United States Department of Labor
Employees' Compensation Appeals Board

G.B., Appellant	)	
and	)	**Docket No. 06-1966**
	)	**Issued: January 23, 2007**
U.S. POSTAL SERVICE, WOODLAND HILLS POST OFFICE, Santa Clarita, CA, Employer	)	

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 August 22, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' May 25, 2006 merit decision denying his claim for wage-loss benefits, and its June 15, 2006 nonmerit decision denying his request for reconsideration. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office properly denied appellant's claim for wage-loss compensation for the period March 7 through 15, 2006; and (2) whether the Office properly refused to reopen his case for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On June 6, 2005 appellant, a 53-year-old mail carrier, filed an occupational disease claim alleging that he reinjured his lower back on May 26, 2005 in the performance of duty. His claim

was accepted for a lumbosacral strain.[1] Appellant returned to limited duty on September 15, 2005. On March 28, 2006 he filed a claim for wage-loss compensation alleging that he was totally disabled due to his May 26, 2005 injury on March 7 through 15, 2006.

In support of his wage-loss claim, appellant submitted reports from his treating physicians, Dr. Barbara Scott, a Board-certified internist, and Dr. Steven Grahek, Board-certified in the field of emergency medicine. On March 6, 2006 Dr. Grahek diagnosed "lumbosacral strain and pain with L5 radiculopathy/industrial, with recent flare-up." He reported that appellant walked with a mild limp and that his pain level was 10/10. Examination revealed that appellant's lumbar spine was nontender, but that there was tenderness over the right S1 area. Dr. Grahek placed him on temporary total disability for March 7, 2006. In a March 9, 2006 report, Dr. Scott opined that appellant experienced a severe exacerbation of low back pain with spasms, over a three-week period. Referencing the May 26, 2005 date of injury, she provided a diagnosis of "lumbosacral strain with right L5 radiculopathy, occupational, flare-up." Dr. Scott noted that appellant returned to work on March 9, 2006 after having been on temporary total disability for five days, but was unable to perform his work activities due to low back pain. She recommended that he "be continued on seven calendar days of temporary total disability." On March 15, 2005 Dr. Scott opined that appellant could return to work provided that he be restricted from bending, twisting, walking or lifting more than 20 pounds. In a documentation of medical impairment form dated March 15, 2006, she indicated that he was disabled due to lower back pain and lumbar radiculopathy. The dates of alleged disability were illegible. In a March 15, 2006 report, Dr. Scott found that appellant had mild tenderness and spasm over his right lumbar musculature and released him to return to work with restrictions. In a March 15, 2006 attending physician's report, she noted a history of "severe worsening of low back pain" and provided a diagnosis of "flare-up L5 strain at R L5 radiculopathy." Dr. Scott indicated that appellant's period of total disability was from March 6 through 15, 2006. In response to the question as to whether she believed his condition was caused or aggravated by his employment, Dr. Scott placed a checkmark in the "yes" box and added the notation, "working excessive hours." An unsigned March 6, 2006 work excuse reflected that appellant would be unable to work for two days due to low back pain and radiculopathy. A March 9, 2006 work excuse reflected that he would be unable to work for seven days.

By letter dated April 11, 2006, the Office informed appellant that the information submitted was insufficient to establish his claim and advised him to submit contemporaneous medical evidence of the disability for the period claimed, supported by an increase in objective findings and an explanation as to how this increase precluded him from performing his employment duties. It provided him 30 days to submit the required evidence.

In a decision dated May 25, 2006, the Office denied appellant's claim for compensation for the period March 7 through 15, 2006, finding that the evidence did not support that he was disabled during the claimed period as a result of his May 26, 2005 injury.

[1] Other claims filed by appellant include: File No. 132003482 (for injuries sustained on May 17, 2000); File No. 132067871 (for injuries sustained on December 5, 2002, accepted for lumbosacral strain with sciatica); File No. 132110667 (for injuries sustained on February 28, 2004, accepted for lumbar strain with sciatica); File No. 132131385 (for injuries sustained on May 26, 2005); and File No. 132156952 (for injuries sustained on August 8, 2006, accepted for lumbosacral strain).

On June 6, 2006 appellant requested reconsideration of the Office's May 25, 2006 decision. In support of his request, appellant submitted an April 13, 2006 work restriction summary. In a May 31, 2006 narrative statement, he indicated that his doctor advised him to stop working after he pulled his back out and contended that he should not be penalized for following his doctor's instructions. In a June 4, 2006 statement, appellant contended that his injuries constituted "objective findings;" stated that his doctor wanted to know what information the Office needed; and contended that denial of his claim for compensation constituted harassment.

By decision dated June 15, 2006, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was immaterial and, therefore, insufficient to warrant a review of its prior decision.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of proof to establish the essential elements of his claim by the weight of the evidence.[3] For each period of disability claimed, the employee has the burden of establishing that he was disabled for work as a result of the accepted employment injury.[4] 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.[5] 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 their disability and entitlement to compensation.[6]

The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.[7] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The

[2] U.S.C. §§ 8101-8193.

[3] *See Amelia S. Jefferson*, 57 ECAB ___ (Docket No. 04-568, issued October 26, 2005); *see also Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

[4] *See Amelia S. Jefferson, supra* note 3. *See also David H. Goss*, 32 ECAB 24 (1980).

[5] *See Edward H. Horton*, 41 ECAB 301 (1989).

[6] *See William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

[7] *See Viola Stanko, claiming as widow of Charles Stanko*, 56 ECAB ___ (Docket No. 05-53, issued April 12, 2005); *see also Naomi A. Lilly*, 10 ECAB 560, 572-573 (1959).

opinion of the physician must be based on a complete factual and medical background of the claimant,[8] must be one of reasonable medical certainty,[9] 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.[10]

Under the Act, the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.[11] Disability is thus not synonymous with physical impairment, which may or may not result in incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in the Act.[12]

ANALYSIS -- ISSUE 1

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between his claimed total disability for the period March 7 through 15, 2006 and the accepted lumbosacral strain.[13] The reports of his physicians do not provide a rationalized medical opinion finding him disabled for work for the claimed period due to his accepted condition. Therefore, the medical evidence submitted is insufficient to meet appellant's burden of proof.[14]

On March 6, 2006 Dr. Grahek diagnosed "lumbosacral strain and pain with L5 radiculopathy/industrial, with recent flare-up." He reported that appellant walked with a mild limp and that his pain level was reportedly 10/10. Dr. Grahek noted that his lumbar spine was nontender, but that there was tenderness over the right S1 area. Appellant had no pain, numbness or tingling radiating down his leg. Dr. Grahek placed him on temporary total disability for one day. However, he provided no opinion as to how appellant's alleged disability was causally related to the accepted May 26, 2005 injury and his report is of diminished probative value.[15] Dr. Grahek also failed to discuss appellant's employment duties or to discuss

[8] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[9] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[10] *See William E. Enright*, 31 ECAB 426, 430 (1980).

[11] 20 C.F.R. § 10.5(f).

[12] *Cheryl L. Decavitch*, 50 ECAB 397, 401 (1999).

[13] *See Amelia S. Jefferson, supra* note 3.

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

[15] *See Brenda L. DuBuque*, 55 ECAB 212 (2004); *see also David L. Scott*, 55 ECAB 330 (2004); *Willa M. Frazier*, 55 ECAB 379 (2004).

how his current physical condition rendered him unable to perform those duties. An exacerbation of appellant's symptoms does not automatically result in his inability to work.[16]

Dr. Scott's March 9, 2006 report also fails to establish that appellant was disabled for the periods in question. She provided a diagnosis of "lumbosacral strain with right L5 radiculopathy, occupational, flare-up." Dr. Scott noted that appellant returned to work on March 9, 2006 after having been on temporary total disability for five days, but was unable to perform his work activities due to low back pain. Referencing the May 26, 2005 date-of-injury, she opined that he had experienced a severe exacerbation of low back pain, with spasms, over a three-week period and recommended that he "be continued on seven calendar days of temporary total disability." However, Dr. Scott provided no objective findings to support appellant's disability, nor did she address how his flare-up prevented him from performing the duties associated with his job. Moreover, she failed to explain how his alleged disability was causally related to the accepted May 26, 2005 injury. For all of these reasons, Dr. Scott's report is of diminished probative value.

Dr. Scott's March 15, 2006 reports also fail to support appellant's claim for lost wages. In a work excuse form, she indicated that he was disabled due to lower back pain and lumbar radiculopathy, but the dates of alleged disability were illegible. In a separate March 15, 2006 report, Dr. Scott found that appellant had mild tenderness and spasm over his right lumbar musculature and released him to return to work with restrictions. This report did not address disability during the periods in question and, therefore, lacks probative value. In a March 15, 2006 attending physician's report, Dr. Scott noted a history of "severe worsening of low back pain;" provided a diagnosis of "flare-up L5 strain at R L5 radiculopathy;" and indicated that appellant's period of total disability was March 6 through 15, 2006. In response to the question as to whether she believed his condition was caused or aggravated by his employment, Dr. Scott placed a checkmark in the "yes" box and added the notation, "working excessive hours." Her attending physician's report failed to establish that appellant was disabled as a result of the accepted employment incident for the period March 7 through 15, 2006. Dr. Scott has again failed to provide objective findings or to explain how appellant's condition was physiologically related to the accepted injury. Although she used a check mark to indicate a belief that the injury caused his current condition, Dr. Scott failed to explain her conclusion. A mere checkmark or affirmative notation in response to a form question on causal relationship is not sufficient to establish causal relationship.[17] The Board notes that Dr. Scott opined on March 15, 2006 that appellant was disabled from March 6 through 15, 2006. However, the evidence of record reflects that she did not examine him until March 9, 2006 for complaints related to his alleged disability on March 7 through 15, 2006. The record does not contain objective data and Dr. Scott has not presented any other basis for her knowledge that appellant was disabled prior to March 9, 2006. The Board further notes that, although Dr. Scott opined that appellant was disabled on March 15, 2006, she also released him to work with restrictions on that date. This inconsistency further diminishes the probative value of Dr. Scott's report.

[16] *See Cheryl L. Decavitch*, *supra* note 12.

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

The remaining medical evidence of record is insufficient to establish appellant's claim. He submitted several work excuses reflecting an opinion that he was disabled. However, the Board has long held that an opinion without explanation lacks probative value.[18]

Because appellant has not submitted any reasoned medical opinion evidence to show that he was disabled for the period March 7 through 15, 2006 as a result of his accepted employment injury, the Board finds that the Office properly denied his claim for wage-loss compensation.

LEGAL PRECEDENT -- ISSUE 2

The Act[19] provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision. The employee may obtain this relief through a request to the district Office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."[20]

The application for reconsideration must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.[21]

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits.[22] Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.[23]

ANALYSIS -- ISSUE 2

Appellant's June 6, 2006 request for reconsideration neither alleged, nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, he did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).

Appellant also failed to submit relevant and pertinent new evidence not previously considered by the Office. The Office denied his claim on the grounds that the medical evidence

[18] *See Brenda L. DuBuque*, *supra* note 15; *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).

[19] 5 U.S.C. §§ 8101 *et seq.*

[20] 20 C.F.R. § 10.605.

[21] 20 C.F.R. § 10.606.

[22] *Donna L. Shahin*, 55 ECAB 192 (2003).

[23] 20 C.F.R. § 10.608.

failed to show that he was disabled for the period March 7 through 15, 2006, as a result of his May 26, 2005 injury. Its May 25, 2006 merit decision, therefore, turned on a medical issue, but when appellant requested reconsideration, he submitted no new medical opinion evidence addressing the issue of his disability or causal relationship. Indeed, most of the evidence he submitted was irrelevant to these issues. In support of his request for reconsideration, appellant submitted an April 13, 2006 work restriction summary and statements dated May 31 and June 6, 2006. As the April 13, 2006 summary does not address the period March 7 through 15, 2006, it is irrelevant. In his May 31, 2006 statement, appellant stated that his doctor advised him to stop working after he pulled his back out and contended that he should not be penalized for following his doctor's instructions. In appellant's June 4, 2006 statement, he contended that his injuries constituted "objective findings;" stated that his doctor wanted to know what information the Office needed; and contended that denial of his claim for compensation constituted harassment. These statements made by him, a layperson, do not constitute competent medical evidence on whether appellant was disabled during the period in question as a result of the accepted employment injury and are irrelevant to the issue at hand.[24] Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

The Board finds that the Office properly determined that appellant was not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied his June 6, 2006 request for reconsideration .

CONCLUSION

The Board finds that appellant has not established that he was disabled for work and entitled to wage-loss compensation for the periods of March 7 through 15, 2006. It further finds that the Office properly refused to reopen his case for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

[24] *D. Wayne Avila*, 57 ECAB ___ (Docket No. 06-366; issued June 21, 2006). *See James A. Long*, 40 ECAB 538 (1989) (where the Board held that the statement of a layperson is not competent evidence on the issue of causal relationship).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 15 and May 25, 2006 are affirmed.

Issued: January 23, 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