

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

T.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Tulsa, OK, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 13-2065
Issued: February 24, 2014**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 9, 2013 appellant filed a timely appeal from a July 10, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 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 intermittent disability from work for the period September 23, 2005 through February 23, 2007 due to her accepted employment injury.

FACTUAL HISTORY

This case has previously been before the Board. By decision dated May 3, 2011, the Board reversed a May 25, 2010 decision terminating appellant's compensation effective June 6,

¹ 5 U.S.C. § 8101 *et seq.*

2010 for refusing an offer of suitable employment.² In decisions dated September 30, 2011 and February 14, 2013, the Board affirmed OWCP's decisions finding that she had not established disability from September 23, 2005 through February 23, 2007 due to her accepted work injury.³ The facts and the circumstances as set forth in the prior decisions are hereby incorporated by reference.

In a progress report dated March 5, 2013, Dr. M. Stephen Wilson, an attending orthopedic surgeon, diagnosed cervical sprain/strain, cervical spine degeneration, a closed dislocation of cervical vertebra and lumbar spine sprain/strain with degeneration of the lumbosacral intervertebral discs. He listed findings on examination and noted that appellant was not working.

In a report dated March 6, 2013, Dr. Wilson related that appellant began "suffering from progressively worsening pain in her neck and back" around September 27, 2005. He noted that she received treatment from Dr. Gerald Snider, Board-certified in family practice, who initially evaluated her on March 1, 2007 and found that she was totally disabled. Dr. Wilson related that Dr. Snider also "noted that she had been unable to work from September 28, 2005 through February 23, 2007." He discussed the opinion of Dr. Daren L. Kirk, a chiropractor, noting that he found that she could work with restrictions beginning September 27, 2005 but subsequently determined that she was unable to work. Dr. Wilson reviewed the duties of appellant's limited-duty position from September 28, 2005 through February 23, 2007 and advised that she sustained increased symptoms due to her employment during this time and "became more and more incapacitated." He related that he evaluated appellant on February 28, 2012 and diagnosed "severe degeneration of the cervical spine with large osteophytes anteriorly and significant collapse of the disc spaces from C3 through T1." Dr. Wilson advised that from September 28, 2005 through February 23, 2007 appellant missed 819.2 hours of work and that she was "intermittently totally disabled throughout this time, due to her continued neck and back pain with migraines and muscle spasms." He addressed the hours lost from work for each period claimed and found that she was disabled during each period due to either neck and back pain or a combination of neck sprain, back sprain, degenerative disc disease, subluxation, muscle spasms and migraines. Dr. Wilson asserted that OWCP should pay appellant for the 819.2 hours of work lost from September 27, 2005 through February 24, 2007. He stated:

"As seen on her work forms, [appellant] attempted to return to work multiple times but was unable to sustain and endure the physical demands of her work-related duties. She was actively receiving treatment during that time and was placed on light-duty restrictions which were accommodated. [Appellant] light-duty work, as listed in the history of this report required her to perform repetitive work which caused her increasing pain on a daily basis."

² Docket No. 10-1785 (issued May 3, 2011). OWCP accepted appellant's March 8, 2007 occupational disease claim for cervical sprain and lumbar sprain, an aggravation of degenerative intervertebral disease of the cervical and lumbar spine and cervical subluxation, resulting from her employment as a clerk. It paid her compensation for disability beginning February 24, 2007.

³ Docket No. 11-756 (issued September 30, 2011); Docket No. 12-1942 (issued February 14, 2013).

On April 21, 2013 appellant requested reconsideration. In a progress report dated May 7, 2013, Dr. Wilson listed findings on examination and noted that she was not working.

By decision dated July 10, 2013, OWCP denied modification of its August 27, 2012 decision. It noted that Dr. Wilson had identified each period that appellant requested wage loss and the number of hours claimed but did not provide any findings or objective evidence supporting that she was unable to work during the time claimed.

On appeal appellant notes that she is claiming compensation for a period before she filed her occupational disease claim but asserts that she was disabled due to her work injury and thus entitled to compensation. She maintains that in his March 6, 2013 report Dr. Wilson sufficiently explained why she was intermittently disabled for each claimed period.

LEGAL PRECEDENT

The term disability as used in FECA⁴ means the incapacity because of an employment injury to earn the wages that the employee was receiving at the time of injury.⁵ Whether a particular injury caused an employee disability for employment is a medical issue which must be resolved by competent medical evidence.⁶ When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in the employment held when injured, the employee is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.⁷ The Board will not require OWCP 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.⁸

ANALYSIS

In decisions dated September 30, 2011 and February 14, 2013, the Board affirmed OWCP's decisions denying appellant's request for compensation for intermittent wage loss from September 23, 2005 to February 23, 2007 as the medical evidence was insufficient to support employment-related disability for the time claimed. On April 21, 2013 appellant requested reconsideration before OWCP and submitted Dr. Wilson's March 6, 2013 report.

On March 6, 2013 Dr. Wilson reviewed the findings from appellant's prior attending physician, Dr. Snider and Dr. Kirk. He discussed Dr. Snider's finding that she was disabled at the time of his initial evaluation on March 1, 2007 due to cervical and lumbar pain and spasms

⁴ 5 U.S.C. § 8101 *et seq.*; 20 C.F.R. § 10.5(f).

⁵ *Paul E. Thams*, 56 ECAB 503 (2005).

⁶ *Id.*

⁷ *Id.*

⁸ *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

and degenerative joint disease of the lumbar and cervical spine and that Dr. Snider indicated that she was not able to work from September 23, 2005 through February 23, 2007. Dr. Wilson also discussed the evidence from Dr. Kirk and the diagnostic studies of record. He opined that OWCP should pay appellant compensation for lost time from September 27, 2005 through February 24, 2007 as she could not perform her work duties. Dr. Wilson found that the duties of appellant's limited-duty employment increased her pain. Generally, however, findings on examination are needed to justify a physician's opinion that an employee is disabled for work.⁹ Dr. Wilson did not support his opinion that appellant was disabled for 819.2 hours by citing any objective findings on examination. Further, while he indicated that appellant's pain increased due to her work duties he did not specifically explain why she was precluded from performing her work duties for the hours in question. A physician's opinion on causal relationship between a claimant's disability and an employment injury is not dispositive simply because it is rendered by a physician. To be of probative value, the physician must provide rationale for the opinion reached. Where no such rationale is present, the medical opinion is of diminished probative value.¹⁰

In progress reports dated March 5 and 7, 2013, Dr. Wilson listed findings on examination, diagnosed cervical and lumbar sprain and degeneration and a closed dislocation of the cervical vertebra. He did not, however, address the cause of the diagnosed conditions or address the relevant issue of whether appellant was disabled from September 23, 2005 through February 23, 2007 and thus his reports are of diminished probative value.¹¹

On appeal appellant asserts that Dr. Wilson's March 6, 2013 report established that she was disabled for the time claimed. She relates that he discussed each claimed period. As noted, however, Dr. Wilson generally found that appellant was unable to work but did not support his opinion with objective findings or a reasoned medical opinion. Such rationale is particularly necessary given that Dr. Wilson did not evaluate appellant until more than five years after the alleged periods of disability.¹²

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128 and 20 C.F.R. §§ 10.605 through 10.607.

⁹ See *H.W.*, Docket No. 13-1185 (issued September 6, 2013); *Laurie S. Swanson*, 53 ECAB 517 (2002).

¹⁰ See *S.B.*, Docket No. 13-1162 (issued December 12, 2013); *Jean Culliton*, 337 ECAB 728 (1996).

¹¹ See *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of little probative value on the issue of causal relationship); *Carol A. Lyles*, 57 ECAB 265 (2005) (whether a particular injury caused an employee disability from employment is a medical issue which must be resolved by competent medical evidence).

¹² See *Conard Hightower*, 54 ECAB 796 (2003) (contemporaneous evidence is entitled to greater probative value than later evidence).

CONCLUSION

The Board finds that appellant has not established that she sustained intermittent disability from work for the period September 23, 2005 through February 23, 2007 due to her accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the July 10, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 24, 2014
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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