

Appellant alleged that he did not file a claim for injury earlier because he did not realize how serious the injury was and hoped it would heal on its own.

The employing establishment submitted additional materials, including a witness statement from Albert Dummann, a coworker and a medical billing form and physical therapy referral from Dr. Russell C. Huang, an orthopedic surgeon. In Mr. Dummann's statement, he indicated that he was working with appellant on May 24, 2004 when appellant turned his head to look over his shoulder and complained of a cracking noise in his neck. He also stated that appellant looked like he was in a great deal of pain and left the facility to seek medical attention. The records from Dr. Huang indicate that appellant was diagnosed with cervical degenerative disc disease and cervicalgia and given a prescription for physical therapy on July 27, 2005.

On September 16, 2005 the Office requested additional medical and factual information from appellant who provided a personal statement dated October 12, 2005 and medical records from his initial consultation with Dr. Huang. Appellant stated that, on May 24, 2005, he was in the equipment room of an air traffic control tower in which he was installing equipment. He alleged that when he turned his head to the left he heard a cracking or popping noise and thereafter experienced severe pain, blurred vision and nausea. Appellant sought immediate medical treatment from Dr. Paula Nuckols, a Board-certified family physician, who gave him a prescription for Celebrex and pain killers.

The report from Dr. Huang's July 27, 2005 consultation indicated that appellant complained of neck pain radiating up into the back of his head and down into the bilateral trapezius. In the medical history, he reported that appellant had a diving accident in 1988 that injured his spinal cord. Though appellant was in a quadriplegic state for nearly a month following the accident, the only long-term effects were diffuse residual weakness in his right arm and left triceps, unsteadiness of gait and minimal weakness in his lower extremities. Dr. Huang reported that, following the May 24, 2004 employment incident, appellant had headaches, ringing in his ears and occasional tingling in his fingers. He conducted both physical and radiographic examinations. Dr. Huang indicated that appellant's cervical range of motion showed stiffness in lateral rotation, but a good range in flexion and extension. His examination of a CT myelogram, cervical magnetic resonance imaging (MRI) scan and x-rays showed a collapse of the disc space at C5-6 with a "relatively kyphotic angulation." Dr. Huang noted hypermobility at the C5-6 segment, which had a broad posterolateral disc bulge on the left side, which he indicated "was probably causing some mild foramina stenosis." He diagnosed appellant with severe and debilitating neck pain and C5-6 degenerative disc disease with segmental instability.

By decision dated December 15, 2005, the Office accepted appellant's claim for cervicalgia.

On February 8, 2006 appellant filed two claims for compensation, Form CA-7, for the periods January 23 to February 4 and February 5 to 18, 2006. He indicated that he was on leave without pay for both periods.

By letter dated March 1, 2006, the Office requested medical evidence establishing appellant's disability for work during the entire claimed period. The Office noted that the record

contained no statement from a treating physician that appellant was totally disabled due to his accepted condition and that appellant had filed no claim for recurrence of disability. In response, appellant resent Dr. Huang's July 27, 2005 report. He also filed a CA-7 form claiming compensation for leave without pay taken from February 19 to March 4, 2006.

On April 18, 2006 the employing establishment requested that the Office refer appellant for a second opinion so that reasonable accommodations for his accepted employment injury could be considered. The employing establishment included copies of appellant's disability retirement application, appellant's position description, Dr. Huang's July 27, 2005 report and an unsigned report from Dr. Steven P. Greer, who is Board-certified in internal medicine. In his report dated April 12, 2006, Dr. Greer stated that he saw appellant on March 24, 2006, when he gave him a physical examination and reviewed the July 27, 2005 report from Dr. Huang. He found appellant's neck to be severely limited in range of motion in extension and lateral rotation on both sides. Dr. Greer concluded that appellant still experienced severe and debilitating neck pain.

On April 18, 2006 appellant submitted CA-7 forms for the period February 19 to March 4 and March 5 to 18, 2006.

On May 11, 2006 the Office sent a letter acknowledging that appellant had claimed a recurrence of disability beginning on January 23, 2006 and requesting that he complete the appropriate forms and provide additional factual and medical information. On that day, the Office also sent a letter requesting medical evidence establishing appellant's disability for work from January 23 to March 4, 2006.

Appellant submitted three more CA-7 claims for compensation on May 15, 2006, covering the periods April 2 to 15, April 16 to 29 and April 30 to May 13, 2006.

On May 24, 2006 the Office sent a letter requesting that appellant provide medical evidence addressing the periods of disability claimed from February 2 to April 1, 2006. The Office found that the two medical records in the record were insufficient because Dr. Huang's report was not current and did not address the claimed periods and Dr. Greer was not a specialist in orthopedic medicine.

On June 5, 2005 appellant submitted a claim for compensation for the period May 14 to 27, 2006. As with all his other claims, he indicated that he had used leave with out pay on those days.

On June 13, 2006 appellant provided the Office with an attending physician's report, Form CA-20, completed by Dr. Huang on May 28, 2006. Dr. Huang indicated that he had not treated appellant since July 27, 2005 and that he did not know appellant's periods of disability or when he might be able to return to work. He stated that he believed appellant's condition was aggravated by manual labor on the job and that the permanent effect of his employment injury was likely to be chronic neck pain.

On June 21, 2006 the Office requested medical information establishing appellant's disability from the claimed period May 14 to 27, 2006. The Office also informed appellant that

the CA-20 completed by Dr. Huang was insufficient because he did not provide information about the periods of appellant's claimed disability.

In response to this request, appellant provided a letter from Dr. Huang dated June 9, 2006. Dr. Huang stated that appellant was not longer able to work as of January 19, 2006 because of his severe and debilitating neck pain caused by C5-6 degenerative disc disease with segmental instability.

By decision dated June 28, 2006, the Office accepted appellant's claim for aggravation of degenerative disc disease, C5-6. The Office also requested additional medical information as to whether appellant's condition was permanent or temporary, and if permanent, how it was determined that the aggravation caused a permanent change to the preexisting condition. In two other decisions of the same date, the Office denied appellant's claims for compensation for the period January 23 and April 1, 2006, specifically, the periods January 23 to February 5, 2006; February 16 to 18, 2006; February 19 to March 4, 2006; March 5 to 18, 2006; and March 19 to April 1, 2006. The Office found that the only evidence addressing these periods, Dr. Huang's June 9, 2006 letter, could not be accepted as medical evidence of disability. The Board noted that the letter addressed a period of time in which Dr. Huang had not treated appellant and that he provided no specific information on specific periods of total or partial disability. Given these insufficiencies, the Office denied all claims for compensation prior to the June 9, 2006 letter on the grounds that they lacked medical evidence to support them.¹

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of proving the essential elements of his claim by the weight of the evidence presented.³ Compensation for wage loss is available only for periods during which an employee's accepted condition prevents him from earning his wages.⁴ Even if the Office has accepted that appellant sustained an injury in the performance of duty, appellant still has the burden of establishing that his accepted condition resulted in disability during the specific periods for which he is claiming compensation.⁵ The duration of a disability is a medical issue that must be proved by a preponderance of the reliable, probative and substantial evidence.⁶

¹ The Board notes that it appears from the record that the compensation claims for the period April 2 to May 27, 2006 are still pending as they were not specifically addressed in the June 28, 2006 decisions. The Board further notes that, by letter dated July 11, 2006, the Office informed appellant that he was eligible for monthly compensation starting from the period June 9, 2006 and provided information about his return to work responsibilities.

² 5 U.S.C. §§ 8101-8193.

³ *William A. Archer*, 55 ECAB 674 (2004); *Nathaniel Milton*, 37 ECAB 712 (1986).

⁴ *Judith A Cariddo*, 55 ECAB 348 (2004); *see also* 20 C.F.R. § 10.500(a).

⁵ *Dorothy J. Bell*, 47 ECAB 624 (1996).

⁶ *Edward H. Horton*, 41 ECAB 301 (1989).

When an employee claims compensation for leave used because of an alleged injury or disability, the Office has the responsibility of determining whether the employee was disabled during those periods.⁷ The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the particular periods of disability for which compensation is claimed. To do so would have the effect of allowing employees to self-certify their disability and entitlement to compensation.⁸ There is no requirement that an employee show an independent medical evaluation for each day of claimed disability, but the employee must provide some medical evidence that he was disabled on those days.⁹ When dealing with an accepted employment injury, a narrative medical opinion directly addressing the dates of claimed disability is generally sufficient to demonstrate disability for those periods.¹⁰

ANALYSIS

Appellant, having proved that he has an accepted employment injury and that he was disabled as of June 9, 2006, now must demonstrate that his employment injury caused him to be completely disabled from work from January 23 to April 1, 2006. The Board finds that appellant has not met this burden.

As evidence of his disability, appellant has provided reports by Dr. Huang, an orthopedic surgeon, and the letter of Dr. Greer, who is a Board-certified internist. Dr. Huang's July 2005 report provided the medical basis for the Office's finding, on December 15, 2005, that appellant had an accepted injury. While Dr. Huang gave a diagnosis and provided evidence that appellant had sustained an injury in the performance of duty, he gave no indication that appellant was partially or totally disabled at the time of the consultation. The report was written six months before the claimed periods of disability in 2006 and thus does not address any of them. The Board finds that this report is insufficient to demonstrate that appellant was disabled from work from January 23 to April 1, 2006.

The Form CA-20, which was completed by Dr. Huang on May 28, 2006, is not sufficient either. On the form, Dr. Huang stated that appellant's periods of permanent or temporary disability were unknown to him and that he had not discussed the issues of returning to work with appellant. He also indicated that he had not treated appellant at any point during the claimed periods. This form is insufficient because it does not provide evidence that appellant was disabled from work for the period January 23 to April 1, 2006.

Dr. Huang's June 9, 2006 letter states that, "[a]s of January 19, 2006, [appellant] was no longer able to return to work." Dr. Huang indicated that appellant's diagnosed condition had not improved since the 2005 examination and that appellant was "unable to return to work with this

⁷ *Glen M. Lusco*, 55 ECAB 148 (2003); *Laurie S. Swanson*, 53 ECAB 517 (2002).

⁸ *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁹ *Id.* (finding that "less than definitive medical evidence" may be adequate proof of disability when an employee has an accepted employment-related condition and a doctor has provided a medical opinion that the effects of the condition are likely reoccur).

¹⁰ *See William A. Archer*, *supra* note 3.

condition.” The Office found that this letter formed the basis for disability from June 9, 2006 onward. However the statements in this letter are not sufficiently rationalized to show that appellant was disabled during the period January 23 to April 1, 2006. Dr. Huang gives no objective evidence as to the state of appellant’s condition during the time in question. Additionally, given the fact that he did not treat appellant during that time, it is unlikely that he has any direct evidence about it. There is also no evidence as to what precipitated the change in appellant’s condition on January 19, 2006 that rendered him disabled after that time, but not before it. For these reasons, the June 9, 2006 letter does not establish that appellant was disabled from work.

The Board also finds that Dr. Greer’s unsigned report is insufficient to prove appellant’s disability. The Board has held that unsigned medical reports are of diminished probative value as the author cannot be readily identified as a physician.¹¹ As such, Dr. Greer’s report is of no probative value in establishing appellant’s claim.

CONCLUSION

The Board finds that appellant has not established that his claims for compensation are due to the accepted work-related condition.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers’ Compensation Programs dated June 28, 2006 are affirmed.

Issued: February 1, 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

¹¹ *D.D.*, 57 ECAB __ (Docket No. 06-1315, issued September 14, 2006); *Merton J. Sills*, 39 ECAB 572 (1988).