

her claim for lumbosacral strain, thoracic strain and lumbar strain. Appellant was terminated for cause on April 9, 2004.

In March 2004 appellant filed a Form CA-7, claim for compensation, which the employing establishment completed on April 12, 2004.² The form advised that appellant was on continuous leave without pay from March 13 to April 9, 2004.

In an April 21, 2004 letter, the Office advised appellant that, in order for her compensation claim for the period March 13 to April 9, 2004 to be processed, she needed to submit medical evidence which established disability for work during the entire period claimed. The Office noted that the medical evidence which appellant had submitted did not state that she was ever totally disabled for work, but advised that she was released to go back to work on March 31, 2004 and only partially disabled prior to March 31, 2004. Appellant was provided 30 days in which to submit the requested information and advised that failure to provide such information might result in the denial of compensation claimed for this period.

In an April 26, 2004 letter, the Office advised appellant that it was deferring her claim until it received requested information from the employing establishment. The Office further noted that it still required the medical information it requested in its April 21, 2004 letter. Appellant was provided 30 days in which to submit the requested information and advised that failure to provide such information might result in the denial of compensation claimed for this period.

The Office received numerous copies of physical therapy reports for the period March 17 to May 25, 2004 along with a copy of a February 20, 2004 magnetic resonance imaging (MRI) scan of the lumbar spine. In an undated medical prescription note, Dr. Valerie Smart, an internist, diagnosed appellant with sciatica, severe muscle spasm and bulging discs lumbar spine. The prescription note also contained the notation "please assist in muscle strengthening and pain control."

By decision dated August 10, 2004, the Office denied appellant's claim for compensation for wage loss from March 13 to April 9, 2004. The Office noted that this decision did not affect appellant's medical benefits or bar future entitlement to compensation for wage loss claimed for a different period of time.

LEGAL PRECEDENT

A claimant seeking benefits under the Federal Employees' Compensation Act³ has the burden of proof to establish the essential elements of her claim by the weight of the evidence,⁴ including that she sustained an injury in the performance of duty and that any specific condition

² Appellant did not indicate a specific period of compensation claimed nor did she sign the form with a specific date.

³ 5 U.S.C. §§ 8101-8193.

⁴ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

or disability for work for which she claims compensation is causally related to that employment injury.⁵

As used in the Act, the term “disability” means incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury.⁶ When 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 her employment, she is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.⁷

The cause and duration of disability are medical issues that must be proved by a preponderance of the reliable, probative and substantial evidence.⁸ Generally, findings on examination are needed to justify a physician’s opinion that an employee is disabled for work.⁹ 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 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.¹⁰ 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.¹¹ 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.¹²

ANALYSIS

In this case, the Office accepted that appellant developed the conditions of lumbosacral strain, thoracic strain and lumbar strain as a result of her federal employment. Appellant then filed a claim for compensation alleging that her wage loss from March 13 to April 9, 2004 was causally related to this employment injury. She therefore bears the burden of proof to establish such a causal relationship.

In letters dated April 21 and 26, 2004, the Office advised appellant that the medical documentation submitted failed to establish that she was totally disabled for work during the claimed period and requested that she provide medical evidence which established her disability for work during the entire period claimed. Appellant was advised in each letter that failure to

⁵ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ 20 C.F.R. § 10.5(f) (1999); *Richard T. DeVito*, 39 ECAB 668 (1988).

⁷ *Bobby W. Hornbuckle*, 38 ECAB 626 (1987).

⁸ *Edward H. Horton*, 41 ECAB 301 (1989).

⁹ *See Dean E. Pierce*, 40 ECAB 1249 (1989).

¹⁰ *John L. Clark*, 32 ECAB 1618 (1981).

¹¹ *Barry C. Peterson*, 52 ECAB 120 (2000).

¹² *Fereidoon Kharabi*, 52 ECAB 291 (2001).

provide such supporting medical evidence may result in the denial of her claim. While the record also contains numerous physical therapy notes, these are not considered medical evidence as physical therapists are not defined as physicians under the Act.¹³ Dr. Smart's prescription note and the MRI scan report do not include a medical opinion which supports that appellant was totally disabled during the period March 13 to April 9, 2004. Evidence that does not offer an opinion regarding the cause of an appellant's condition is of limited probative value.¹⁴ As appellant has submitted no other evidence supporting disability during the period claimed, she has not met her burden of proof to establish entitlement to compensation.

CONCLUSION

Appellant has not met her burden of proof to establish entitlement to compensation for wage loss from March 13 to April 9, 2004.

ORDER

IT IS HEREBY ORDERED THAT the August 10, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 22, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

¹³ 5 U.S.C. § 8101(2); *Vickey C. Randall*, 51 ECAB 357 (2000).

¹⁴ *Willie M. Miller*, 53 ECAB 697 (2002).