United States Department of Labor
Employees' Compensation Appeals Board

WAYNE W. HARMON, Appellant	)	
and	)	**Docket No. 05-1975**
	)	**Issued: July 26, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Atlanta, GA, Employer	)	

Appearances:
Wayne W. Harmon, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge

JURISDICTION

On September 27, 2005 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated September 15, 2005, finding that he failed to establish an employment-related recurrence of disability. 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 has established that he sustained a recurrence of disability beginning May 14 to July 6, 2005 causally related to his July 8, 1999 employment injury.

FACTUAL HISTORY

On July 8, 1999 appellant, then a 32-year-old letter carrier, filed a claim for a traumatic injury occurring that date in the performance of duty. The Office accepted the claim for lumbosacral strain and a sprain of the sacroiliac. On June 19, 2002 Dr. David F. Fowler, a Board-certified orthopedic surgeon, performed a cluneal nerve exploration and release of the right paravertebral insertion on appellant's right spine.

By decision dated March 7, 2003, the Office reduced appellant's compensation to zero effective June 18, 2002 on the grounds that his actual earnings as a modified carrier technician fairly and reasonably represented his wage-earning capacity.[1]

In a form report dated June 23, 2005, Dr. Fowler diagnosed cluneal nerve entrapment and checked "yes" that the condition was caused or aggravated by employment. He found that appellant was totally disabled from May 14 to July 6, 2005. In an accompanying office visit note, Dr. Fowler noted that appellant should not work from May 14 to July 6, 2005.

On June 24, 2005 appellant filed a claim for compensation Form CA-7 requesting compensation for total disability from May 14 to July 6, 2005.

By letter dated July 1, 2005, the Office acknowledged appellant's claim for disability compensation and requested information regarding whether he was requesting modification of the wage-earning capacity determination or alleging a recurrence of disability.

In a report dated June 6, 2005, received by the Office on July 14, 2005, Dr. Fowler diagnosed "chronic pain secondary to his on-the-job back injury" and referred appellant for a psychological evaluation.

In a progress report dated July 5, 2005, Dr. Fowler discussed appellant's complaints of "severe burning pain down his right flank." He indicated that a physical examination revealed that he was "neurovascularly intact" and recommended a full body scan. Dr. Fowler stated: "I really can[not] find anything orthopedically to suggest he needs to be off of work. If [the scan] is negative, [I] cannot support further out of work behavior."[2]

On July 7, 2005 appellant filed a notice of recurrence of disability on May 13, 2005 due to his July 8, 1999 employment injury. He noted that following his June 2000 back surgery his condition worsened. Appellant's supervisor indicated on the claim form that he returned to work on July 21, 2005.

By letter dated July 20, 2005, the Office requested additional information from appellant, including the submission of a detailed report from his attending physician describing the objective findings upon which the physician based his disability determination.

In a form report dated July 17, 2005, received by the Office on July 28, 2005, Dr. Fowler listed findings of cluneal nerve entrapment and diagnosed status post cluneal nerve exploration. He found that appellant was totally disabled from July 6 to 20, 2005 and listed work restrictions. Dr. Fowler did not respond to the question on the form regarding the cause of the diagnosed condition.

[1] In a decision dated June 2, 2003, the Office denied appellant's claim for a schedule award. By decision dated May 11, 2004, the hearing representative remanded the case based on the submission of new medical evidence. In a decision dated June 1, 2004, the Office granted appellant a schedule award for a 12 percent permanent impairment of the right leg.

[2] A whole body bone scan obtained on July 13, 2005 was interpreted as unremarkable.

In a progress report dated July 18, 2005, Dr. Fowler diagnosed "[c]ontinued pain without significant structural abnormality." He recommended that appellant work within his current restrictions.

Dr. Fowler completed a disability certificate on July 20, 2005 in which he opined that appellant should remain off work from July 6 to 20, 2005 and listed work restrictions.

In a letter dated August 19, 2005, appellant related that he did not work from May 14 to July 20, 2005 because his employment injury "had worsened which made it difficult for me to work."

By decision dated September 15, 2005, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that he sustained a recurrence of disability from May 14 to July 6, 2005, due to his accepted employment injury.

LEGAL PRECEDENT

Where an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.[3]

Office regulations provide that a recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[4] This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn, (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force) or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.[5]

ANALYSIS

The Office accepted that appellant sustained a sprain of the sacroiliac and underwent a cluneal nerve exploration due to his July 8, 1999 employment injury. Following his injury, he resumed work in a modified carrier position effective June 18, 2002. He stopped work on May 14, 2005 and filed a notice of recurrence of disability.

[3] *Jackie D. West*, 54 ECAB 158 (2002); *Terry R. Hedman*, 38 ECAB 222 (1986).

[4] 20 C.F.R. § 10.5(x).

[5] *Id*.

Appellant has not alleged a change in the nature and extent of his light-duty job requirements. Instead, he attributed his recurrence of disability to a change in the nature and extent of his employment-related condition. Appellant must thus provide medical evidence establishing that he was disabled due to a worsening of his accepted work-related condition.[6]

In a report dated June 6, 2005, Dr. Fowler diagnosed "chronic pain secondary to his on-the-job back injury" and referred appellant for a psychological evaluation. As the physician did not address the relevant issue of whether appellant was disabled from employment beginning May 6, 2005 due to his accepted employment injury of sacroiliac strain, his opinion is insufficient to meet his burden of proof.

In a form report dated June 23, 2005, Dr. Fowler diagnosed cluneal nerve entrapment and found that appellant was totally disabled from May 14 to July 6, 2005. He checked "yes" that the condition was caused or aggravated by employment. Dr. Fowler, however, did not provide any rationale for his opinion on the cause of appellant's condition or list findings on physical examination. The Board has held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion has little probative value and is insufficient to establish a claim.[7] Further, findings on examination are generally needed to justify a physician's opinion that an employee is disabled.[8]

Dr. Fowler, in an office visit note dated June 23, 2005, noted that appellant should not work from May 14 to July 6, 2005. He did not, however, provide a diagnosis, address causation or list findings on physical examination and thus his opinion is of diminished probative value.[9]

In a progress report dated July 5, 2005, Dr. Fowler discussed appellant's complaints of "severe burning pain down his right flank." He indicated that a physical examination revealed that he was "neurovascularly intact" and recommended a full body scan. Dr. Fowler found nothing "orthopedically to suggest he needs to be off of work." As he found that appellant had no findings on physical examination supporting disability from employment, his report does not support a determination that appellant sustained a recurrence of disability.

In a form report dated July 17, 2005, Dr. Fowler diagnosed status post cluneal nerve exploration and found that appellant was totally disabled from July 6 to 20, 2005. He did not, however, respond to the question on the form regarding the cause of the diagnosed condition and thus his opinion is of little probative value.[10]

In a progress report dated July 18, 2005, Dr. Fowler diagnosed "[c]ontinued pain without significant structural abnormality" and found that he could work "with his current limitations."

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[6] *See Jackie D. West*, *supra* note 3.

[7] *Deborah L. Beatty*, 54 ECAB 3234 (2003).

[8] *Laurie S. Swanson*, 53 ECAB 517 (2002).

[9] *See Laurie S. Swanson*, *supra* note 8; *Willie M. Miller*, 53 ECAB 697 (2002).

[10] *Conard Hightower*, 54 ECAB 796 (2003) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

As the physician did not find appellant unable to perform modified employment, his opinion does not support disability from employment.

Dr. Fowler completed a disability certificate on July 20, 2005 in which he opined that appellant should remain off work from July 6 to 20, 2005 and listed work restrictions. He provided no opinion on causation, findings on examination or diagnosis and thus his report is of diminished probative value.[11]

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is causal relationship between his claimed condition and his employment.[12] To establish causal relationship, appellant must submit a physician's report in which the physician reviews the employment factors identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination, state whether the employment injury caused or aggravated the diagnosed conditions and present medical rationale in support of his or her opinion.[13] Appellant failed to submit such evidence in this case and, therefore, has failed to discharge his burden of proof to establish that he sustained an employment-related recurrence of disability.

CONCLUSION

The Board finds that appellant has not established that he sustained a recurrence of disability beginning May 14 to July 6, 2005 causally related to his July 8, 1999 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 15, 2005 is affirmed.

Issued: July 26, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

[11] *Id*.

[12] *Robert A. Boyle*, 54 ECAB 381 (2003); *Patricia J. Glenn*, 53 ECAB 159 (2001).

[13] *Calvin E. King*, 51 ECAB 394 (2000).