

**United States Department of Labor
Employees' Compensation Appeals Board**

K.L., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Cleveland, OH, Employer**

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**Docket No. 09-2053
Issued: August 9, 2010**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 10, 2009 appellant, through her attorney, filed a timely appeal from a June 29, 2009 decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that she was disabled for the period January 26, 2006 to June 21, 2007 causally related to her accepted employment injuries of herniated cervical disc and radiculopathy.

FACTUAL HISTORY

On June 28, 2002 appellant, then a 41-year-old mail processor, filed an occupational disease claim alleging that in July 2001 she first realized that her right shoulder, arm and neck problems were employment related. The Office accepted the claim for herniated cervical disc and radiculopathy.

The Office authorized treatment of appellant by Dr. Mirza I. Baig, a treating Board-certified internist and physiatrist, who in a February 2, 2006 disability slip indicated that she was to be off work due to severe pain for the period February 2 to 9, 2006. In a March 9, 2006 disability slip, Dr. Baig stated that appellant was to be off work from March 2, 2006 until the completion of additional testing.

In an April 6, 2006 medical report, Dr. Walter A. Offenhartz, a treating physician Board-certified in emergency, related that appellant informed him that her former physician, Dr. Baig, had taken her off work. He diagnosed symptom magnification, herniated cervical disc and radiculopathy. A physical examination revealed normal shoulder range of motion, decreased cervical range of motion. Dr. Offenhartz stated that he believed appellant was capable of performing light-duty work. Appellant's work restrictions included no repetitive lifting of more than 20 pounds and no pushing or pulling more than 20 pounds.

In an April 26, 2006 fitness-for-duty report, Dr. Elizabeth Mease, a physician Board-certified in internal medicine and occupational medicine, diagnosed cervical herniated disc and radiculopathy. She indicated that appellant was capable of working with restrictions. The restrictions included no lifting, pushing, pulling or carrying more than 10 pounds. Lastly, Dr. Mease opined that there was no evidence of symptom magnification.

In a September 20, 2006 duty status report, Dr. Timothy Morley, a treating osteopath, provided a diagnosis of displaced cervical disc and indicated that appellant was currently disabled from working. In September 20, 2006 progress notes, he reported decreased spine range of motion and that she continued to have complaints of right arm pain. Dr. Morley noted that appellant was currently not working.

In an October 16, 2006 report, Dr. Gregory Hill, a second opinion Board-certified orthopedic surgeon, diagnosed C5-6 and C6-7 herniated disc with osteophyte formation and mild right C6 cervical radiculopathy. A physical examination revealed pain on palpation in the right shoulder area, base of the cervical spine and right biceps tendon. Dr. Hill concluded that appellant was capable of working with restrictions. Work restrictions included six to eight hours of sitting; four to six hours of walking, no stooping, squatting, kneeling, climbing, operating a motor vehicle, bending, pushing or pulling; one to four hours of lifting up to 20 pounds; and one to two hours of repetitive wrist and elbow movements.

In an October 23, 2006 duty status report, Dr. Morley provided a diagnosis of displaced cervical disc with myelopathy, provided work restrictions and indicated that appellant should not work until she was seen by a pain management physician. In progress notes dated October 23, 2006, he noted that she appeared depressed, that she was not working and she had cervical pain complaints on very little motion.

In a February 1, 2007 disability slip, Dr. Todd S. Hochman, a treating physician Board-certified in internal medicine and pediatric medicine, stated that appellant was disabled from working until March 1, 2007. In a February 1, 2007 initial patient evaluation report, he diagnosed C5-6 and C6-7 herniated discs and cervical radiculopathy. Appellant complained of right neck pain radiating into her right upper extremity. A physical examination revealed

restricted range of motion quite a bit of cervical spasms and midline tenderness. Dr. Hochman stated that her work situation was discussed and stated that she should remain off work.

On March 1, 2007 Dr. Hochman reviewed Dr. Hill's report and agreed with his recommendations regarding referral to a pain management physician. A physical examination revealed midline cervical tenderness, spasm, light sensory deficit and restricted range of motion. Lastly, Dr. Hochman stated that appellant currently remained off work.

On March 22, 2007 Dr. Hochman reported that appellant continued to have neck pain radiating into her right upper extremity. A physical examination revealed restricted range of motion, midline tenderness, slight cervical region spasms and slight sensory deficit. In an April 23, 2007 report, Dr. Hochman noted that appellant continued to have neck pain with radicular symptoms. Physical findings were similar to those found in his March 22, 2007 report.

On May 25, 2007 appellant filed claims for wage-loss compensation (Form CA-7) for the period January 26, 2006 to June 21, 2007. In support of her claim, she submitted medical evidence including a February 6, 2006 duty status report; January 26, February 16 and 18, 2006 disability slips from Dr. Baig; disability slips dated March 1, 22 and April 23, 2007 and a May 21, 2007 report from Dr. Hochman; and disability slips dated August 22 and December 27, 2006 from Dr. Morley.

In an August 22, 2006 disability slip, Dr. Morley noted that appellant was seen that day and that she was disabled from work until September 20, 2006. He in a December 27, 2006 disability slip, stated that she had been seen that day and was disabled from working until she was reexamined.

In a January 26, 2006 disability slip, Dr. Baig stated that appellant was disabled from work for that day. In a February 16, 2006 disability slip, he stated that she was disabled until February 16, 2006 and then could perform light-duty work. In a February 18, 2006 disability slip, Dr. Baig stated that appellant was disabled for two weeks from February 16, 2006 due to radiculopathy. In a February 6, 2006 duty status report, he indicated that she was capable of returning to work on March 7, 2006 with the restrictions noted.

In a March 1, 2007 disability slip, Dr. Hochman stated that he had seen appellant that day and she was disabled from working from March 1 to 22, 2007. In an April 23, 2007 disability slip, he reported seeing her that day and stated that she was totally disabled from March 22 to April 19, 2007. In an April 23, 2007 disability slip, Dr. Hochman stated that appellant had been seen in his office that day and noted she was off work until May 21, 2007. In a May 21, 2007 report, he stated that she related that she was not doing well. A physical examination revealed cervical region spasms, decreased handgrip, midline tenderness, discomfort on range of motion and sensory deficit.

By letters dated June 29, 2007 and May 5, 2008, the Office informed appellant that the evidence was insufficient to support her claim for wage-loss compensation for the period

claimed. Appellant was advised as to the type of medical evidence required to support her claim.¹

By decision dated December 12, 2008, the Office denied appellant's claim for wage-loss compensation for the period January 26, 2006 to June 21, 2007.

On December 20, 2008 appellant's counsel requested an oral hearing before an Office hearing representative, which was held on April 20, 2009.

By decision dated June 29, 2009, an Office hearing representative affirmed the December 12, 2005 denial of appellant's claim for wage-loss compensation.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of proof to establish the essential elements of her claim by the weight of the evidence.³ 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.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

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.⁶ Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.⁷ 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.⁸ When, however, the medical evidence establishes that the residuals or sequelae of an

¹ In a letter dated October 4, 2006, appellant's counsel noted that appellant was filing a claim for a schedule award and submitted an impairment rating by Dr. Morley in support of her request. As no final decision has been issued on her request for a schedule award, the Board has no jurisdiction to consider this matter. 20 C.F.R. § 501.2(c).

² 5 U.S.C. §§ 8101-8193.

³ See *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

⁴ See *Jefferson*, *supra* note 3; see also *David H. Goss*, 32 ECAB 24 (1980).

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

⁶ *S.M.*, 58 ECAB 166 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Conard Hightower*, 54 ECAB 796 (2003); 20 C.F.R. § 10.5(f).

⁷ *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

⁸ *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).⁹ 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.¹⁰

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.¹¹

ANALYSIS

The Office accepted the claim for cervical herniated disc and radiculopathy. The issue to be resolved is whether appellant submitted sufficient evidence supporting her claim that her total disability for the period January 26, 2006 through June 21, 2007 was causally related to her accepted employment conditions. The Board finds that the medical evidence submitted in support of the wage-loss compensation claim for disability for the period beginning January 26, 2006 through June 21, 2007 is insufficient to establish that the claimed period of disability was caused or aggravated by the accepted employment conditions.

In support of her claim, for total disability for the period January 26, 2006 through June 21, 2007, appellant submitted disability slips, duty status reports and medical reports from various physicians including Drs. Baig, Hochman, Morley and Offenhartz.

Dr. Offenhartz, a treating physician Board-certified in emergency, diagnosed symptom magnification, herniated cervical disc and radiculopathy, who opined that appellant was capable of working with restrictions, which included no repetitive lifting of more than 20 pounds and no pushing or pulling more than 20 pounds. As he concluded that she was able to perform light-duty work, his report is insufficient to support her claim for total disability for the claimed period.

The record contains disability slips dated January 26, February 2, 16 and 18 and March 9, 2006, from Dr. Baig indicating that appellant was totally disabled from working. In a February 2, 2006 disability slip, he stated that she was disabled from working for the period February 2 to 9, 2006 due to severe pain. Dr. Baig, in a February 16, 2006 disability slip, stated

⁹ A.D., 58 ECAB 149 (2006).

¹⁰ *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

¹¹ *See William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

that appellant was disabled until February 16, 2006 and then could perform light-duty work. In a February 18, 2006 disability slip, he stated that she was disabled for two weeks from February 16, 2006 due to radiculopathy. In a February 6, 2006 duty status report, Dr. Baig indicated that appellant was capable of returning to work on March 7, 2006 with the restrictions noted. The January 26, February 2, 16 and March 9, 2006 disability slips excusing her from work, however, fail to address whether her disability was due to her accepted herniated cervical disc or radiculopathy. These disability slips merely note that appellant is unable to work for the period mentioned or in pain. Similarly, the February 6, 2006 duty status report merely notes that she was currently disabled but could return to work as of March 7, 2006 with restrictions. As these disability slips and the duty status report fail to offer any opinion on whether appellant was disabled due to her accepted condition these medical excuse notes and duty status report are of diminished probative value.¹²

Appellant submitted progress notes, duty status reports and disability slips from Dr. Morley, who indicated that she was totally disabled. In disability slips dated August 22 and December 27, 2006 disability slip, Dr. Morley noted that she was disabled from working. He noted physical findings in progress notes and that appellant was not working in progress notes dated September 20 and October 23, 2006. In a September 20, 2006 duty status report, Dr. Morley indicated that she was disabled from working while in an October 23, 2006 duty status report, he provided work restrictions and indicated that she was unable to work until seen by a pain management physician. These duty status reports, disability slips and progress notes are of limited probative value as he failed to provide any medical rationale explaining how and why appellant became disabled due to her accepted injuries of herniated cervical disc and radiculopathy or unable to continue work at her light-duty position beginning January 26, 2006. Without any explanation to support that appellant was disabled beginning January 26, 2006 due to her accepted conditions of herniated cervical disc and radiculopathy, these disability slips, duty status reports and progress notes are insufficient to meet appellant's burden of proof.¹³

The disability slips and reports from Dr. Hochman, a treating physician Board-certified in internal medicine and pediatric medicine, are also insufficient to support appellant's claim for total disability. In a February 1, 2007 initial patient evaluation report, Dr. Hochman diagnosed C5-6 and C6-7 herniated discs and cervical radiculopathy and provided physical findings. He stated that appellant's work situation was discussed and stated that she should remain off work. Physical findings by Dr. Hochman were also provided in his subsequent reports and progress notes of March 1 and 22 and April 23, 2007. In his March 1, 2007 report, he noted that appellant continued to remain off work. Dr. Hochman stated that she was disabled from working in disability slips dated March 1 and 22, 2007 for a total period of March 1 to April 19, 2007. In an April 23, 2007 disability slip, he stated that appellant had been seen in his office that day and noted that she was off work until May 21, 2007. As noted above, Dr. Hochman's report, progress notes and disability slips are of limited probative value as he failed to provide any medical rationale explaining how and why appellant became disabled due to her accepted injuries of herniated cervical disc and radiculopathy or unable to continue work at her light-duty

¹² See *Sandra D. Pruitt*, 57 ECAB 126 (2005).

¹³ *T.F.*, 58 ECAB 128 (2006); *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006) (a medical report is of limited probative value on a given medical question if it is unsupported by medical rationale).

position beginning January 26, 2006. Without any explanation to support that she was disabled beginning January 26, 2006 due to her accepted conditions of herniated cervical disc and radiculopathy, these disability slips, duty status reports and progress notes are insufficient to meet appellant's burden of proof.¹⁴

The record also contains reports from Dr. Hill, a second opinion Board-certified orthopedic surgeon, and Dr. Mease, a physician Board-certified in internal medicine and occupational medicine and a fitness-for-duty physician, who both concluded that appellant was capable of working with restrictions. As these physician's, found that she was able to work with restrictions, their reports do no support her claim for total disability for the period January 26, 2006 to June 21, 2007.

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.¹⁵ 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.¹⁶ The Board finds that there is no such evidence in this case.

CONCLUSION

The Board finds that appellant has not established that her disability for the period January 26, 2006 to June 21, 2007 was causally related to her accepted employment injuries of herniated cervical disc and radiculopathy.

¹⁴ *Id.*

¹⁵ *See Jefferson supra* note 3.

¹⁶ *Supra* note 12.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 29, 2009 is affirmed.

Issued: August 9, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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