United States Department of Labor
Employees' Compensation Appeals Board

M.L., Appellant	)	
and	)	**Docket No. 07-261**
	)	**Issued: May 11, 2007**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Denver, CO, 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 7, 2006 appellant filed a timely appeal from an August 24, 2006 merit decision of the Office of Workers' Compensation Programs denying her claim for wage-loss benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501(d)(3), the Board has jurisdiction over the merits of this wage-loss case.

ISSUE

The issue is whether the Office properly denied appellant's claim for wage-loss compensation for the period July 14 to August 4, 2005.

FACTUAL HISTORY

On September 21, 2004 appellant, then a 37-year-old mail processing clerk, filed an occupational disease claim alleging that on September 3, 2004 she first realized her tendinitis was employment related. The Office accepted the claim for left shoulder tenosynovitis, left shoulder impingement, left lateral epicondylitis, cervical strain and left shoulder rotator cuff

syndrome. It paid wage loss for total disability for the periods January 7 to February 2 and June 16 to 26, 2005.

On July 14, 2005 appellant filed a claim for compensation (Form CA-7) requesting wage loss for the period June 16 to 27, 2005. Accompanying her claim were reports dated June 10, 16 and 27, 2005 by Dr. Christopher B. Ryan, an attending Board-certified physiatrist, a time analysis form[1] and a leave summary. The Office accepted appellant's claim by decision dated January 18, 2006 and authorized compensation for 40 hours of wage loss claimed from June 17 to 21, 2005 and 24 hours of wage loss claimed from June 24 to 26, 2005.

On July 14, 2005 duty status report (Form CA-17), Dr. Ryan indicated that appellant was totally disabled beginning that date and her next appointment was August 4, 2005. In a report dated July 14, 2005, Dr. Ryan reported that appellant "continues to have very significant symptomatology which sounds radicular." He filled out a Form CA-17 which "takes her off work, as she should not return to work on the basis of her work-related injuries."

In an August 14, 2005 Form CA-17, Dr. Ryan released appellant to work as of August 5, 2005 with restrictions including no casing over shoulders and "must work days."

On August 4, 2005 appellant filed a claim for compensation (Form CA-7) requesting wage loss for the period July 14 to August 4, 2005.

By decision dated August 26, 2005, the Office denied appellant's request for wage-loss compensation for the period June 16 to 27, 2005.

On September 8, 2005 Dr. Ryan reported that a December 1, 2004 magnetic resonance imaging scan revealed left C6 lateral nerve root impingement. As a result of the nerve impingement appellant "has had intermittent pain in exactly that C6 nerve root distribution." Dr. Ryan opined that appellant "is incapable of working when she has these flare-ups and therefore I took her off work." In a second report dated September 8, 2005, Dr. Ryan stated that he "would not disagree at all with your characterization" that appellant was not disabled for the period July 14 to August 4, 2005 due to her accepted work injuries.

By decision dated September 19, 2005, the Office denied appellant's request for wage-loss compensation for the period July 14 to August 4, 2005.

On October 13, 2005 Dr. Ryan stated that he misspoke when he stated that appellant was not disabled for the period July 14 to August 4, 2005 due to her employment injuries. He stated that he had confused appellant's vacation time with this period of disability. Dr. Ryan stated that he took appellant off work due to a C6 nerve root distribution aggravation and that this was noted on a CA-17 form that he completed. In a progress note dated October 13, 2005, Dr. Ryan stated that he made a mistake when he concluded that appellant's time off for the period July 14 to August 4, 2005 was not employment related. He reported that appellant continued with the

[1] The form noted that appellant used 40 hours of leave without pay (LWOP) for June 17 to 21, 2005 and 24 hours of LWOP for June 24 to 26, 2005.

same symptoms which are "difficulty using her hands in front of her and gets parasthesias in ostensibly the C6 distribution persistently.

On January 19, 2006 appellant requested reconsideration of the September 19, 2005 decision denying wage loss for the period July 14 to August 4, 2005.

On April 4, 2006 the Office denied modification of the September 19, 2005 decision.

On May 3, 2006 Dr. Ryan diagnosed cervical radiculopathy which he attributed to her employment. In support of this conclusion, he stated:

> "The only thing that persists at this time, and the only diagnosis that makes any sense, is the C6 radiculopathy. Let me point out also for the record that your discussion of 'underlying conditions' included stenosis, radiculopathy, and paresthesis (sic), are part and parcel of the cervical condition, and have nothing to do with the cervical strain. I take it that the last diagnosis was parathesias, which are symptoms of the compression of the C6 nerve root. To say that she has a radiculopathy is the same thing as the C6 nerve root entrapment. She does not have cervical canal stenosis, nor has there been any indication that she did. There is stenosis of the C5-6 neural foramen, but the general diagnosis of stenosis does not make any sense."

With respect to appellant's disability, the physician stated that appellant had an aggravation of her condition which "required time off to treat." Dr. Ryan indicated that "there are a number of factors that can cause further compression of the C6 nerve root."

On June 2, 2006 appellant requested reconsideration of the denial of wage loss for the period July 14 to August 4, 2005.

By letter dated June 20, 2006, the Office referred appellant, together with the case record, a statement of accepted facts and a list of questions to be addressed, to Dr. John D. Douthit, a Board-certified orthopedic surgeon, for a second opinion medical examination.

On July 18, 2006 Dr. Douthit reviewed the medical evidence and listed findings on physical examination. He diagnosed pain behavior, possible radiculopathy and left arm and neck pain syndrome. Dr. Douthit explained that the diagnosis of possible radiculopathy was based on review of the MRI scans. He stated:

> "The MRI [scan] was described as showing an osteophyte or light dis[c] protrusion, but this certainly does not account for the bilateral symptoms or the persistence of pain. She had no significant relief from nerve root injections and I am thus very skeptical of this being a radiculopathy with normal reflexes, normal strength, and no atrophy or loss of neurological function. I would thus conclude that this is a pain syndrome of the left shoulder and neck."

Dr. Douthit opined that appellant continued to experience pain as a result of her accepted cervical and shoulder strains.

In a letter dated August 2, 2006, the Office forwarded Dr. Douthit's report to Dr. Ryan for comment. Dr. Ryan did not provide any response within 30 days as requested.

By decision dated August 24, 2006, the Office denied modification of the June 2, 2006 decision.[2] The Office found that appellant failed to submit rationalized medical evidence establishing that she was disabled from work for the period July 14 to August 4, 2005.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[3] has the burden of proof to establish the essential elements of her claim by the weight of the evidence.[4] For each period of disability claimed, the employee has the burden of establishing that she was disabled for work as a result of the accepted employment injury.[5] 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.[6] 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.[7]

Under the Act the term "disability" means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.[8] Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.[9] An employee who has a physical impairment causally related to her federal employment, but who nonetheless has the capacity to earn the wages she was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.[10] When, however, the medical evidence establishes that the residuals or sequelae of an

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[2] The Board notes that, following the August 24, 2006 decision, the Office received additional evidence. However, the Board may not consider new evidence on appeal. *See* 20 C.F.R. §§ 501.2(c); *Donald R. Gervasi*, 57 ECAB ___ (Docket No. 05-1622, issued December 21, 2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

[3] 5 U.S.C. §§ 8101-8193.

[4] *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).

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

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

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

[8] *S.M.*, 58 ECAB ___ (Docket No. 06-536, issued November 24, 2006). *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Conard Hightower*, 54 ECAB 796 (2003); 20 C.F.R. § 10.5(f).

[9] *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

[10] *Merle J. Marceau*, 53 ECAB 197 (2001).

employment injury are such that, from a medical standpoint, they prevent the employee from continuing in her employment, she is entitled to compensation for any loss of wages.

To meet this burden, a claimant must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factor(s).[11] The opinion of the physician must be based on a complete factual and medical background, 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.[12]

ANALYSIS

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between her disability for the period July 14 to August 4, 2005 and the accepted conditions of left shoulder tenosynovitis, left shoulder impingement, left lateral epicondylitis, cervical strain and left shoulder rotator cuff syndrome.[13] The reports of Dr. Ryan do not provide a rationalized medical opinion explaining why she was disabled for work for the claimed period due to her accepted conditions. The medical evidence submitted is insufficient to meet appellant's burden of proof.[14]

On July 14, 2005 Dr. Ryan noted that appellant had taken the prior three days off work for a nonemployment-related condition. He noted her complaints of bilateral symptoms in the C6 region and that her symptoms sounded radicular. Dr. Ryan completed a CA-17 which placed appellant off work on the basis of her employment injuries. He subsequently released her to return to work on August 5, 2005 with restrictions. This is the only evidence contemporaneous to the period of claimed disability. However, Dr. Ryan did not provide sufficient rationale for relating appellant's disability to her accepted injury. He did not adequately explain the nonemployment injury for which appellant was disabled immediately prior to his July 14, 2005 examination. On May 3, 2006 Dr. Ryan diagnosed cervical radiculopathy which he attributed to her employment and the cause of her periods of total disability. In support of the conclusion that appellant's radiculopathy was employment related he noted that the last diagnosis he made was parathesias, which he indicated was symptomatic of C6 nerve root compression. Dr. Ryan stated that "[t]o say that she has a radiculopathy is the same thing as the C6 nerve root entrapment." With respect to appellant's disability, he stated that appellant has suffered aggravation of her condition which "required time off to treat." Dr. Ryan indicated that "there are a number of factors that can cause further compression of the C6 nerve root." He did not explain how appellant's total disability for the period July 14 to August 4, 2005 was related to her employment injuries. Dr. Ryan merely noted that, either appellant was disabled due to her

[11] *A.D.*, 58 ECAB ___ (Docket No. 06-1183, issued November 14, 2006).

[12] *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

[13] *Amelia S. Jefferson*, *supra* note 4.

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

employment injuries or that periodically, she would take time off due to her condition. The Board has held that a medical opinion not fortified by medical rationale is of diminished probative value.[15] Dr. Ryan failed to provide sufficient explanation as to how appellant's disability was related to her accepted conditions. To the extent that Dr. Ryan attributed appellant's disability to a cervical radiculopathy, the Office has not accepted such condition as causally related to her employment.

Dr. Ryan also provided conflicting opinions as to whether appellant's disability for the period July 14 to August 4, 2005 was employment related. On September 8, 2005 Dr. Ryan opined that appellant "is incapable of working when she has these flare-ups, and therefore I took her off work." In another report of that date, Dr. Ryan stated that he "would not disagree at all with your characterization" that appellant was not disabled for the period July 14 to August 4, 2005 due to her accepted work injuries. On October 13, 2005 Dr. Ryan stated that he misspoke in his September 8, 2005 report as he had confused appellant's vacation time with this period of disability. However, he did not address appellant's disability immediately prior to July 14, 2005 or explain her activities while on vacation prior to the period of claimed disability. Dr. Ryan's reports do not adequately address causal relationship or provide a rationalized medical opinion, based on thorough medical history and examination, in which he fully explains how and why appellant's accepted left shoulder tenosynovitis, left shoulder impingement, left lateral epicondylitis, cervical strain and left shoulder rotator cuff syndrome caused the disability.

Dr. Douthit's July 18, 2006 second opinion report is not instructive on appellant's period of claimed disability. The Office did not request an opinion as to whether appellant was disabled from July 14 to August 4, 2005.

Appellant had the burden of proving by the preponderance of the reliable, probative and substantial evidence that he was disabled for work as a result of her employment injury. For the reasons stated above, the Board finds that appellant failed to sustain her burden of proof in establishing that she was totally disabled due to his accepted employment condition for the period July 14 to August 4, 2005.[16]

CONCLUSION

The Board finds that appellant has not established that she was disabled for work and entitled to wage-loss compensation for the period July 14 to August 4, 2005.

[15] *Mary A. Ceglia*, 55 ECAB 626 (2004). *See Brenda L. DuBuque*, 55 ECAB 212 (2004); *see also Willa M. Frazier*, 55 ECAB 379 (2004); *David L. Scott*, 55 ECAB 330 (2004).

[16] *See Fereidoon Kharabi, supra* note 7. (The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the particular period of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.)

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 24, 2006 is affirmed.

Issued: May 11, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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