United States Department of Labor
Employees' Compensation Appeals Board

H.F., Appellant	)	
and	)	**Docket No. 10-77**
	)	**Issued: July 21, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Jacksonville, FL, Employer	)	

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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 13, 2009 appellant, through counsel, filed a timely appeal from an August 14, 2009 merit decision of the Office of Workers' Compensation Programs denying compensation for wage loss. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether appellant met her burden of proof to establish that she was disabled on October 11, 30 and December 3, 2008 and January 5 and 6, 2009 causally related to her March 22, 2007 employment injury.

FACTUAL HISTORY

On March 22, 2007 appellant, then a 45-year-old rural carrier, sustained a concussion and injuries to her neck, back, shoulders and arms when she was involved in an automobile accident. The Office accepted the claim for concussion with no loss of consciousness, contusions of the

head, both shoulders and knees and a cervical strain. Appellant stopped work on March 23, 2007 and returned to modified duty on or about April 13, 2007.[1]

On November 3, 2008 appellant filed a claim for wage-loss compensation (Form CA-7) for October 11 and 13, 2008. In an attached time analysis form she claimed 5.24 hours of leave without pay for October 11, 2008, which she indicated that was approved under the Family and Medical Leave Act according to her physician's report.[2]

On November 14, 2008 appellant filed a claim for wage-loss compensation (Form CA-7) for October 30, 2008. In an attached time analysis form she claimed 5.24 hours of leave without pay for that day, which she indicated that was approved under the Family and Medical Leave Act.

In letters dated November 12 and 19, 2008, the Office requested that appellant submit medical evidence establishing her disability for October 11 and 30, 2008. In a November 24, 2008 report, Dr. Winston R. Ortiz, a treating Board-certified neurologist, indicated that on October 11 and 30, 2008 she was totally disabled from work due to migraine headaches. He stated that he instructed appellant not to drive or work when she experienced a severe headache and that this condition was permanent.

On January 9, 2009 appellant filed claims for wage-loss compensation for December 3, 2008 and January 5 and 6, 2009. In an accompanying time analysis form, she claimed 12 hours of leave without pay for these days.

In a January 8, 2009 report, Dr. Ortiz stated that appellant was disabled from work on December 3, 2008 and January 5 and 6, 2009 as a result of migraine headaches. He reiterated that her condition was permanent and she was not to drive or go to work while having a migraine headache.

On February 11, 2009 the Office noted receipt of appellant's claim for wage loss on December 3, 2008 and January 5 and 6, 2009 and Dr. Ortiz' January 8, 2009 report. It advised her that the evidence was insufficient as the medical report did not provide any physical findings or medical rationale addressing how her disability related to her accepted injury.

By decision dated February 11, 2009, the Office denied appellant's claim for wage-loss compensation for October 11 and 30, 2008. It found that the report of Dr. Ortiz was insufficient to establish her claim as there was no evidence that he had examined her on those dates or provided medical rationale explaining how her disability rated to her accepted injury.

In a letter dated February 18, 2009, appellant's counsel disagreed with the February 11, 2009 decision and requested a telephonic hearing before an Office hearing representative.

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[1] Appellant was not a full-time employee at the time of injury. The agency advised that she worked 1635.55 hours in the year prior to injury.

[2] Appellant also claimed 5.24 hours of holiday pay for October 13, 2008 which was not approved by the employing establishment on the grounds that she was not entitled to holiday pay for that day.

In a February 24, 2009 note, Dr. Ortiz stated that he had instructed appellant not to drive or go to work when she had a migraine headache. He opined that her headaches were post-traumatic and a direct result of her work injury. Dr. Ortiz noted that appellant would occasionally have headaches and should be excused from work.

In a March 13, 2009 decision, the Office denied appellant's claim for wage-loss compensation for December 3, 2008 and January 5 and 6, 2009. It found that the opinion of Dr. Ortiz was insufficient to establish her disability as he provided no supporting medical rationale or evidence that he had examined her on the dates claimed.

In a letter dated March 20, 2009, appellant's counsel requested a telephonic hearing before an Office hearing representative. A hearing was held on June 1, 2009 from the February 11 and March 13, 2009 decisions.

In a March 13, 2009 report, Dr. Ortiz noted that appellant sustained a head injury on March 22, 2007 and stated that it was "common for patients with this sort of injury to experience headaches to a varying degree for months and even years afterward." He noted that he was unable to provide objective findings but felt it medically necessary that she must remain at home and take her medication when experiencing a severe headache. On March 17, 2009 Dr. Ortiz reiterated the content of the March 13, 2009 report noted adding that appellant missed only five days of work on October 11, 30 and December 3, 2008 and January 5 and 6, 2009 as a result of her accepted injury.

By decision dated August 14, 2009, the Office hearing representative affirmed the February 11 and March 13, 2009 decisions denying appellant's claim for wage-loss compensation. He found that the medical evidence from Dr. Ortiz was insufficient to establish that she was disabled for the dates claimed.

LEGAL PRECEDENT

For each period of disability claimed, an employee has the burden of establishing that she was disabled for work as a result of the accepted employment injury.[3] 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.[4]

Under the Federal Employees' Compensation 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.[5] Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.[6] An employee who has a physical impairment causally

[3] *See Amelia S. Jefferson*, 57 ECAB 183 (2005); *see also David H. Goss*, 32 ECAB 24 (1980).

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

[5] *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).

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

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.[7] When, however, the medical evidence establishes that the residuals or sequelae of an 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).[8] 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.[9]

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.[10]

ANALYSIS

Appellant claimed disability on October 11, 30 and December 3, 2008 and January 5 and 6, 2009 due to the March 22, 2007 automobile accident. She must submit probative evidence of disability causally related to the employment injury for these dates. The Office accepted her claim for concussion with no loss of consciousness, contusions of the head, both shoulders and knees and a cervical strain.

The Board finds that the brief notes from Dr. Ortiz are not sufficient to establish appellant's disability for the specific dates claimed due to the March 22, 2007 employment injury. The medical notes of record addressed her disability first arising in October 2008 to the motor vehicle accident some 18 months prior to the claimed disability. Dr. Ortiz related that appellant became totally disabled due to migraine headaches and referenced the dates she was disabled. In addressing causal relation, he stated only that it is common for individuals sustaining head trauma in automobile accidents to experience disabling headaches. Dr. Ortiz noted that this was the extent of the objective evidence he could provide. He did not provide a full description of the injuries sustained by appellant, discuss the conditions accepted by the Office, provide findings from physical examination or adequately explain how the motor vehicle

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

[8] *A.D.*, 58 ECAB 149 (2006).

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

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

accident contributed to her disability on the dates claimed.[11] Dr. Ortiz's reports do not contain findings on examination or explanation as to how the disability on the dates claimed was related to the employment injury beyond noting that when appellant experienced a migraine headache she was totally disabled. The Board has held that a medical opinion not fortified by medical rationale is of diminished probative value.[12] The opinion of Dr. Ortiz is speculative on the issue of causal relation.[13]

The Board finds that the medical evidence of record is not sufficient to meet appellant's burden of proof with respect to the claimed dates of disability. Accordingly, the Office properly denied wage-loss compensation for these days.

CONCLUSION

The Board finds that appellant has not established that she was disabled on October 11, 30 and December 3, 2008 and January 5 and 6, 2009 causally related to her March 22, 2007 employment injury.

[11] *See Robert Broome*, 55 ESAB 339 (2004).

[12] *T.M.*, 60 ECAB ___ (Docket No. 08-975, issued February 6, 2009); *Richard A. Neidert*, 57 ECAB 474 (2006) (medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof).

[13] *See Ellen L. Noble*, 55 ECAB 530 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 14, 2009 is affirmed.

Issued: July 21, 2010
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