

**United States Department of Labor
Employees' Compensation Appeals Board**

J.J., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Sneedville, TN, Employer**

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**Docket No. 06-1716
Issued: December 13, 2006**

Appearances:
Floyd W. Rhea, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 20, 2006 appellant filed a timely appeal from merit decisions of the Office of Workers' Compensation Programs dated December 19, 2005 and May 17, 2006, which denied his claim that he was totally disabled for any period after December 12, 2003. 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 met his burden of proof to establish that he was totally disabled for any period after December 12, 2003 causally related to his accepted employment injury.

FACTUAL HISTORY

This case has previously been before the Board. In a November 16, 2004 decision, the Board set aside an April 28, 2004 Office decision and remanded the case for consideration of relevant medical evidence including a December 24, 2003 report from Dr. Gregory Corradino, Board-certified in neurosurgery.¹ The law and the facts of the previous Board decision are incorporated herein by reference.²

On February 8, 2005 the Office accepted that appellant sustained an employment-related L5 herniated nucleus pulposus with L5 nerve root compression and radiculopathy. On February 14, 2005 appellant filed a Form CA-7 claim for compensation beginning August 6, 2003 and a schedule award claim.³ By letter dated March 9, 2005, he advised the Office that he retired because no light duty was available. In a report dated December 12, 2003, Dr. William M. Platt, a Board-certified physiatrist, provided restrictions to appellant's physical activity of seven pounds lifting with no prolonged sitting or repeated bending, kneeling, stooping, squatting or crawling. Dr. Platt advised that appellant's condition was temporary and should resolve in six to eight weeks. Dr. John A. Short, an attending family practitioner, submitted a number of reports and treatment notes. By letter dated January 20, 2004, Dr. Short reported the history of injury and discussed appellant's complaints and treatment. He noted that appellant had been referred to Dr. Corradino and on October 7, 2003, was unable to work. Dr. Short advised that any decision regarding appellant's work status would be made by Dr. Platt. Appellant would again be seen in the office within 14 days. On February 2, 2004 Dr. Short reported appellant's complaint of constant leg pain and advised that he was unable to perform mail carrier duties. He found that appellant could only lift 20 pounds occasionally and that any type activity was limited by pain. On March 1, 2004 the physician advised that appellant was seen for severe, radiating right shoulder, arm and wrist pain. He diagnosed arthrosis of the right wrist. In a May 19, 2004 note, Dr. Short stated that appellant was seen in follow-up for his hypertension and sleep apnea. By reports dated September 17 and November 18, 2004, he diagnosed right wrist pain, tendinitis, low back pain, sleep disorder and hypertension.

¹ In that report Dr. Corradino described the August 6, 2003 employment incident when appellant, then a 58-year-old rural carrier, felt a sharp pain in his lower back and both legs while reaching for a parcel in the back of his vehicle. He advised that appellant's symptoms had progressively worsened and that lumbar myelogram and postmyelographic computerized tomography (CT) scan showed evidence of appellant's prior surgery with a small disc protrusion at the L3-4 level causing some L4 nerve root compression. Dr. Corradino concluded that given his history and that he returned to employment without difficulty after his prior surgery "his current symptoms are arising from the injury noted above."

² Docket No. 04-1617.

³ On February 14, 2005 appellant submitted a schedule award claim and on October 17, 2005 appellant was granted a schedule award for a 23 percent permanent impairment of his left leg and a 15 percent permanent impairment of his right leg. The award was for 109.43 weeks of compensation, to run from July 15, 2005 to August 20, 2007. On November 23, 2005 he filed an appeal of this decision with the Board and by decision dated November 1, 2006, Docket No. 06-359, the Board affirmed the Office's October 17, 2005 decision.

In an August 10, 2004 treatment note, Dr. Corradino noted that appellant underwent cervical discectomy and fusion on July 20, 2004. He diagnosed spondylosis at C5-6 and C6-7 with a satisfactory postoperative course. In a September 8, 2004 note, Dr. Corradino reported appellant's complaints of increased lower extremity pain. He diagnosed low back pain and bilateral lower extremity pain. In a September 21, 2004 report, he reviewed a September 14, 2004 lumbar myelogram and postmyelogram CT scan, which demonstrated degenerative changes at L4-5 and L5-S1 with minimal nerve root compression.⁴

By letter dated March 17, 2005, the employing establishment informed the Office that appellant's last day in pay status was January 20, 2004 and that he had retired on disability effective May 3, 2004. The employing establishment advised that limited duty was available. It enclosed appellant's disability retirement application in which he stated that he had not requested an accommodation by the employing establishment and that he had been advised that no long-term limited duty was available. Glenice R. Godsey of the employing establishment certified that the employing establishment did not accommodate appellant because his physician would not allow accommodations. It provided restrictions of 10 pounds lifting, less than two hours standing with alternate sitting and further physical limitations. The form also noted appellant's prior cervical and lumbar surgeries, cervical spondylosis, lumbar degenerative disease with disc bulge and minimal compression. The employing establishment also submitted leave analysis for the period August 6, 2003 through January 30, 2004, which indicated that appellant missed intermittent periods from August 6 through 23, 2003 when he stopped work and began continuation of pay. He returned to limited duty on September 6, 2003, missed intermittent periods and was again off work from October 1 through November 7, 2003. Appellant returned to limited duty on November 8, 2003 and last worked on December 11, 2003.

On May 17, 2005 the Office informed appellant that he needed to submit medical evidence to establish entitlement to wage-loss compensation for the period August 6, 2003 through May 2, 2004.

In a decision dated May 17, 2005, the Office found that appellant was not entitled to wage-loss compensation after May 3, 2004 because his retirement was not due to his employment injury. On May 31, 2005 appellant requested a hearing. In a June 1, 2005 report, Dr. Short advised that appellant could not work between August 6, 2003 and May 2, 2004 because of severe pain and inability to use his legs due to a herniated disc at L5. A June 10, 2005 magnetic resonance imaging scan of the lumbar spine demonstrated previous left laminotomies at L3-4 and L4-5 with a small recurrent disc herniation at L4-5 and degenerative disc narrowing.

At the hearing held on October 18, 2005, appellant described his light-duty job as working inside and not lifting. He testified that he did not want to retire but that his light duty was withdrawn in December 2003 and he subsequently had neck surgery. Appellant stated that a claim for back surgery in 2001 was denied and that carpal tunnel syndrome was accepted in 2002. In a January 27, 2005 form report, Dr. Short noted appellant's complaint of constant lower extremity pain and advised that examination of the musculoskeletal system was abnormal.

⁴ Appellant also submitted additional evidence regarding his cervical condition and surgery, duplicates of evidence previously of record and form reports from Dr. Short's office.

Dr. Short diagnosed herniated disc at L5 with nerve root compression and radiculopathy. In an October 3, 2005 report, he stated that appellant could not work beginning May 3, 2004 and thereafter due to the chronic, severe pain from his lumbar condition, noting that his condition worsened between August 6, 2003 and May 3, 2004.

By decision dated December 19, 2005, an Office hearing representative found the medical evidence sufficient to establish that appellant was unable to work from August 29 until September 6, 2003 but did not support that he was unable to work from September 26 to November 7, 2003 or that his disability beginning December 12, 2003 was caused by the employment injury.⁵

On March 21, 2006 appellant, through counsel, requested reconsideration. He submitted additional medical evidence including duplicates of evidence previously of record and reports regarding epidural injections and laboratory and x-ray testing. In a December 12, 2003 treatment note, Dr. Platt noted the history of injury, appellant's complaints of worsening pain and that appellant continued to work. He diagnosed syndrome of the back and bilateral leg pain with radiation to the knees and imaging consistent with possible new L3-4 disc pathology. Dr. Platt recommended epidural injections and restrictions to appellant's physical activity of no lifting, bending or twisting. On January 19, 2004 he reported that he initially saw appellant on October 31, 2003 with resolving symptoms and returned him to work without restrictions on November 10, 2003 but that his pain worsened. Dr. Platt provided examination findings and advised that epidural injections were only briefly helpful and continued the physical restrictions.

On February 17, 2005 Dr. Short noted that appellant was seen for a shot to his right wrist and in treatment notes dated April 5 and 22, 2005, he advised that appellant was seen for follow-up of his lumbar spine condition. On May 6, 2005 he diagnosed acute bronchitis and in a June 23, 2005 treatment note, recommended surgical evaluation for appellant's continued low back and lower extremity complaints. By letter dated April 3, 2006, Dr. Short advised that appellant's condition was unchanged and perhaps worse.

By decision dated May 17, 2006, the Office denied modification of the December 19, 2005 decision.

LEGAL PRECEDENT

Under the Federal Employees' Compensation Act⁶ the term "disability" is defined as incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.⁷ Disability is thus not synonymous with physical impairment which may or may not result in an incapacity to earn the wages. An employee who has a physical impairment causally related to a federal employment injury but who nonetheless has the capacity to earn wages he or she was receiving at the time of injury has no disability as that term is used in the

⁵ Appellant received continuation of pay for the period August 23 through September 5, 2003.

⁶ 5 U.S.C. §§ 8101-8193.

⁷ See *Prince E. Wallace*, 52 ECAB 357 (2001).

Act⁸ and whether a particular injury causes an employee disability for employment is a medical issue which must be resolved by competent medical evidence.⁹ Whether a particular injury causes an employee to be 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 medical evidence.¹⁰

The Board 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.¹¹ Furthermore, it is well established that medical conclusions unsupported by rationale are of diminished probative value.¹²

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.¹³ Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.¹⁴ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹⁵

ANALYSIS

The Board finds that appellant has not established that his work stoppage on December 12, 2003 or disability thereafter was caused by the accepted lumbar conditions. The medical evidence most contemporaneous with appellant stopping work are the December 12, 2003 and January 19, 2004 reports of Dr. Platt. He advised that appellant's condition was temporary and should resolve in six to eight weeks. While he provided restrictions to appellant's physical activity, these restrictions of seven pounds lifting and no repetitive bending, twisting, squatting were well within the light duty appellant was performing at the time he stopped work,

⁸ *Cheryl L. Decavitch*, 50 ECAB 397 (1999); *Maxine J. Sanders*, 46 ECAB 835 (1995).

⁹ *Donald E. Ewals*, 51 ECAB 428 (2000).

¹⁰ *Tammy L. Medley*, 55 ECAB 182 (2003); see *Donald E. Ewals*, *id.*

¹¹ *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹² *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

¹³ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁴ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

¹⁵ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

as he testified at the hearing that his light-duty employment was inside and required no lifting, stating that he was allowed to do what he could do. The employing establishment stated that light duty was available for injured employees and there is no evidence that appellant's light duty was withdrawn at the time he stopped work. The Board finds that the work tolerance limitations set forth by Dr. Platt would not preclude appellant from performing his limited-duty position.¹⁶ Similarly, Dr. Corradino did not provide an opinion regarding appellant's disability from work. The reports of Drs. Platt and Corradino are, therefore, insufficient to establish that appellant was disabled after December 12, 2003.¹⁷

Appellant's attending family physician Dr. Short provided a number of reports advising that appellant could not work at all. The Board, however, finds Dr. Short's opinion insufficient to establish total disability beginning December 12, 2003. In a report dated January 20, 2004, Dr. Short advised that a decision regarding appellant's work status should be made by Dr. Platt who, as noted advised that appellant could work within restrictions. In a report of February 2, 2004, Dr. Short referenced appellant's regular duties as a rural letter carrier and not the light duty he was performing when he stopped work. Appellant underwent cervical surgery in July 2004, for a nonwork-related condition. Dr. Short opined in a June 1, 2005 report that appellant could not work between August 2003 and May 2004 because of severe pain and inability to use his legs and reiterated on April 3, 2006 that appellant's condition was unchanged. The issue of whether a claimant's disability is related to an accepted condition is a medical question which must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to employment factors and supports that conclusion with sound medical reasoning.¹⁸ Dr. Short did not provide an opinion sufficient to meet appellant's burden of proof.¹⁹

CONCLUSION

The Board finds that appellant did not establish that he was totally disabled for any period after December 12, 2003 causally related to his accepted lumbar condition.

¹⁶ See *Laurie S. Swanson*, 53 ECAB 517 (2002).

¹⁷ See *Jacqueline M. Nixon-Steward*, *supra* note 13.

¹⁸ *Sandra D. Pruitt*, 57 ECAB ____ (Docket No. 05-739, issued October 12, 2005).

¹⁹ The Board also notes that a determination made for disability retirement purposes is not determinative of the extent of physical disability or impairment for compensation purposes under the Act. *James E. Norris*, 52 ECAB 93 (2000).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 17, 2006 and December 19, 2005 be affirmed.

Issued: December 13, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board