United States Department of Labor
Employees' Compensation Appeals Board

OHMER A. BOWLES, JR., Appellant	)	
and	)	**Docket No. 04-1199**
	)	**Issued: August 26, 2004**
U.S. POSTAL SERVICE, GENERAL MAIL FACILITY, Capitol Heights, MD, Employer	)	

Appearances:
Ohmer A. Bowles, Jr., pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On April 5, 2004 appellant filed a timely appeal of a merit decision of the Office of Workers' Compensation Programs dated March 18, 2004 which denied his claim for compensation for intermittent periods between February 1 and 15, 2002. 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 was totally disabled for work due to his accepted employment condition for intermittent periods between February 1 and 15, 2002.

FACTUAL HISTORY

This is appellant's second appeal before the Board. In a December 22, 2003 decision, the Board found that appellant sustained a chronic right-sided L5 and S1 radiculopathy.[1] The case

[1] Docket No. 03-120 (issued December 22, 2003). The facts and history of the Board's decision are incorporated by reference.

was remanded for development of his periods of disability causally related to his lumbosacral radiculopathy sustained on November 3, 2001.

On February 5, 2004 the Office notified appellant that it had accepted his claim for lumbar radiculopathy and requested that he submit a list of time lost from work together with medical evidence establishing that the time claimed was causally related to treatment of his accepted medical condition. Also, by letter dated February 5, 2004, the Office acknowledged receipt of appellant's claim for wage loss and leave buy back intermittently for the period January 22 through February 15, 2002. It requested that he forward objective medical evidence from his attending physician which showed that he was disabled from performing work during the intermittent periods he claimed and which contained a rationalized medical opinion supporting the causal relation of his disability with his November 3, 2001 employment injury.

Appellant submitted a Form CA-7 claim for compensation due to leave without pay during the period January 23 to February 15, 2002. For this period the Office paid wage-loss compensation for 64 hours of leave without pay.

A time analysis sheet was submitted which noted that on February 1, 2002 appellant used eight hours of annual leave and that he canceled physical therapy due to pain in his hip. Appellant indicated that on February 2, 2002 he took four hours of leave without pay and four hours of annual leave due to lower back pain. On February 9, 2002 appellant took eight hours of annual leave due to back pain, and on February 12, 2002 he used eight hours of sick leave due to pain in his lower back. On February 15, 2002 appellant took four hours of leave without pay and four hours of annual leave.

On February 12, 2002 the Office explained that appellant was required to provide evidence demonstrating that he was disabled from work during the claimed period due to his accepted medical condition. It requested that he provide rationalized medical evidence from his physician addressing the periods of disability.

Appellant submitted a February 12, 2002 report from Dr. G. Hudson Drakes, an attending physician Board-certified in physical medicine and rehabilitation. He noted February 12, 2002 as the date of service and addressed appellant's injury-related symptomatology. Dr. Drakes noted that the subsequently submitted medical evidence supported that appellant had L5-S1 radiculopathy that was causally related to his employment. He opined that enough clinical evidence had been submitted to draw a clear relationship between appellant's complaints and the accepted workplace injury. Dr. Drakes noted that appellant described a burning sensation in his lower back, radiating to his buttock and opined that the pain symptomatology radiating into the buttocks was strongly suggestive of L5-S1 radiculopathy. Upon examination on November 12, 2001, appellant exhibited tenderness in his lumbosacral facet joints and moderate spasm in the lumbosacral paraspinal muscles. Subsequent electrodiagnostic testing revealed chronic right L5 radiculopathy and some chronic S1 radiculopathy on the right which a November 14, 2001 magnetic resonance imaging (MRI) scan identified as a small residual left lateral disc protrusion which narrowed the left neural foramen. The specific amount of time appellant was treated and the question as to whether or not he remained disabled for the entire day was not addressed.

On March 18, 2004 the Office denied wage-loss compensation on February 1, 2002 for eight hours of annual leave, February 2, 2002 for four hours of annual leave, February 9, 2002 for eight hours of sick leave, February 12, 2002 for eight hours of sick leave and February 15, 2002 for four hours of annual leave. The Office noted that it had paid wage-loss compensation for four hours on February 15, 2002.

LEGAL PRECEDENT

As used in the Federal Employees' Compensation Act,[2] the term "disability" means incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.[3] Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.[4] An employee who has a physical impairment causally related to his federal employment, but who nonetheless has the capacity to earn the wages he was receiving at the time of injury, has no disability as that term is used in the Act and is not entitled to compensation for loss of wage-earning capacity.[5] When, however, 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 his employment, he is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.[6] Compensation for loss of wage-earning capacity is based upon loss of the capacity to earn, not upon actual wages lost.[7]

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.[8] Generally, findings on examination are needed to justify 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 a repetition of the employee's complaints that he or she hurt too much to work, without objective signs of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.[9] The Board will not require the Office to pay compensation for disability in the

[2] 5 U.S.C. §§ 8101-8193.

[3] *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).

[4] *See Fred Foster*, 1 ECAB 21 at 24-25 (1947) (finding that the Act provides for the payment of compensation in disability cases upon the basis of the impairment in the employee's capacity to earn wages, and not upon physical impairment as such).

[5] *See Gary L. Loser*, 38 ECAB 673 (1987) (although the evidence indicated that appellant had sustained a permanent impairment of his legs because of work-related thrombophlebitis, it did not demonstrate that his condition prevented him from returning to his work as a chemist or caused any incapacity to earn the wages he was receiving at the time of injury).

[6] *Bobby W. Hornbuckle*, 38 ECAB 626 (1987).

[7] *George W. Coleman*, 38 ECAB 782 (1987).

[8] *Fereidoon Kharabi*, 52 ECAB 291 (2001).

[9] *Id.*

absence of any medical evidence directly addressing the particular period of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.[10]

A claimant has the burden of establishing by the weight of the substantial, reliable and probative evidence that he or she is disabled for the period claimed, and that the disability for which compensation is claimed is causally related to the accepted injury.[11] This burden of proof includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.[12] Causal relationship is a medical issue and can be established only by medical evidence.[13]

ANALYSIS

Appellant has not submitted sufficient medical evidence which addresses his total or partial disability for work and the cause of the disability on the dates and at the times claimed: February 1, 2002 for eight hours, February 2, 2002 for four hours, February 9, 2002 for eight hours, February 12, 2002 for eight hours and February 15, 2002 for four hours.

The only medical evidence submitted which coincides with one of these dates is the February 12, 2002 medical report from Dr. Drakes, who noted the date of service as February 12, 2002, provided the physical findings on examination conducted on November 12, 2001, and related appellant's complaints to his accepted injury. The Board notes, however, that Dr. Drakes did not specifically address the dates appellant has claimed disability for work or the nature of any medical disability or services provided on the dates claimed. Therefore, this report is insufficient to establish that appellant was disabled on the dates claimed due to residuals of his accepted lumbar radiculopathy.

Appellant has not met his burden of proof to establish his entitlement to wage-loss compensation for the dates and periods claimed.

CONCLUSION

Appellant has not met his burden of proof to establish that he was totally disabled for work for the periods February 1, 2002 for eight hours, February 2, 2002 for four hours, February 9, 2002 for eight hours, February 12, 2002 for eight hours or February 15, 2002 for

[10] *Id.*

[11] *See Dennis J. Lasanen*, 43 ECAB 549 (1992); *Dominic M. DeScala*, 37 ECAB 369 (1986); *Bobby Melton*, 33 ECAB 1305 (1982).

[12] *Stephen T. Perkins*, 40 ECAB 1193 (1989); *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

[13] *Mary J. Briggs*, 37 ECAB 578 (1986); *Ausberto Guzman*, 25 ECAB 362 (1974).

four hours. He did not submit probative medical evidence identifying total disability on these dates and the time claimed.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 18, 2004 is hereby affirmed.

Issued: August 26, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member