

This the second appeal in this case. On September 2, 1992 appellant, then a 33-year-old casual mail handler, filed a traumatic injury claim alleging that she sustained pain in her side

while working on a truck on August 27, 1992. The Office denied her claim by decisions dated October 28, 1992 and January 11, 2004. Appellant requested review by the Board. By decision dated July 8, 1996, the Board set aside the Office's decisions and remanded the case for additional development of the medical evidence regarding whether she had sustained an umbilical hernia on August 27, 1992.¹ The facts and the circumstances of the case as set forth in the Board's prior decision are adopted herein by reference.

In a letter dated August 21, 1996, the Office accepted appellant's claim for aggravation of umbilical hernia with repair. The Office noted that appellant was entitled to receive continuation of pay from September 2 to October 15, 1992.

Appellant filed a claim for compensation requesting compensation for wage loss from November 28, 1992 to February 1, 1993. In support of her claim, appellant submitted a report from her attending physician, Dr. David Nicklin, a Board-certified family practitioner. On April 8, 1999 Dr. Nicklin indicated that appellant was totally disabled from September 1, 1992 to February 1, 1993 and that she was partially disabled beginning February 2, 1993. In a report dated April 27, 1999, Dr. Nicklin diagnosed abdominal pain since the surgical repair of the hernia on December 18, 1992. He indicated that appellant could currently perform light-duty work lifting up to 20 pounds. The Office paid appellant compensation from October 16, 1992 to February 1, 1993 based on Dr. Nicklin's reports.

Appellant filed an additional claim for compensation requesting wage loss from February 2, 1993 to April 19, 1999. The Office requested additional factual and medical evidence regarding her periods of disability in a letter dated March 23, 2006. The Office requested information regarding appellant's employment history from the Social Security Administration. Appellant's records indicated that she worked during 1994 to 2001 and in 2004. The employing establishment indicated that appellant was terminated on November 27, 1992 for failure to follow instructions. Appellant worked from December 10 to 31, 1994 at the employing establishment as a casual appointee. She also worked in a temporary position at the employing establishment from August 2 to December 31, 1995 and from January 1 to March 18, 1996 when she was again terminated for cause.

By decision dated November 2, 2006, the Office denied appellant's claim for wage-loss compensation for the period February 2, 1993 to April 8, 1999. It found that she failed to submit the necessary factual and medical evidence to establish her disability for work.

Appellant requested reconsideration of the Office's November 2, 2006 decision on March 5, 2007. By decision dated April 17, 2007, the Office denied appellant's reconsideration request on the grounds that she failed to submit relevant new evidence or argument.

¹ Docket No. 94-1738 (issued July 8, 1996).

LEGAL PRECEDENT -- ISSUE 1

Under the Federal Employees' Compensation Act,² 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.³ 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.⁴ Appellant for each period of disability claimed, has the burden of proving by a preponderance of the reliable, probative and substantial evidence that she is disabled for work as a result of her employment injury. Whether a particular injury caused an employee to be disabled for employment and the duration of that disability are medical issues which must be provided by preponderance of the reliable probative and substantial medical evidence.⁵

Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work. The Board has stated 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 hurts 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.⁶

ANALYSIS -- ISSUE 1

The Office accepted appellant's claim for aggravation of umbilical hernia and authorized compensation benefits to February 1, 1993. Appellant requested additional compensation benefits for wage loss from February 2, 1993 to April 8, 1995. The only medical evidence in the record addressing appellant's periods of disability consists of the two reports from Dr. Nicklin, a Board-certified family practitioner, dated April 8 and 27, 1999. Dr. Nicklin indicated that appellant could perform light-duty work beginning on February 2, 1993 lifting up to 20 pounds. He did not provide any detailed findings on physical examination or any medical reasoning supporting his opinion that appellant was partially disabled during the period in question. As Dr. Nicklin merely repeated appellant's claim that she was unable to work, his reports are not sufficient to meet appellant's burden of proof in establishing that she was disabled from February 2, 1993 to April 8, 1995.

The Board further notes that the factual evidence of record establishes that the employing establishment terminated appellant for good cause on November 27, 1992 and again on March 18, 1996. The record further indicates that appellant could and did work for some periods

² 5 U.S.C. §§ 8101-8193.

³ 20 C.F.R. § 10.5(f).

⁴ *Cheryl L. Decavitch*, 50 ECAB 397, 401 (1999).

⁵ *Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

⁶ *Id.*

from February 2, 1993 to April 8, 1995. She has not submitted factual evidence alleging any periods of total disability. The Board finds that appellant has not submitted the necessary factual and medical evidence to establish that she was disabled from work during the period February 2, 1993 to April 8, 1995. The Office properly denied her claim.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,⁷ the Office's regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.⁸ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.⁹

ANALYSIS -- ISSUE 2

Appellant requested reconsideration of the Office's November 2, 2006 merit decision on March 5, 2007. She did not submit any evidence or argument in support of her request for reconsideration. Therefore, appellant failed to comply with the requirements of 10.606(b)(1).¹⁰ The Office properly denied her request for reconsideration of the merits in the April 17, 2007 decision.

CONCLUSION

The Board finds that appellant failed to submit the necessary factual and medical evidence to establish that she was disabled from February 2, 1993 to April 8, 1995. The Board further finds that the Office properly declined to reopen appellant's claim for consideration of the merits on April 17, 2007.

⁷ 5 U.S.C. §§ 8101-8193, § 8128(a).

⁸ 20 C.F.R. § 10.606(b)(2).

⁹ 20 C.F.R. § 10.608(b).

¹⁰ *Supra* note 8.

ORDER

IT IS HEREBY ORDERED THAT the April 17, 2007 and November 2, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 22, 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