



In a note dated December 20, 2007, Dr. William Paul Magdycz, a Board-certified otolaryngologist, reported that appellant had been coughing for 10 to 11 weeks. He found that appellant was running a fever of over 102 degrees. He diagnosed acute chemical bronchitis, bronchiectasis, asthma, dyspnea, chronic rhinitis and pulmonary nodules found on x-ray as well as “other disease of the vocal cords.”

Dr. Rajnish Dhawan, a Board-certified pulmonologist, completed a work release note dated January 9, 2008 finding that appellant was disabled from December 5, 2007 through January 8, 2008. In a narrative report of February 27, 2008, he stated that he examined appellant on December 5, 2007 for a chronic cough lasting six years. Appellant attributed his cough to Loctite 380 exposure while working at the employing establishment. Dr. Dhawan stated that he reviewed appellant’s 2007 chest x-rays which did not demonstrate any cardiopulmonary disorders. He opined that appellant had acid reflux with silent aspiration of acid leading to gastroesophageal reflux symptoms with chronic cough.

By letter dated October 29, 2008, the Office requested additional medical evidence in support of appellant’s claimed period of disability and allowed 30 days for a response. Appellant submitted a December 12, 2007 report from Dr. Dhawan regarding appellant’s hospitalization for a bronchoscopy scheduled that day. On December 17, 2008 Dr. Dhawan noted that there were periods that appellant could not talk without coughing and that his job required the ability to speak. He stated that appellant had sporadic periods of disability. In notes dated January 8 and 28, 2008, Dr. Dhawan diagnosed chronic cough.

By decision dated January 23, 2009, the Office authorized compensation for eight hours on December 12, 2007 and for four hours on January 8 and September 16, 2008 for appellant’s medical appointments. It requested additional medical evidence to support any other periods of disability.

Appellant filed a claim for compensation on February 6, 2009 and requested wage-loss compensation from December 5, 2007 through June 13, 2008. On February 2, 2009 Dr. Dhawan reiterated that he treated appellant on December 5, 2007, January 21, June 19 and September 16, 2008. He indicated generally that appellant was totally disabled from December 5, 2007 through January 8, 2008.

In a March 27, 2009 decision, the Office denied appellant’s claim for compensation from December 1, 2007 through September 6, 2008. Appellant requested an oral hearing that was held on August 11, 2009.

By decision dated October 23, 2009, an Office hearing representative found that appellant did not establish that he was totally disabled after December 1, 2007 due to his accepted respiratory condition and affirmed the March 27, 2009 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his or her claim, including that any disability or

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

specific condition for which compensation is claimed is causally related to the employment injury.<sup>2</sup> The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.<sup>3</sup>

Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues, which must be proved by a preponderance of the reliable, probative and substantial medical evidence.<sup>4</sup> Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work. When a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that she hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.<sup>5</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>6</sup>

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.<sup>7</sup> Rationalized medical evidence is medical evidence, which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.<sup>8</sup> Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>9</sup>

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<sup>2</sup> *G.T.*, 59 ECAB \_\_\_\_ (Docket No. 07-1345, issued April 11, 2008); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> 20 C.F.R. § 10.5(f); *see, e.g., Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury but no loss of wage-earning capacity).

<sup>4</sup> *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>8</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>9</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

### ANALYSIS

The Office accepted that appellant sustained bronchitis, pneumonitis and chronic rhinitis. Appellant claimed wage-loss compensation from December 1, 2007 through September 6, 2008. The Office authorized intermittent hours of disability for his medical appointment. It denied further wage loss finding that appellant had not established disability after December 1, 2007.

The reports from Dr. Dhawan, a Board-certified pulmonologist, dated December 12 and 17, 2007 noted that there were periods when appellant could not speak without coughing. Dr. Dhawan stated only that appellant had sporadic periods of disability but did not further identify any dates of disability due to the accepted conditions. On January 8 and 28, 2008 he diagnosed chronic cough. On February 27, 2008 Dr. Dhawan again noted appellant's chronic cough but attributed appellant's condition to acid reflux and gastroesophageal reflux symptoms. On February 2, 2009 he listed the dates he treated appellant and stated generally that appellant was totally disabled from December 5, 2007 through January 8, 2008. Dr. Dhawan did not otherwise address appellant's disability due to the accepted condition of bronchitis, pneumonitis and chronic rhinitis. Moreover, he attributed appellant's disability to acid reflux and chronic cough. Dr. Dhawan did not adequately explain why appellant was totally disabled for work due to his accepted conditions. His reports are not sufficient to establish the period of disability claimed.

On December 20, 2007 Dr. Magdycz, a Board-certified otolaryngologist, reported a history that appellant had been coughing for 10 to 11 weeks and found that he was running a fever. He diagnosed acute chemical bronchitis, bronchiectasis, asthma, dyspnea, chronic rhinitis and pulmonary nodules found on x-ray as well as "other disease of the vocal cords." While this report establishes that appellant was disabled for work on December 20, 2007, Dr. Magdycz did not sufficiently address how appellant's accepted bronchitis, pneumonitis and chronic rhinitis caused disability for the other period of time claimed. He provided a general statement regarding disability but did not offer any medical reasoning to support that appellant's fever and resulting disability was caused or contributed to by the accepted employment-related conditions rather than the other diagnoses he provided. Without a clear statement of the cause of appellant's disability for work and supportive medical reasoning, the report of Dr. Magdycz does not establish appellant's claim.

### CONCLUSION

The Board finds that appellant failed to establish that he was totally disabled on or after December 1, 2007 due to his accepted employment conditions.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 23, 2009 decision of Office of Workers' Compensation Programs is affirmed.

Issued: October 12, 2010  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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