



many years, smoking was being allowed at the employing establishment. Appellant was off work from May 28 to June 8, 2004. On September 8, 2004 she filed a Form CA-1, traumatic injury claim, alleging that on August 27, 2004 she suffered an acute asthma attack due to exposure to second-hand smoke and incense at work. Appellant did not work from August 31 to September 9, 2004.<sup>1</sup>

By letters dated August 5 and October 8 and 12, 2004, the Office informed appellant of the evidence needed to support her claim and asked that the employing establishment respond. In decisions dated November 12 and 29, 2004, it denied claims on the grounds that the evidence did not establish that she sustained a work-related injury. On December 10 and 22, 2005 respectively, appellant requested a hearing that was held on September 20, 2005. She testified that smoking was allowed at the employing establishment from 2003 to 2005. By decision dated November 9, 2005, an Office hearing representative reversed the November 29, 2004 decision and accepted the condition of reactive airway disease. On February 15, 2006 the decision was reissued to reflect that the decision encompassed both file numbers, *i.e.*, xxxxxx772 and xxxxxx919.<sup>2</sup> On February 27, 2006 the Office accepted that appellant sustained employment-related aggravation of extrinsic asthma and on March 17, 2006 accepted aggravation of reactive airways disease. Appellant was informed that she should file CA-7 forms, claims for compensation.

Appellant filed claims for compensation for the periods May 14, 2003 to January 14, 2005 and January 26 to December 9, 2005 and the employing establishment submitted time analysis forms. By letter dated June 13, 2006, the Office informed appellant that the medical evidence of record was insufficient to establish that she was disabled for the periods claimed. Appellant was advised to submit a physician's report that explained how each intermittent period of total disability was causally related to her accepted condition.

The relevant medical evidence includes a June 17, 2003 report from Dr. Sharon E. Malcolm, an attending Board-certified internist, who advised that appellant had reactive airway disease exacerbated by second-hand smoke at work and would need to be off work when an aggravation of the disease or related complications occurred.<sup>3</sup> In reports dating from December 3, 2003 through April 11, 2005, Dr. Malcolm described appellant's symptoms and treatment. Pulmonary function tests on July 6, 2004 demonstrated asthma. In a July 17, 2004 report, Dr. Malcolm advised that appellant recently had several episodes of increased shortness of breath and wheezing secondary to smoke exposure at work. She reported pulmonary function study results and described appellant's medications. In an April 14, 2005 employing establishment form medical report, Dr. Malcolm advised that appellant had exacerbations of asthma and bronchitis on November 3 and 22, 2004, January 7 and 31 and April 11, 2005. She provided examination findings and advised that appellant's prognosis was good.

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<sup>1</sup> The June 8, 2004 claim was adjudicated by the Office under File No. xxxxxx919 and the September 8, 2004 File No. xxxxxx772. On May 17, 2006 the claims were doubled, with the former becoming the master claim.

<sup>2</sup> *Id.*

<sup>3</sup> Appellant also submitted reports dating from January 6, 2006 that are not relevant to the period of claimed disability at issue in this case.

By report dated June 10, 2005, Dr. G. Keith Wolfe, Board-certified in internal medicine and pulmonary disease, noted a three-year history of respiratory problems precipitated by smoke or inhalation exposures. He reviewed appellant's medications, provided physical findings and advised that chest x-ray was normal. Dr. Keith diagnosed asthma, obesity, hypothyroidism and mild chronic rhinitis. On August 3, 2005 Dr. Malcolm advised that appellant should be excused from work on August 3 and 4, 2005 because she was being treated with antibiotics and oral steroids and needed to be in a controlled environment and away from work for 24 to 48 hours.

In a report dated December 7, 2006, Dr. Malcolm summarized appellant's treatment, noting that, when smoking was allowed in the workplace in March 2003, appellant began having episodes of shortness of breath. Beginning in May 2003, appellant began experiencing frequent exacerbations of the illness and appellant's condition continued to deteriorate during the two years that smoking was allowed at work. Dr. Malcolm described appellant's medications and advised that her condition had become permanent and was triggered by cigarette smoke and other allergens found in the workplace such as diesel and jet fuel fumes, molds, mildew and construction dust. She also noted that appellant experienced acute laryngitis approximately once weekly due to a medication, which made it difficult for her to work because the work required constant talking and that she would continue to have acute weekly asthma attacks. Dr. Malcolm commented that appellant's prognosis was good with no work limitations and concluded:

[Appellant] has required time off work intermittently since smoking started in the air traffic facility in March 2003 and this need continues although smoking was stopped in April of 2005, due to progression of the disease process. She requires time off intermittently for acute asthma attacks and the complications of attacks.... Each intermittent period of temporary total disability that [she] has experienced related to exacerbation of reactive airway disease and asthma since May 14, 2003 is secondary to progression of the respiratory disease that resulted from long term, ongoing exposure to second hand cigarette smoke in the workplace. The disease is now chronic and permanent.

On July 11, 2007 the Office denied appellant's claim for compensation for the period July 1, 2003 to December 9, 2005 on the grounds that the medical evidence of record was not sufficient to support the periods of claimed disability.

On August 3, 2007 appellant, through counsel, requested a hearing that was held on December 20, 2007. At the hearing appellant testified that she had not worked since May 2007 and described her condition and medical treatment. Counsel argued that Dr. Malcolm's December 7, 2006 report was sufficient to establish disability for the period claimed. The hearing representative explained the type evidence needed to support appellant's claim for disability.

By decision dated March 5, 2008, an Office hearing representative modified the July 11, 2007 decision to reflect that appellant was entitled to four hours of compensation for December 3, 2003, June 3 and 16 and July 6, 2004 and June 10, 2005 when she received medical treatment for her accepted conditions.

### **LEGAL PRECEDENT**

Under the Federal Employees' Compensation Act<sup>4</sup> the term "disability" is defined as incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>5</sup> Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn the wages. An employee who has a physical impairment causally related to a federal employment injury but who nonetheless has the capacity to earn wages he or she was receiving at the time of injury has no disability as that term is used in the Act<sup>6</sup> and whether a particular injury causes an employee disability for employment is a medical issue which must be resolved by competent medical evidence.<sup>7</sup> Whether a particular injury causes an employee to be disabled for work and the duration of that disability, are medical issues that must be proved by a preponderance of the probative and reliable medical evidence.<sup>8</sup>

The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.<sup>9</sup> Furthermore, it is well established that medical conclusions unsupported by rationale are of diminished probative value.<sup>10</sup>

### **ANALYSIS**

The Board finds that appellant is entitled to an additional four hours of compensation for November 3, 2004. On April 14, 2005 Dr. Malcolm advised that appellant was seen for an exacerbation of asthma and bronchitis on that day. Her report is sufficient to establish entitlement for this day.<sup>11</sup> The Board, however, finds that appellant did not meet her burden of proof to establish that she was totally disabled for any additional claimed periods from July 1, 2003 to December 9, 2005. The issue of whether a claimant's disability is related to an accepted condition is a medical question that must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to employment factors and supports that conclusion with sound medical reasoning.<sup>12</sup>

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<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> See *Prince E. Wallace*, 52 ECAB 357 (2001).

<sup>6</sup> *Cheryl L. Decavitch*, 50 ECAB 397 (1999); *Maxine J. Sanders*, 46 ECAB 835 (1995).

<sup>7</sup> *Donald E. Ewals*, 51 ECAB 428 (2000).

<sup>8</sup> *Amelia S. Jefferson*, 57 ECAB 183 (2005).

<sup>9</sup> *Id.*

<sup>10</sup> *Albert D. Brown*, 52 ECAB 152 (2000).

<sup>11</sup> Dr. Malcolm also advised that appellant had exacerbations on November 22, 2004 and January 7 and 31 and April 11, 2005. The record before the Board, however, does not indicate that appellant claimed compensation for these dates.

<sup>12</sup> *Sandra D. Pruitt*, 57 ECAB 126 (2005).

Appellant submitted a number of medical reports. The vast majority, however, contain no discussion regarding her ability to work and are therefore of diminished probative value. Compensation for wage loss due to disability is available only for periods during which an employee's work-related medical condition prevents him or her from earning the wages earned before the work-related injury.<sup>13</sup> Whether a particular injury caused an employee disability from employment is a medical issue, which must be resolved by competent medical evidence.<sup>14</sup>

In a December 7, 2006 report, Dr. Malcolm asserted that all periods of disability claimed by appellant were caused by her employment-related respiratory condition. The Board will not require the Office to pay compensation for disability in the absence of medical evidence that directly addresses specific dates of disability for which compensation is claimed.<sup>15</sup> The Board finds that, since Dr. Malcolm only generally advised that appellant had periods of disability without identifying the specific dates, the December 7, 2006 report is insufficient to meet her burden to establish that she was totally disabled for the additional dates claimed.

For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.<sup>16</sup> The issue of whether a claimant's disability is related to an accepted condition is a medical question which must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to employment factors and supports that conclusion with sound medical reasoning.<sup>17</sup> Other than Dr. Malcolm's supportive opinion that appellant was totally disabled on November 3, 2004, there is no such evidence in this case.

### **CONCLUSION**

The Board finds that, other than November 3, 2004, appellant did not meet her burden of proof to establish that she was totally disabled for claimed intermittent periods from July 1, 2003 to December 9, 2005.

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<sup>13</sup> W.P., 59 ECAB \_\_\_\_ (Docket No. 08-202, issued May 8, 2008).

<sup>14</sup> *Carol A. Lyles*, 57 ECAB 265 (2005).

<sup>15</sup> *Amelia S. Jefferson*, *supra* note 8.

<sup>16</sup> *Id.*

<sup>17</sup> *Sandra D. Pruitt*, *supra* note 12.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated March 5, 2008 be affirmed, as modified.

Issued: January 26, 2009  
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