

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

L.R., Appellant)

and)

U.S. POSTAL SERVICE, ATLANTA BULK)
MAIL CENTER, Atlanta, GA, Employer)

Docket No. 07-1667
Issued: December 17, 2007

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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 29, 2007 appellant filed a timely appeal from the May 18, 2007 merit decision of the Office of Workers' Compensation Programs denying appellant's claim for compensation for intermittent periods of disability. 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 met her burden of proof to establish that she was entitled to wage-loss compensation for intermittent periods of disability from May 11, 1991 to September 10, 1992 causally related to her accepted employment injury.

FACTUAL HISTORY

By letter dated November 25, 1992, the Office accepted appellant's claim for an injury sustained on April 8, 1991 for thoracic strain.¹

On September 5, 2006 appellant filed a claim for compensation for the period April 7, 1991 to September 10, 1992. Time analysis forms, signed by a representative of the employing establishment and appellant, indicated that she took eight hours of leave per scheduled workday from April 7 to May 30, 1991 and that during this period she was totally incapacitated. During this period, appellant took sick leave for 22 days, annual leave for 5 days and leave without pay for 9 days. These forms also indicate that appellant took eight hours a day leave without pay from July 21 through September 10, November 20, 1991 through January 5, 1992; and June 26 through September 10, 1992.

In a note dated January 10, 1997, Dr. Paulk, a chiropractor, indicated that appellant was seen with regard to her back pain and could work limited duty from January 10 to February 1, 1992. However, in a report dated January 17, 1992, he indicated that appellant, who was again seen for back pain, could do no work on January 17, 1992.

In an attending physician's report dated November 20, 1992, Dr. Willie R. Rainey, a Board-certified internist, indicated that appellant had a thoracic strain and that this was related to the injury appellant sustained on April 6, 1991 while pulling mail sacks. He found that appellant was totally disabled from April 15 through 21, 1991 and partially disabled commencing April 21, 1991. In a report dated December 20, 1993 Dr. Rainey indicated that appellant was totally disabled from April 15 through 21, 1991, partially disabled from April 15 through May 30, 1991, and was able to resume regular duties on May 30, 1991. In a supplemental attending physician's report of the same date, Dr. Rainey listed the date of injury as April 6, 1991 and indicated that his most recent examination of appellant took place on July 8, 1992. He noted that appellant was partially disabled from April 15 through May 3, 1991.

In two absence notes by a physician whose name is illegible, appellant was excused from work for the period November 20, 1991 through January 8, 1992 for low back pain.

Appellant submitted "Verification of Treatment" forms from Dr. Dennis Bonner, a Board-certified physiatrist, dated April 8, 15, 18 and 23 and May 2, 6 and 13, 1991. These notes indicated repeated periods of illness and returns to light-duty work during this time period. In a verification of treatment form dated May 24, 1991, Dr. Bonner indicated that appellant called the office on May 24, 1991 and may resume work on May 25, 1991. In a June 10, 1991 duty status report Dr. Bonner indicated that appellant was able to work full time with restrictions. In a July 12, 1991 note, Dr. Bonner indicated that appellant may resume light-duty work on July 12, 1991. In a September 4, 1991 note, Dr. Bonner indicated that appellant reportedly felt mid-thoracic interscapular pain while pulling mail sacks on April 6, 1991. He noted mild right lumbar thoracic tenderness and noted that appellant would be partially disabled until September 9, 1991.

¹ The Board notes that a copy of appellant's original claim form is not in the record. Accordingly, there is some discrepancy in the record as to whether the injury occurred on April 6 or 8, 1991.

In a disability certificate dated September 10, 1992 Dr. Lester L. Bullard, a Board-certified family practitioner, indicated that appellant was totally incapacitated from June 26 through September 10, 1992 and would be able to return to regular duties on September 11, 1992. In a September 11, 1992 work capability certificate, Dr. Bullard listed his diagnosis as cervical strain/spasm and myositis. He noted the history as “a stack of mail was failing and [appellant] tried to prevent this and was thrown down by the impact.”

In an attending physician’s supplemental statement dated December 20, 1993 Dr. Rainey indicated that he last saw appellant on July 8, 1992, that appellant was not totally disabled but that appellant was partially disabled from April 15 through May 3, 1991.

By letter dated February 26, 2007, the employing establishment requested further information.

In a letter to the claims examiner dated April 2, 2005, appellant summarized the amount of time she lost and the bills she incurred as a result of the work injury.

By decision dated May 18, 2007, the Office denied appellant’s claim for compensation for the period May 11, 1991 to September 10, 1992. The Office noted that it did not address the period April 7 through May 10, 1991 as appellant took sick leave for this period of time.

LEGAL PRECEDENT

A claimant seeking benefits under the Federal Employees’ Compensation Act² has the burden of proof to establish the essential elements of his claim by the weight of the evidence,³ 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.⁴

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.⁵ When the medical evidence establishes that the residuals of an employment injury are such that, from a medical 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.⁶

Whether a particular injury causes an employee to become disabled for work and the duration of that disability, are medical issues that must be provided by a preponderance of the

² 5 U.S.C. §§ 8101-8193,

³ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

⁴ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *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).

⁶ *Bobby W. Hornbuckle*, 38 ECAB 626 (1987).

reliable, probative and substantial evidence.⁷ Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work.⁸ The Board has held 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 hurt 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.⁹ The Board, however, will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability or which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.¹⁰

ANALYSIS

On November 25, 1992 the Office accepted that appellant sustained a thoracic strain on April 8, 1991 during the course of her federal employment. However, in its decision dated May 18, 2007, the Office denied appellant's claim for compensation on the basis that the evidence of record failed to establish that she was totally disabled as a result of the accepted work injury.¹¹ As noted, appellant bears the burden of proof in establishing entitlement to such compensation.

In work status reports dated January 10 and 17, 1992 Dr. Paulk, a chiropractor, indicated that he evaluated appellant for back pain and that she could do limited work from January 10 to February 1, 1992 with the exception of January 17, 1992 when she could do no work. However, a chiropractor is only considered a physician under the Act to the extent that he or she diagnoses a spinal subluxation as demonstrated by x-ray.¹² As Dr. Paulk did not diagnose a spinal subluxation as demonstrated by x-ray, his opinion is of no probative value.

With regard to the opinions of Dr. Rainey, appellant's Board-certified internist, he indicated that appellant had a thoracic strain and that it was related to her work injury of April 6, 1991. Dr. Rainey's reports are internally inconsistent. For example, Dr. Rainey, in his report dated December 20, 1993 indicated that appellant was totally disabled from April 15 through 21, 1991 and then indicated in the same report that she was partially disabled from April 15 through May 30, 1991. Accordingly, Dr. Rainey listed appellant as both partially and totally disabled for the period April 15 through 21, 1991. Furthermore, at no point does Dr. Rainey provide a rationalized medical opinion, complete with objective findings explaining

⁷ *Edward H. Horton*, 41 ECAB 301 (1989).

⁸ *See Dean E. Pierce*, 40 ECAB 1249 (1989); *Paul D. Weiss*, 36 ECAB 720 (1985).

⁹ *John L. Clark*, 32 ECAB 1618 (1981).

¹⁰ *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹¹ *Id.*

¹² *See* 5 U.S.C. § 8101(2).

why appellant was disabled from her work for any period. An award of compensation may not be based on surmise, conjecture or speculation.¹³

The reports of Dr. Bonner consist of completion of various “Verification of Treatment” forms that basically just report appellant’s complaints and indicate that appellant may resume work on various dates. In a work capability certificate dated September 4, 1991, Dr. Bonner did note that appellant was partially disabled until September 9, 1991 due to right lumbar thoracic tenderness. However, he also did not provide objective findings and merely reiterated appellant’s complaints without providing a rationalized explanation with regard to any disability.

Dr. Bullard, in his disability certificate dated September 10, 1992 indicated that appellant was totally incapacitated from June 26 through September 10, 1992. He indicated his diagnosis as cervical strain/spasm and myositis and noted a history of appellant injuring herself when she tried to prevent a stack of mail from falling. This report, as with the reports of Drs. Rainey and Bonner, fails to note specific objective findings or provide a rationalized opinion with regard to disability.

For these reasons, the Board finds that appellant has not met her burden of proof to establish that she was entitled to compensation for the aforementioned period.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she was entitled to wage-loss compensation for intermittent periods from May 11, 1991 to September 10, 1992 causally related to her accepted employment injury.

¹³ *Donald W. Long*, 41 ECAB 142 (1989).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 18, 2007 is affirmed.

Issued: December 17, 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