

FACTUAL HISTORY

On February 13, 2005 appellant, then a 47-year-old passenger screener, filed a traumatic injury claim alleging that she injured her back, shoulders and neck in the performance of duty on February 10, 2005. She did not initially stop work but began working with restrictions. On June 28, 2005 the Office accepted the claim for sprain/strain of the lumbar region, bilateral sprain/strain shoulder and arm and bilateral sprain/strain of the neck.

On July 8, 2005 appellant submitted a CA-7 claim requesting wage-loss compensation for disability beginning July 10, 2005. The employing establishment stated that she came back to work in a limited-duty capacity; however, her physician indicated on July 7, 2005 that she could not perform light duty. The employing establishment referred to a statement from appellant's physician, Dr. A.N. Mauskar, Board-certified in family medicine and internal medicine, who opined that appellant was disabled from work commencing July 7, 2005. Dr. Mauskar submitted treatment notes and opined that she could not do light duty and was disabled from work.

The July 6, 2005 magnetic resonance imaging (MRI) scans of the cervical, lumbosacral and thoracic spine, were read by Dr. K. Francis Lee, Board-certified in diagnostic radiology. The testing revealed a disc protrusion at C6-7 and disc bulges at C5-6 and C4-5 with bilateral neuroforaminal stenosis. The MRI scans revealed no significant abnormality in the lumbosacral or thoracic spine.

By letter dated August 2, 2005, the Office informed appellant of the type of evidence needed to support her claim for compensation for the period July 10 to 23, 2005. The Office requested medical evidence establishing her disability for the claimed period be submitted in 30 days.

In an August 15, 2005 duty status report, Dr. Mauskar advised that appellant had pain in the shoulder and back due to her injury at work. He found that she could not do light duty. Dr. Mauskar submitted additional disability certificates advising that appellant could not work.

In an August 24, 2005 report, Dr. Mauskar repeated his prior diagnoses and checked the box "yes" in response to whether he believed appellant's condition was caused or aggravated by an employment injury. He filled in "pain status often." Dr. Mauskar opined that appellant was totally disabled from July 8, 2005 to the present.

On August 25, 2005 appellant explained that on February 21, 2005 she was placed in a light-duty position which consisted of sitting on a stool with no support or standing as needed. She alleged that her light duty was comprised of standing at an exit and preventing access to an area. From March to July 2005, appellant stood for eight hours a day and had to lean over a stand while she was medicated and in pain. She alleged that the standing in her light duty only worsened her injuries.

In a September 15, 2004 state workers' compensation status report, Dr. Mauskar opined that appellant could return to light duty on September 15, 2005 with restrictions comprised of no standing, bending or stooping. In a June 31, 2005 disability certificate, he kept appellant off

work commencing March 11, 2005. An August 1, 2005 report diagnosed acute cervical, lumbosacral and shoulder sprains. An August 31, 2005 treatment note advised that appellant could return to work on September 1, 2005. Dr. Mauskar's September 8, 2005 treatment note indicated that appellant was on light duty. From September 30 to October 9, 2005 he advised that she had a recurrence of pain. On November 19 and December 12, 2005 Dr. Mauskar found that appellant had pain and could not work.

In a January 10, 2006 report, Dr. Arun Lall, a Board-certified anesthesiologist, noted appellant's history of injury and treatment. He conducted a physical examination and diagnosed multilevel cervical invitro diagnostic (IVD) displacement per MRI scan, cervical radiculopathy, cervical facet syndrome and low back pain with radicular symptomatology. Dr. Lall provided appellant with cervical epidural steroid injections and epidurography. In a January 25, 2006 operative report, he diagnosed cervical radiculopathy and cervical nerve root lesions. In a follow up report dated January 31, 2006, Dr. Lall noted that he was recommending conservative care and that appellant's physician, Dr. Mauskar, had placed her off work for a period of two weeks. Dr. Mauskar recommended that appellant should rest and take her medication as prescribed. In a February 14, 2006 report, Dr. Lall proceeded with a cervical epidural steroid injection, recommended physical therapy and prescribed Lortab. On March 2, 2006 appellant underwent repeat cervical epidural steroid injection. She submitted follow-up reports dated March 7, 2006, but did not provide any work restrictions.

In disability certificates dated February 13 and 27, 2006, Dr. Mauskar repeated that appellant could not return to work until March 13, 2006.

By decision dated March 20, 2006, the Office denied appellant's claim for compensation for disability beginning July 10, 2005. The Office found that the medical evidence was insufficient to establish that her disability beginning July 10, 2005 was due to the accepted employment injury.

Dr. Mauskar submitted disability certificates on March 17 and 31, 2006 indicating that appellant was unable to work. On February 13, 2006 he advised that she was under his care from February 7, 2005 to the present and unable to return to work.

On March 27, 2006 appellant submitted a CA-7 form for March 14 to 31, 2006.¹

On March 30, 2006 Dr. Lall again performed a cervical epidural steroid injection. In an April 4, 2006 report, he noted that appellant was not working and recommended post procedure physical therapy. Dr. Lall diagnosed multilevel cervical IVD displacement per MRI scan, cervical radiculopathy, spondylarthritis of cervical facet joints and low back pain with radicular symptomatology. In an April 10, 2006 letter, Dr. Lall's physician's assistant recommended that appellant take the day off work after each of her three cervical epidural steroid injections.

On April 16, 2006 appellant requested a review of the written record.

¹ The Office adjudicated this as a claim for a recurrence of disability.

In a disability certificate dated April 23, 2006, Dr. Mauskar advised that appellant could not return to work until April 23, 2006. He recommended that she continue light duty until July 6, 2006 and prescribed restrictions.²

In a May 2, 2006 report, Dr. Lall performed a diagnostic cervical facet joint block on the left at C3-4, C4-5 and C5-6. He opined that appellant's pain was "most likely emanating from the facet joints." Dr. Lall recommended physical therapy and active and passive modalities.

By decision dated May 10, 2006, the Office denied appellant's claim for a recurrence of total disability beginning March 14, 2006. The Office found that appellant had not established that she sustained a recurrence of total disability such that she could not perform her light-duty position or that the light-duty requirements had changed.

By decision dated July 18, 2006, the Office hearing representative affirmed the March 20, 2006 decision, finding that appellant failed to establish that she had employment-related disability beginning July 10, 2005.

LEGAL PRECEDENT -- ISSUE 1

For any period of disability claimed, a claimant has the burden of proving by the preponderance of the reliable, probative and substantial evidence that he or she is disabled for work as a result of an employment injury or condition. This burden includes the necessity of submitting medical opinion evidence, based on a proper factual and medical background, establishing such disability and its relationship to employment.³ A claimant also has the burden of proof to show that medical expenses were incurred for treatment of the effects of an employment-related condition and this burden includes the necessity to submit supporting rationalized medical evidence.⁴

ANALYSIS -- ISSUE 1

The Office accepted appellant's claim for sprain/strain of the lumbar region, bilateral sprain/strain shoulder and arm and bilateral sprain/strain of the neck. The record reflects that the employing establishment provided appellant with light duty. However, her physician advised that she could not do light duty commencing on July 10, 2005.

Appellant filed claims for wage-loss compensation commencing July 10, 2005 causally related to the February 10, 2005 employment injury. She, therefore, bears the burden of proof to establish the causal relationship of her claimed disability to her accepted injuries.

In support of her claim for the period of disability commencing July 10, 2005, appellant submitted reports from Dr. Mauskar. In numerous disability certificates, he advised that she

² His restrictions are not completely legible.

³ *Fereidoon Kharabi*, 52 ECAB 291 (2001); *David H. Goss*, 32 ECAB 24 (1980).

⁴ *Dale E. Jones*, 48 ECAB 648, 649 (1997).

could not do light-duty work and was disabled from work commencing July 7, 2005. However, Dr. Mauskar did not provide any medical rationale to explain how her disability was caused or contributed to by the accepted injury.⁵

In reports dated August 15, November 19 and December 12, 2005, Dr. Mauskar advised that appellant had pain in the shoulder and back. He opined that her condition was due to the injury at work and that she could not perform light duty. However, Dr. Mauskar did not provide any rationale as to the cause of appellant's disability. He did discuss how residuals of her accepted conditions changed to the point that she became disabled for light-duty work. In an August 24, 2005 report, Dr. Mauskar, repeated his previous diagnoses and checked the box "yes" in response to whether he believed appellant's condition was caused or aggravated by an employment injury. However, this is insufficient to establish her disability for the claimed period. Dr. Mauskar did not provide a firm diagnosis other than note "pain status often" and opined that appellant was totally disabled from July 8, 2005 to the present. The checking of a box "yes" in a form report, without additional explanation or rationale, is not sufficient to establish causal relationship.⁶

Appellant also submitted several reports from Dr. Lall. Beginning January 10, 2006 Dr. Lall provided her with cervical epidural steroid injections and epidurography. While he noted that Dr. Mauskar had placed appellant off work, Dr. Lall did not address the issue of her disability for work or how the treatment he administered related to her accepted soft tissue injuries.

The record contains other reports; however, they did not address whether appellant was disabled on or after July 10, 2005 due to the accepted employment injury and therefore, are not relevant to the claim for disability on July 10, 2005.

As appellant has submitted no other evidence supporting disability during the period claimed or a change in the nature and extent of the light-duty requirements,⁷ she has not met her burden of proof to establish entitlement to compensation.

LEGAL PRECEDENT -- ISSUE 2

When an employee who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee 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 to show that he or she cannot perform such light duty. As part of this burden, the

⁵ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

⁶ *Calvin E. King*, 51 ECAB 394 (2000).

⁷ See *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

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.⁸

Causal relationship is a medical issue⁹ and the medical evidence required to establish a causal relationship, generally, is rationalized medical evidence. This consists of a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.¹⁰ The physician's opinion must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹¹

ANALYSIS

Appellant has not provided any medical reports to establish that there was a change in the nature and extent of her condition such that she could no longer perform her light-duty job. There is no evidence to establish that there was a change in the nature and extent of her light-duty job requirements beginning March 14, 2006.

In support of her claim for recurrence of disability, appellant submitted several reports from Dr. Mauskar. They included disability certificates of March 17 and 31, 2006 in which he indicated that she was unable to work. On April 23, 2006 Dr. Mauskar advised that appellant could not return to work until April 23, 2006. However, these reports are of limited probative value as Dr. Mauskar did not provide medical rationale explaining how and why appellant became disabled due to her accepted injury or unable to continue work at her light-duty position beginning March 14, 2006. Without any explanation to support that appellant was disabled on or after March 14, 2006 due to her accepted injury, his reports are insufficient to meet appellant's burden of proof.¹²

As noted, Dr. Lall performed cervical epidural steroid injections and recommended post procedure physical therapy. On May 2, 2006 he performed a diagnostic cervical facet joint block on the left at C3-4, C4-5 and C5-6 and recommended physical therapy. Dr. Lall did not provide any opinion addressing how appellant was disabled on or after March 14, 2006 due to her accepted injuries. His reports are insufficient to meet her burden of proof in establishing a recurrence of disability.

In an April 10, 2006 letter, Dr. Lall's physician's assistant explained that he recommended that appellant take the day off work after each of her three cervical epidural

⁸ *Richard E. Konnen*, 47 ECAB 388 (1996); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁹ *Elizabeth Stanislav*, 49 ECAB 540, 541 (1998).

¹⁰ *Duane B. Harris*, 49 ECAB 170, 173 (1997).

¹¹ *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

¹² See *George Randolph Taylor*, *supra* note 5.

steroid injections. However, this report is not competent medical evidence as it is not from a physician. Section 8101(2) of the Act¹³ provides that the term “physician” includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by the applicable state law. Consequently, this evidence cannot be considered medical evidence and, as indicated above, the underlying point at issue is medical in nature.

While appellant submitted a number of reports from her treating physicians, these reports do not provide any opinion regarding whether her total disability was due to a change in the nature and extent of her injury-related condition or a change in the nature and extent of the light-duty requirements. The record also contains numerous reports which do not address the period of disability or indicate that appellant was disabled and thus, they are not relevant to appellant’s claim for a recurrence of disability on March 14, 2006.

The Board finds that appellant has failed to establish either a change in the nature and extent of her light-duty job requirements or a change in the nature and extent of her injury-related condition beginning March 14, 2006. As appellant failed to meet her burden of proof, the Office properly denied her claim for a recurrence of disability.

CONCLUSION

The Board finds that appellant did not meet her burden of proof in establishing that she was disabled beginning July 10, 2005 causally related to her employment injury. The Board also finds that she did not meet her burden of proof to establish that she sustained a recurrence of total disability commencing on March 14, 2006 causally related to her accepted February 10, 2005 employment injury.

¹³ See 5 U.S.C. § 8101(2). See also *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board has held that a medical opinion, in general, can only be given by a qualified physician).

ORDER

IT IS HEREBY ORDERED THAT the July 18 and May 10, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 26, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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