

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CRYSTALINE LOWERY and DEPARTMENT OF THE NAVY,
NAVAL RESEARCH LABORATORY, Washington, DC

*Docket No. 99-867; Submitted on the Record;
Issued June 28, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant was entitled to intermittent wage-loss compensation for the period February 7, 1996 through July 2, 1997 due to her accepted September 21, 1995 employment injury.

On September 21, 1995 appellant, then a 40-year-old supply technician, sustained a lumbar strain and left knee contusion when she fell to the floor when another coworker moved the chair she had moved to sit on.¹

On February 6, 1996 the Office of Workers' Compensation Programs notified appellant that it had accepted her claim for lumbar strain and left knee contusion and advised her that if her injury resulted in time lost from work she may be eligible to receive continuation of pay for a maximum of 45 days and if wage loss continued after the expiration of her continuation of pay, for disability compensation. The Office requested that appellant send a detailed medical report from her treating physician including a history of injury, findings of all test results and x-rays and an opinion regarding the relationship between any continued disability and the accepted injury.

¹ This was assigned claim number A25-0475228. In a letter dated October 14, 1997, the employing establishment noted that appellant had sustained an injury on June 7, 1996, which the Office accepted for cervical strain and that appellant was treated by Dr. Saied Jamshidi, an attending Board-certified neurological surgeon, for both employment injuries.

On May 20, 1996 appellant filed a claim for compensation (Form CA-7) for intermittent lost wages and referenced an attached list of dates. On the back of the form the period for the intermittent date was noted as March 4, 1996 to July 2, 1997.²

Appellant submitted treatment reports dated March 4 and 18, April 15, May 13, June 10 and 24, July 8 and 22, August 26, September 23 and December 2, 1996 and January 27, March 24, and June 2, 1997 from Dr. Jamshidi and a February 9, 1996 report by Dr. Sami N. Azer, an attending Board-certified orthopedic surgeon. Dr. Jamshidi, in his various reports, stated his diagnosis, treatment and examination findings for appellant on the reports and referenced the September 21, 1995 employment injury. In his February 9, 1996 report, Dr. Azer reported the results of a February 7, 1996 magnetic resonance imaging (MRI) scan, which revealed a small posterior central disc protrusion at L5-S1 and L4-5.

By letter dated September 19, 1997, the Office approved payment of compensation for four hours out of the eight hours appellant had claimed for February 7, March 4 and 18, April 15 and May 13, 1996. The Office informed appellant that “up to four hours are paid for doctor’s appointments” and that “[t]o be considered for the total days and hours claimed, you may submit medical reports within 30 days to support medical appointments and/or total disability.” Furthermore, the Office advised appellant to file a traumatic injury claim for the June 7, 1996 employment injury as compensation for that injury would not be paid under her September 21, 1995 employment injury claim.

By letter dated October 13, 1997, Dr. Jamshidi wrote:

“This is to certify that [appellant] has been under my professional care due to her back pain, which is related to her work injury of September 21, 1995. She was off work due to this injury for eight hours per day for the following dates: [February 7, February 13, March 4, March 5, March 18, March 19, March 20, April 15, April 29, April 30, May 1, May 8, May 13, May 14, May 15, May 29, June 10, June 13, June 14, November 19, and December 2, 1996, June 19 and July 2, 1997].”³

Appellant submitted an October 14, 1997 time analysis report (Form CA-7a) in which she claimed compensation for 176 hours due to doctor visits, her severe pain and an MRI appointment during the period February 7, 1996 through July 2, 1997. Appellant detailed her claim of lost wages as including eight hours per day for doctor visits on March 4 and 18, April 15, May 13 and June 10, 1996 and a February 7, 1996 MRI appointment. She claimed eight hours of total disability due to severe pain, which caused her inability to walk for the following dates, May 1, 15 and 29, June 13 and 14 and November 19, 1996, and June 19 and July 2, 1997.

² The date July 2, 1997 appears to have been added at a later date as this date appears to have been written over a whited out prior date.

³ The Board notes that appellant did request compensation for lost wages for the dates of February 13, March 5, 19 and 20, April 29 and 30, May 8 and 14 and December 2, 1996, in her claim for compensation for lost wages.

By decision dated June 25, 1998, the Office denied payment of compensation for intermittent dates from February 13, 1996 to July 2, 1997. The Office noted that it had paid compensation for medical visits on February 7, March 4 and 18, April 15, and May 13, 1996, but that the remainder of appellant's request for compensation for disability was denied because she had not submitted sufficient evidence to establish total disability for those dates. The Office found Dr. Jamshidi's October 13, 1997 letter lacked any probative value as he failed to provide any information detailing medical treatments he provided on the listed dates for which appellant was denied compensation.

By letter dated August 14, 1998, appellant requested reconsideration and submitted a report by Dr. Jamshidi in support of her request. In a July 27, 1998 report, Jamshidi stated:

"The dates that I certified that she was completely disabled, she was not able to work. This was medically necessary. As you know, she has lumbar strain, which causes significant myofascial pain and a knee contusion. While it is true that she was not seen by me in the office on those days, it was medically necessary because her pain was very severe and she was not able to perform her work."

By merit decision dated December 7, 1998, the Office denied appellant's request for reconsideration on the basis that the evidence was insufficient to establish modification.

The Board finds that appellant has established entitlement to wage-loss compensation for June 10, 1996 as she has provided documentation that she had a medical examination that day.⁴ However, appellant has not established any further entitlement to compensation for the other periods of claimed disability between February 7, 1996 and July 2, 1997.

An employee seeking benefits under the Federal Employees' Compensation Act⁵ has the burden of establishing the essential elements of his or her claim including the fact that the injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁶ As used in 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.⁷ Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.⁸ Whether a

⁴ The Board notes that appellant is only entitled to compensation for June 10, 1996 to the extent that she has not been given compensation for this day under her other claim for a neck injury.

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *Patricia A. Keller*, 45 ECAB 278 (1993); *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.5(17).

⁸ *See Fred Foster*, 1 ECAB 21 (1947).

particular injury caused an employee disability from employment is a medical issue, which must be resolved by competent medical evidence.⁹

With respect to claimed disability for medical treatment, section 8103 of the Act provides for medical expenses, along with transportation and other expenses incidental to securing medical care, for injuries.¹⁰ Appellant would be entitled to compensation for any time missed from work due to medical treatment for an employment-related condition.¹¹ However, the Office's obligation to pay for medical expenses and expenses incidental to obtaining medical care, such as loss of wages, extends only to expenses incurred for treatment of the effects of any employment-related condition. Appellant has the burden of proof, which includes the necessity to submit supporting rationalized medical evidence.¹²

With respect to June 10, 1996 that appellant claims wage-loss compensation, the Board finds that the evidence established that appellant had medical treatment provided by Dr. Jamshidi. Appellant submitted treatment notes dated June 10, 1996 by Dr. Jamshidi indicating that she saw him for treatment related to her accepted September 21, 1995 employment injury. This report in conjunction with appellant's October 14, 1997 time analysis report (Form CA-7a) establishes that she is entitled to compensation for lost time from work due to medical treatment provided to her because of her employment injury.¹³

In support of her claim for wage-loss compensation for May 1, 15 and 29, June 13 and 14, November 19, 1996, June 19 and July 2, 1997, appellant submitted letters dated October 13, 1997 and July 27, 1998 by Dr. Jamshidi.

An award of compensation may not be based on surmise, conjecture or speculation or upon appellant's belief that there is a causal relationship between her condition and her employment.¹⁴ To establish causal relationship, appellant must submit a physician's report, in which the physician reviews the employment factors identified by appellant as causing her condition and, taking these factors into consideration as well as finding upon examination of appellant and her medical history, state whether the employment injury caused or aggravated appellant's diagnosed conditions and provide medical rationale in support of his opinion.¹⁵

⁹ See *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

¹⁰ 5 U.S.C. § 8103(a).

¹¹ *Vincent E. Washington*, 40 ECAB 1242 (1989).

¹² *Dorothy J. Bell*, 47 ECAB 624 (1996); *Zane H. Cassell*, 32 ECAB 1537 (1981).

¹³ This compensation would only be payable to the extent that appellant has not received compensation for the same date under her other claim for a neck injury. This decision does not adjudicate the entitlement, if any, to compensation for time missed from work to attend medical treatment on dates not adjudicated by the Office.

¹⁴ *William S. Wright*, 45 ECAB 498 (1994).

¹⁵ *Jean Culliton*, 47 ECAB 728 (1996); *Lucrecia M. Nielson*, 42 ECAB 583 (1991).

Appellant failed to submit such evidence in this case and, therefore, has failed to discharge her burden of proof. Dr. Jamshidi's reports are not sufficient to meet appellant's burden of proof as he did not offer medical rationale explaining the causal relationship as to how or why appellant's accepted employment injury prevented her from performing the duties of her position on the particular dates listed.¹⁶ Instead he merely stated a conclusion without any discussion of the reasons why appellant was disabled on the dates in question. This is significant in view of the lack of indication in his more contemporaneous earlier reports, that appellant was disabled due to her work injury on the dates in question. As appellant has failed to submit sufficient rationalized medical opinion evidence to establish that she was unable to work on the days she claimed she was unable to work due to her employment injury, she has failed to establish that she was disabled and thus is not entitled to wage-loss compensation for the days she did not work. Without such evidence, appellant cannot establish her claim for intermittent wage-loss compensation during the period February 7, 1996 to July 2, 1997.

The decisions of the Office of Workers' Compensation Programs dated December 7, 1998 is hereby affirmed in part, reversed in part and the case remanded to the Office for payment of additional compensation for appellant's June 10, 1996 medical examination.¹⁷

Dated, Washington, D.C.
June 28, 2000

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

¹⁶ Medical reports not containing rationale on causal relationship are entitled to little probative value and are generally insufficient to meet appellant's burden of proof. *Lourdes Davila*, 45 ECAB 139 (1993).

¹⁷ Following the date of the appeal to the Board on January 12, 1999, the Office issued a subsequent decision on February 18, 1996 denying appellant's request for a hearing, which the Board finds to be null and void; *see Arlonia B. Taylor*, 44 ECAB 591 (1993).