

when she was ready to sit back, the lower back of the chair went back causing her to fall out of the chair.

After further development of the case record, the Office accepted appellant's claim for a left shoulder contusion in a letter dated August 8, 2003.

In an October 3, 2003 letter, appellant provided the Office with a description of the mistreatment she allegedly received from employing establishment managers. She inquired about filing a claim for compensation for the period beginning September 13, 2003, the date her pay stopped after her removal from the employing establishment became effective on September 12, 2003. She submitted a time analysis form (Form CA-7a), emergency room treatment notes dated June 12, 2003, time and attendance records, the employing establishment's August 8, 2003 letter advising her that she was being removed effective September 12, 2003 due to improper conduct and literature regarding back pay. She also submitted a September 17, 2003 magnetic resonance imaging (MRI) scan report of Dr. Michael Morin, a Board-certified radiologist, finding no evidence of a rotator cuff tear, only traces of rotator cuff tendinopathy, a small three millimeter cyst in the left upper humeral head, some irregularity about the anterior and posterior glenoid labrum regions which could reflect a component of degenerative character, no visible left shoulder joint effusion and mild spurring about the acromion process of the left clavicle. A July 14, 2003 report from Dr. Sofjan Lamid, appellant's attending Board-certified physiatrist, revealed a history of an injury at work on June 12, 2003 and a diagnosis of a contusion of the left shoulder. He opined that appellant's shoulder condition was caused by the June 12, 2003 employment injury. In a duty status report dated September 29, 2003, Dr. Lamid found that appellant was unable to perform her regular duties, but indicated that she could perform limited-duty work. Appellant submitted a July 1, 2003 report and treatment notes covering the period July 1 to 16, 2003, from her physical therapist, Christopher G. Piacun, providing his findings on physical examination of her left shoulder and neck.

By letter dated October 10, 2003, the Office acknowledged receipt of the medical evidence and advised appellant that it did not receive the Form CA-7 that she submitted along with her October 3, 2003 letter. The Office explained that the Form CA-7a she submitted was not certified by the employing establishment and that she needed to submit either a Form CA-7 or Form CA-7a and supportive medical evidence through her former injury compensation office for certification and then the employing establishment would forward the claim forms to the Office. The Office noted that, upon receipt of the proper documentation, her request would be processed.

On October 20, 2003 appellant filed a Form CA-7 for wage-loss compensation and leave without pay beginning September 13, 2003. By letter dated November 7, 2003, the Office acknowledged receipt of appellant's claim and advised her to submit additional medical evidence establishing her disability for work after that date. The Office received duplicate copies of Dr. Morin's September 17, 2003 MRI scan report.

By decision dated December 22, 2003, the Office denied appellant's claim on the grounds that the medical evidence of record failed to establish that she was totally disabled for work beginning September 13, 2003.

LEGAL PRECEDENT

As used in the Federal Employees' Compensation Act,¹ the term "disability" means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.² Disability is thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.³ 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 is not entitled to compensation for loss of wage-earning capacity.⁴ 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.

ANALYSIS

The Office accepted that appellant sustained a contusion of the left shoulder on June 12, 2003. Although the Office accepted that appellant sustained an employment-related injury, she has the burden of establishing that her accepted condition resulted in disability for work on or after September 13, 2003.⁵ 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.⁶

Appellant has not provided sufficient rationalized medical evidence to establish her disability for work beginning September 13, 2003. The June 12, 2003 emergency room treatment notes predate the claimed period of disability. Dr. Morin's September 17, 2003 MRI

¹ 5 U.S.C. §§ 8101-8193.

² *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).

³ 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).

⁴ 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).

⁵ See *Dorothy J. Bell*, 47 ECAB 624 (1996).

⁶ *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

scan report merely listed findings on diagnostic testing. There was no evidence of a rotator cuff tear, only traces of rotator cuff tendinopathy, a small three millimeter cyst in the left upper humeral head, some irregularity about the anterior and posterior glenoid labrum regions of a degenerative nature, no visible left shoulder joint effusion and mild spurring about the acromion process of the left clavicle. The report failed to address whether appellant was disabled as of September 13, 2003 due to her accepted contusion of the left shoulder. The Board therefore finds that this evidence is insufficient to establish that appellant was disabled for work beginning September 13, 2003 due to the June 12, 2003 employment injury.

Dr. Lamid's July 14, 2003 report finding that appellant's contusion of the left shoulder was caused by the June 12, 2003 employment injury failed to address whether she was disabled beginning September 13, 2003. His September 29, 2003 duty status and attending physician's reports found that appellant was able to perform limited-duty work. Thus, the Board finds that Dr. Lamid's reports are insufficient to establish appellant's claim.

The July 1, 2003 report and treatment notes covering the period July 1 to 16, 2003 from Mr. Piacun, a physical therapist, addressed findings on physical examination of her left shoulder and neck. The reports of Mr. Piacun are insufficient to establish her claim inasmuch as a physical therapist is not a "physician" as defined under the Act and is not competent to render a medical opinion.⁷

CONCLUSION

The Board finds that appellant has failed to establish that she is entitled to wage-loss compensation for disability commencing September 13, 2003, due to her June 12, 2003 employment injury.

⁷ 5 U.S.C. § 8101(2); *see also Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jane A. White*, 34 ECAB 515 (1983).

ORDER

IT IS HEREBY ORDERED THAT the December 22, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 14, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member