

FACTUAL HISTORY

On August 14, 1995 appellant, then a 41-year-old clerk, filed a claim for compensation for lower cervical degenerative disease that she attributed to repetitive movements in her job over several years. Appellant stopped work on July 13, 1995. The Office accepted an aggravation of degenerative cervical disc disease, and paid appropriate compensation for temporary total disability.

On September 20, 1997 appellant returned to a part-time limited-duty position offered by the employing establishment, but she worked only two and one-half hours. In an October 3, 1997 report, Dr. Eric A. Brewner, a Board-certified family practitioner, diagnosed chronic neck pain, degenerative disc disease and radicular symptoms. Dr. Brewner stated that appellant's condition had worsened despite treatment, and concluded, "Her continued symptoms, which recurred following a brief return to work, indicate that her condition prohibits her return to the same type of work at this time." The Office resumed payment of compensation beginning October 2, 1997, based on Dr. Brewner's report, but denied compensation for the period September 20 to October 1, 1997.

In a November 18, 1999 report, Dr. Jeffrey M. Hrutkay, a Board-certified orthopedic surgeon to whom the Office referred appellant for a second opinion, stated that her objective findings included cervical disc degeneration seen on a magnetic resonance imaging (MRI) scan and decreased cervical range of motion. Dr. Hrutkay stated that appellant's degenerative disc disease did not adequately account for her diffuse symptoms, and that her pain was primarily myofascial in nature.

In a June 12, 2000 report, Dr. Brewner stated that appellant had chronic neck pain aggravated by her employment, that she had reached maximum medical improvement, that her symptoms were subjective and nonquantifiable, and that her objective finding of degenerative disc disease was severe enough to cause the level of pain and limitation of function that she claimed. Dr. Brewner noted that he had treated appellant for two and one-half years and never seen her in a pain-free state, that she had made every effort to treat and rehabilitate her chronic totally disabling condition,² and that she could not work in any capacity.

On October 25, 2000 the employing establishment offered appellant a position as a modified clerk, with duties of using a television screen to monitor the employee entrance gate and parking facilities, and physical requirements of lifting no more than one pound, simple grasping and fine manipulation. On October 20, 2000 Dr. Brewner approved of these duties as being within appellant's work limitations.

Appellant accepted the offer on October 31, 2000, returned to work on a part-time basis on November 19, 2000. She progressed to full-time work in this position on December 19, 2000. By decision dated March 2, 2001, the Office found that her actual earnings as a full-time modified clerk represented her wage-earning capacity, and that appellant was not entitled to further compensation for disability. Appellant claimed subsequent periods of disability, and the Office paid compensation for March 11 to 13, 2001, November 18 to December 19, 2001, and

² The unsuccessful treatment included an epidural steroid injection, acupuncture, and chiropractic manipulation.

November 2 to 23, 2003. It denied payment of compensation for March 12 to 19 and August 19, 2002, September 11 to 28, 2003, and January 16 to February 14, 2004.

On May 28, 2004 appellant filed a claim for compensation for temporary total disability for the period March 5 to May 28, 2004. In a February 20, 2004 report, Dr. Brewner stated that appellant was in no acute distress and continued to complain of pain in her neck with movement or palpation. In a March 19, 2004 report, Dr. Brewner stated that appellant was “acutely worse over the last two weeks with increasing neck pain radiating down into both shoulders and arms. She has numbness and tingling into the fingers.” Dr. Brewner diagnosed chronic cervical strain secondary to degenerative disc disease with acute exacerbation, and stated that she was disabled beginning March 7, 2004. In a May 18, 2004 report, Dr. Brewner stated that appellant was unable to work because of pain and muscle spasm, and that her severe headaches and neck pain were aggravated by repetitive motions, lifting and certain positions required in the performance of her duties.

In a May 28, 2004 report, Dr. Brewner stated that he treated appellant on February 26, March 19 and 26, April 23, and May 6 and 27, 2004 for cervical degenerative disc disease related to her employment, and for bipolar disorder, anxiety and chronic insomnia. Dr. Brewner noted that she had been out of work for much of the last eight months, including from March 5 to the present, due to these conditions, that her prognosis was chronic pain for the rest of her life. Her objective findings included multilevel degenerative disc disease demonstrated by MRI scan, with physical examination showing tenderness and limitation of motion of the cervical spine. In another May 28, 2004 report, Dr. Brewner indicated that appellant was totally disabled from March 5 to May 28, 2004.

By decision dated July 30, 2004, the Office found that appellant was not entitled to compensation from March 5 to May 28, 2004 for the reason that “the medical [evidence] submitted is after the fact and we have not received any medical [evidence] dated at the time of the first absence which medically justifies your leave for the dates mentioned above. Please note periods of self directed absences are not compensable under the Federal Employees’ Compensation Act.”

LEGAL PRECEDENT

For each period of disability claimed, appellant has the burden of proving that she was disabled for work as a result of the employment-related condition.³ Whether a particular injury causes an employee to become disabled for work and the duration of that disability, are medical issues that must be proved by a preponderance of the reliable, probative and substantial evidence.⁴ Generally, findings on examination are needed to justify a physician’s opinion that an employee is disabled for work.⁵ The Board has held that when a physician’s statements regarding an employee’s ability to work consist only of a repetition of the employee’s complaints

³ *David H. Goss*, 32 ECAB 24 (1980).

⁴ *Edward H. Horton*, 41 ECAB 301 (1989).

⁵ *See Dean E. Pierce*, 40 ECAB 1249 (1989); *Paul D. Weiss*, 36 ECAB 720 (1985).

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.⁶ While there must be a proven basis for the pain, pain due to an employment-related condition can be the basis for the payment of compensation.⁷ Worsening of symptoms, including pain, can be an appropriate basis for payment of compensation for disability.⁸ The Board, however, will not require the Office 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.⁹

ANALYSIS

Appellant began working a full-time modified position, consisting of using a television to monitor the employee entrance gate and parking facilities on December 19, 2000, and the Office determined that her actual earnings represented her wage-earning capacity. After this determination, appellant missed intermittent periods of work, some of which the Office found compensable; for others, it denied compensation. The period involved on the present appeal -- March 5 to May 28, 2004 -- is the longest period appellant has missed from work since her return to full-time modified work on December 19, 2000.

Appellant's attending physician, Dr. Brewner, a Board-certified family practitioner, concluded that appellant was totally disabled from March 5 to May 28, 2004, the specific period claimed. During this period Dr. Brewner examined appellant on five different dates. His opinion that she was disabled does not consist of a repetition of appellant's complaint that she hurt too much to work. Rather, he cited to the objective basis for her pain, namely cervical degenerative disc disease, the condition the Office found was aggravated by her employment. Dr. Brewner stated in a June 12, 2000 report that this condition was severe enough to cause the level of pain and limitation of function that appellant claimed.

When compared to the findings in his February 20, 2004 report, when appellant was reported to be in no acute distress and was working, Dr. Brewner's March 19, 2004 report shows that appellant's cervical spine condition had worsened. The March 19, 2004 report reflected pain radiating down into both shoulders and arms, and numbness and tingling into the fingers, findings not seen on February 20, 2004. Dr. Brewner also stated that on March 19, 2004 appellant became acutely worse over the prior two weeks with increasing neck pain.

In the present case, Dr. Brewner determined that the condition accepted by the Office as aggravated by her employment, cervical degenerative disc disease, was sufficiently severe to cause pain and disability. He found, based on his examinations that her degenerative cervical disease caused disability during the period at issue, March 5 to May 28, 2004. There is no

⁶ *John L. Clark*, 32 ECAB 1618 (1981).

⁷ *Barry C. Peterson*, 52 ECAB 120 (2000).

⁸ *See Thomas N. Martinez*, 41 ECAB 1006 (1990).

⁹ *Fereidoon Kharabi*, 52 ECAB 291 (2001).

contrary medical evidence addressing this period. The Board finds Dr. Brewner's reports sufficient to establish that appellant was totally disabled from March 5 to May 28, 2004.

CONCLUSION

The medical evidence establishes that appellant was totally disabled from March 5 to May 28, 2004.

ORDER

IT IS HEREBY ORDERED THAT the July 30, 2004 decision of the Office of Workers' Compensation Programs is reversed and the case remanded to the Office for payment of appropriate compensation from March 5 to May 28, 2004.

Issued: April 25, 2005
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member