

work area and hurt her back, which caused a blood clot. She stopped work on August 13, 2003 and returned to work on October 3, 2003.

Appellant submitted a Form CA-16 authorization for treatment dated September 30, 2003 of Dr. Seymour Beach Conger, her treating Board-certified internist, which revealed that she suffered from left hip and low back strain, that she was hospitalized from August 15 through 18, 2003, that she was disabled on September 29, 2003 and that she could return to light-duty work from September 30 through October 14, 2003 with certain physical limitations. She also submitted Dr. Conger's October 2, 2003 disability certificate indicating that she was seen on that date and that she could not return to work until October 3, 2003. Dr. Conger's prescription of the same date indicated that appellant may be excused for physical therapy two days a week through November 15, 2003. An October 3, 2003 letter from appellant's physical therapist, Molly A. Drew, explained the plan for the treatment of appellant's back, which included physical therapy twice a week for approximately one hour each visit. Dr. Conger's September 23, 2003 work capacity evaluation indicated that appellant could work eight hours a day with certain physical restrictions.

By letter dated October 30, 2003, the Office advised appellant that the evidence submitted was insufficient to establish her claim. The Office further advised appellant about the type of factual and medical evidence she needed to submit within 30 days to establish her claim.

In a December 4, 2003 letter, the Office accepted appellant's claim for a lumbar strain.

On October 17 and 30 and November 13, 2003 appellant filed claims for compensation (Form CA-7) for intermittent periods of disability from October 6 through November 15, 2003. She submitted leave records in support of her claims.

Regarding appellant's claim for compensation for the period October 6 through November 15, 2003, the Office, in a December 24, 2003 letter, advised appellant:

"We cannot authorize compensation at this time, as there is no medical evidence in your file to support work-related disability or treatment for the dates claimed. The medical evidence in your file establishes that you were hospitalized from August 15 to August 13, 2003, and that you were disabled on October 2, 2003."¹

The Office requested that appellant provide medical evidence in support of her claim including evidence from her physical therapist, if she were claiming compensation for intermittent dates for such treatment, within 30 days or a decision would be issued based on the evidence in her case file.

The Office received duplicate copies of correspondence from an Office referral nurse regarding appellant's work capability, appellant's leave records and CA-7 forms and Dr. Conger's September 30, 2003 Form CA-16. The Office also received a September 29, 2003 letter from Patsy Belton, appellant's manager, to Dr. Conger requesting that he complete a Form

¹ The Board notes that it appears that the Office inadvertently stated that appellant was hospitalized from August 15 through 13, 2003 rather than from August 15 through 18, 2003 as previously noted.

CA-16, a December 22, 2003 letter from appellant advising that she had obtained a new treating physician² and a Form CA-7 claiming compensation for the period September 30 through October 3, 2003.

By letter dated January 7, 2004, the Office advised appellant that it had received her Form CA-7 claiming compensation for the period September 30 through October 3, 2003. The Office further advised appellant that there was no evidence of record to support a work-related disability for the claimed period and directed her attention to its December 24, 2003 letter. The Office requested that appellant give the enclosed attending physician's report (Form CA-20) to her treating physician for completion and clarification of the period of her disability. The Office informed appellant to submit medical evidence in support of all claimed periods of disability within 30 days or a decision would be issued based on the evidence in her case file. Appellant did not respond within 30 days.

By decision dated February 13, 2004, the Office denied appellant's claim for compensation for the period September 30 through November 15, 2003. The Office found that appellant failed to submit rationalized medical evidence to substantiate that she was totally disabled for work during the claimed period due to her August 13, 2003 employment injury.³

LEGAL PRECEDENT

As used in the Federal Employees' Compensation Act,⁴ 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 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 as that term is used in the Act and

² The Office authorized appellant's change of physician by letter dated January 13, 2004.

³ Subsequent to the Office's February 13, 2004 decision, appellant submitted medical evidence in support of her claims. The Office advised appellant, by letter dated February 19, 2004, that, since the evidence she submitted was received after its February 13, 2004 decision, she should exercise her appeal rights, which accompanied the decision, if she disagreed with the decision. The Board cannot consider evidence that was not before the Office at the time of the final decision. See *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952); 20 C.F.R. § 501.2(c). The Board notes that appellant can submit the new evidence to the Office and request reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *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(f).

⁶ 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).

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 his or her employment, he or she is entitled to compensation for any loss of wages.⁸

To meet this burden appellant 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). 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

ANALYSIS

In this case, the Office accepted that appellant sustained a lumbar strain on August 13, 2003. Appellant, however, has failed to establish that her accepted condition resulted in disability for work and medical treatment during the specific claimed period, September 30 through November 15, 2003. Dr. Conger's Form CA-16, which revealed that appellant suffered from left hip and low back conditions, that she was hospitalized from August 15 through 18, 2003, that she was disabled on September 29, 2003 and that she could return to light-duty work from September 30 through October 14, 2003 with certain physical limitations does not address whether her disability during the claimed period was due to her August 13, 2003 employment injury.

Dr. Conger's disability certificate revealed that appellant was disabled on October 2, 2003. His prescription note indicated that appellant may be excused for physical therapy two days a week from October 2 through November 15, 2003 and the treatment plan from Ms. Drew, the physical therapist whom Dr. Conger referred appellant, provided that appellant would undergo physical therapy twice a week for approximately one hour during each visit. While addressing a portion of the requested disability periods, Dr. Conger did not address whether appellant's disability and physical therapy were causally related to her August 13, 2003 employment injury. Dr. Conger's work capacity evaluation provided that appellant could work eight hours a day with certain physical limitations but did not discuss whether appellant sustained any employment-related disability due to her August 13, 2003 employment injury. Further, although the Office advised appellant, in its December 24, 2003 letter, that "[t]he medical evidence in your file establishes that you were hospitalized from August 15 to August 18, 2003, and that you were disabled on October 2, 2003," the Office did not accept that

⁷ 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).

⁸ *Bobby W. Hornbuckle*, 38 ECAB 626 (1987).

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

appellant's hospitalization and disability were employment related and, as discussed above, the Board finds that the medical evidence does not establish that appellant's disability resulted from the effects of the August 13, 2003 injury. As such, appellant has not met her burden of proof.

CONCLUSION

The Board finds that appellant has failed to establish that she is entitled to wage-loss compensation for total disability during the period September 30 through November 15, 2003 as she has not provided a sufficiently rationalized medical opinion to support that her disability for work during the period in question was causally related to her August 13, 2003 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the February 13, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 22, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member