was not totally disabled for work during the claimed period. She has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed disability and the accepted condition.[6]

Appellant submitted Dr. Tetor's November 8, 2004 prescription which released her to return to work four hours per day on November 9, 2004. However, Dr. Tetor did not address whether appellant was totally disabled during the claimed period due to her accepted employment-related injury and is devoid of a history of injury and treatment therefore. The Board, therefore, finds that Dr. Tetor's prescription does not support appellant's claimed total disability from February 17 to August 7, 2005.

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[1] *See Prince E. Wallace*, 52 ECAB 357 (2001).

[2] *Dennis J. Balogh*, 52 ECAB 232 (2001).

[3] *Gary J. Watling*, 52 ECAB 278 (2001).

[4] *Manuel Garcia*, 37 ECAB 767 (1986).

[5] *Amelia S. Jefferson*, 57 ECAB ___ (Docket No. 04-568, issued October 26, 2005); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

[6] *Alfredo Rodriguez*, 47 ECAB 437 (1996).

Dr. Tetor's July 12, 2005 form report found that appellant sustained low back pain on October 20, 2004. She indicated with an affirmative mark that this condition was caused by an employment activity. Appellant was released to light-duty work on November 8, 2004. A physician's mere diagnosis of pain, without more by way of an explanation, does not constitute a basis for payment of compensation.[7] Further, Dr. Tetor's report does not provide any medical rationale explaining how or why appellant's condition was caused by the accepted employment injury.[8] Moreover, she does not address appellant's total disability from February 17 to August 7, 2005. The Board finds that Dr. Tetor's report is insufficient to establish appellant's claim.

The March 23, 2005 report of Dr. Nguyen, a chiropractor, found that appellant sustained lumbar sprain/strain with associated lumbar joint dysfunction, lumbar disc syndrome with mild radiculopathy, cervical joint dysfunction with associated myofascial pain syndrome and thoracic joint dysfunction. His treatment notes covering intermittent dates from March 23 to April 25, 2005 addressed appellant's neck and back pain. Dr. Nguyen did not diagnose a spinal subluxation as shown on x-ray. Therefore, he is not considered a physician under the Act and his opinion is of no probative value.[9]

Dr. Jones's July 21, 2005 report and September 12, 2006 treatment note and report found that appellant moved in a guarded manner in light of a recent motor vehicle accident, that her conditions included back spasms and limited range of motion and that she required physical therapy. On April 14, 2006 he stated that appellant tolerated trigger point injections well. In a mostly illegible report dated August 30, 2006, Dr. Jones recommended self-massage. His April 19, July 13 and August 30, 2006 reports found that appellant sustained discogenic lumbar spine pain with minimal neurologic symptoms, no progressive neurologic loss, lumbar spine dysfunction with degenerative disc disease, worsening radiculopathy, coexisting sacroiliac joint dysfunction and resultant functional deficit, and coexisting but unrelated cervical spine and scapular dysfunction due to a motor vehicle collision. Dr. Odom's February 3, 2005 report which found that appellant sustained Bertolotti's syndrome and a L5 and L6 degenerative disc with pressure on the S1 nerve root on the left is insufficient to establish appellant's claim. Neither Dr. Jones nor Dr. Odom addressed the causal relation between appellant's diagnosed conditions and accepted employment-related injury or identified any total disability during the claimed period. The Board finds that the reports of Dr. Jones and Dr. Odom and Dr. Jones' treatment note are insufficient to establish appellant's claim.

[7] *Robert Broome*, 55 ECAB 493 (2004).

[8] *See Frederick H. Coward, Jr.*, 41 ECAB 843 (1990); *Lillian M. Jones*, 34 ECAB 379 (1982).

[9] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.311(a); *Thomas W. Stevens*, 50 ECAB 288 (1999); *George E. Williams*, 44 ECAB 530 (1993).

The April 19, 2006 report of a physician's assistant and the April 14, 2006 treatment note of Mr. Mathewson, a physical therapist, do not constitute probative medical evidence inasmuch as a physician's assistant[10] and a physical therapist[11] are not considered physicians under the Act.

Appellant failed to submit rationalized medical evidence establishing that her total disability during the period February 17 to August 7, 2005 resulted from the residuals of her accepted October 18, 2004 lumbar strain. The Board finds that she has not met her burden of proof.

CONCLUSION

The Board finds that appellant has failed to establish that she was totally disabled from February 17 to August 7, 2005 due to her accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the January 10, 2007 and May 2, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 6, 2007
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

[10] 5 U.S.C. § 8101(2); *Ricky S. Storms*, 52 ECAB 349 (2001).

[11] *Vickey C. Randall*, 51 ECAB 357, 360 (2000).