

Appellant submitted a June 4, 2005 report from a physician whose signature is illegible, indicating that she had acute lower back pain. The report indicated that limited-duty work was available at the employing establishment and it could accommodate any restriction short of bed rest. In form reports dated June 4, 2005, the same physician diagnosed an acute lumbar strain and indicated with an affirmative mark that the diagnosed condition was caused by the June 3, 2005 injury.

Appellant also submitted instructions dated June 4, 2005 regarding her medical care. A June 6, 2005 disability slip from Susan Wallace, a nurse practitioner, excused her from work on June 7 and 8, 2005 and stated that appellant could return to limited-duty work on June 11, 2005 and restricted to lifting no more than 20 pounds. In a disability slip dated June 10, 2005, Ms. Wallace excused appellant from work from June 10 through 13, 2005.

On June 15, 2005 appellant accepted the employing establishment's job offer as a modified priority mail processing clerk.

The employing establishment controverted appellant's entitlement to continuation of pay.

The Office accepted appellant's claim for a lumbar sprain/strain. On June 23, 2005 the Office advised appellant to submit medical records regarding her back condition and information about her outside activities while off work and her involvement in a prior motor vehicle accident.

The employing establishment submitted appellant's employment records. It also submitted medical records which included a June 20, 2005 disability slip from Dr. Mark D. Omar, a Board-certified internist. He indicated that appellant was ill and incapacitated from June 17 through 21, 2005.

Unsigned notes indicated that appellant was treated on intermittent dates from December 29, 1989 through August 31, 2000 for back and neck pain. Ms. Wallace's June 17, 2005 disability slip requested that appellant be excused from work from that date until June 24, 2005.

The employing establishment submitted Dr. Omar's June 21, 2005 report, which noted appellant's back symptoms and found that she could return to work on June 24, 2005 with the noted physical restrictions. A June 30, 2005 report of Dr. Mark J. Puccioni, a Board-certified neurologist, provided a history of the June 4, 2005 employment injury and found that appellant had low back pain and bilateral S1 radicular pain. He stated that she remained symptomatic and that she should continue her work restrictions. In a June 6, 2005 narrative report that was reviewed by Dr. Omar on June 8, 2005, Ms. Wallace found that appellant had low back pain and a strain with radiculopathy. She placed her off work on June 7 and 8, 2005 and stated that she could return to work on June 10, 2005 with the restriction of no lifting more than 20 pounds.

On June 25, 2005 appellant resumed limited-duty work. In a July 19, 2005 note, Dr. Puccioni found that she experienced lumbar pain and S1 radicular pain. In July 21, 2005 report, Brent Todd, appellant's physical therapist, addressed her back treatment. Dr. Omar's August 28, 2005 report found that she sustained a lumbar sprain/strain.

By decision dated August 4, 2005, the Office denied appellant's claim for continuation of pay for the period June 6 through 24, 2005. It found that she failed to submit rationalized medical evidence establishing that she was totally disabled during the claimed period. The Office found that appellant was capable of performing sedentary work during the claimed period.

In an undated letter received by the Office on September 2, 2005, appellant requested reconsideration of the Office's August 4, 2005 decision. With regard to the employing establishment's investigative memorandum, she stated that she had scheduled a medical appointment for her then 15-pound daughter. When she was observed carrying a diaper bag and lifting a stroller that weighed 10 pounds. She contended that her activities were in compliance with her physician's orders. Appellant submitted copies of Ms. Wallace's June 6, 10 and 17, 2005 disability slips and Dr. Omar's June 20, 2005 disability slip. She also submitted Dr. Omar's August 17, 2005 note in which he indicated that appellant had been seen by a nurse practitioner under his guidance and stated: "I agree with the plans, treatment, *etc.*"

In an October 27, 2005 decision, the Office denied appellant's request for reconsideration because the evidence submitted was of a repetitious nature and, thus, insufficient to warrant a merit review.¹

LEGAL PRECEDENT -- ISSUE 1

The United States shall authorize the continuation of pay of an employee who has filed a claim for a period of wage loss due to a traumatic injury with her immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2).²

To be eligible for continuation of pay, a person must: (1) have a traumatic injury that is job related and the cause of disability or the cause of lost time due to the need for medical examination and treatment; (2) file Form CA-1 within 30 days of the date of the injury; and (3) begin losing time from work due to the traumatic injury within 45 days of the injury.³

The employer, not the Office, pays continuation of pay.⁴ The intent of the continuation of pay provision is to eliminate interruption in the employee's income for the period immediately following a job-related traumatic injury, not to increase the amount of compensation.⁵

¹ The Board notes that, in the October 27, 2005 decision, the Office stated that appellant submitted a June 28, 2005 duty status report in support of her September 2, 2005 reconsideration request and found that it was duplicative of evidence already in the case record. The Board, however, notes that this evidence is not contained in the record as an accompaniment to appellant's request.

² 5 U.S.C. § 8118(a). The latter section provides that written notice of injury shall be given within 30 days. The context of section 8122 makes clear that this means within 30 days of the injury. *George A. Harrell*, 29 ECAB 338 (1978).

³ 20 C.F.R. § 10.205(a) (2005).

⁴ *Id.* at § 10.200.

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Continuation of Pay and Initial Payments*, Chapter 2.807.2 (March 2004).

ANALYSIS -- ISSUE 1

Appellant claimed continuation of pay for absences from June 6 through 24, 2005. By decision dated August 4, 2005, the Office denied continuation of pay for the claimed period of disability on the grounds that she did not submit any rationalized medical evidence establishing total disability for work during this period.

The relevant medical evidence of record which addresses appellant's total disability during the claimed period includes disability slips and a report from Ms. Wallace, a nurse practitioner, adopted by Dr. Omar.⁶ Her disability slips found that appellant was totally disabled for work on June 7 and 8, 2005 and during the periods June 10 through 13 and 17 through 24, 2005. In a June 6, 2005 narrative report, Ms. Wallace opined that appellant had low back pain and a strain with radiculopathy and that she was totally disabled for work on June 7 and 8, 2005. The Board finds that Ms. Wallace's disability slips and report are insufficient to establish appellant's claim as they failed to address whether her disability for work was causally related to the accepted June 3, 2005 employment injury.

Similarly, Dr. Omar's June 20, 2005 disability slip which found that appellant was totally disabled for work from June 17 through 21, 2005 and his June 21, 2005 report which indicated that she could return to work on June 24, 2005 with specified physical restrictions are insufficient to establish her claim. He did not address whether appellant's disability during the claimed period was causally related to the accepted employment injury.

Dr. Puccioni reported on June 30, 2005 that appellant could continue her work restrictions. He did not address whether she was disabled during the claimed period.

The unsigned and illegible notes and reports are of no probative value as the author(s) cannot be identified as physicians.⁷ Thus, these notes and reports do not substantiate appellant's claim.

As there is no rationalized medical evidence of record establishing that appellant was totally disabled from June 6 through 24, 2005 due to the June 3, 2005 employment injury as alleged, she has failed to meet her burden of proof⁸ and thus, the Board finds that the Office properly denied her claim for continuation of pay.

⁶ The Board notes that a nurse practitioner is not defined as a "physician" under the Federal Employees' Compensation Act and cannot provide probative medical evidence. *See* 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law). *See also Thomas Lee Cox*, 54 ECAB 509 (2003); *Janet L. Terry*, 53 ECAB 570 (2002). However, Dr. Omar stated that appellant was seen by a nurse practitioner under his guidance and "I agree with the plans, treatment, *etc.*," the Board finds that Ms. Wallace's disability slips and report constitute medical evidence.

⁷ *See Merton J. Sills*, 39 ECAB 572 (1988).

⁸ The Board notes that, following the issuance of the October 27, 2005 decision, denying continuation of pay, the Office received additional evidence. The Board may not consider evidence for the first time on appeal which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). Appellant can submit this evidence to the Office and request reconsideration. 5 U.S.C. § 8128; 20 C.F.R. § 10.606.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128 of the Act,⁹ the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.¹⁰ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.¹¹ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review of the merits.

ANALYSIS -- ISSUE 2

In an undated letter received by the Office on September 2, 2005, appellant requested reconsideration of the Office's August 4, 2005 decision, which denied continuation of pay from June 6 through 24, 2005. Thus, the relevant underlying issue in this case is whether she was totally disabled for work during the period June 6 through 24, 2005 due to the June 3, 2005 employment injury.

Appellant submitted duplicate copies of Ms. Wallace's disability slips dated June 6, 10 and 17, 2005 and Dr. Omar's June 20, 2005 disability slip. The Board has held that evidence that repeats or duplicates evidence already in the case record, has no evidentiary value and does not constitute a basis for reopening a case.¹² Ms. Wallace's disability slips were already of record at the time appellant requested reconsideration and had been considered by the Office. Thus, the Board finds that this evidence is insufficient to reopen her claim for a merit review.

Dr. Omar's August 17, 2005 note indicates that appellant was seen by Ms. Wallace under his guidance. He did not address the relevant issue of whether she was totally disabled from June 6 through 24, 2005 due to the June 3, 2005 employment injury. The Board finds that Dr. Omar's note is insufficient to reopen appellant's claim for a merit review.

Appellant did not submit any relevant and pertinent new evidence not previously considered by the Office in support of her request for reconsideration. Further, she did not show that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office. As appellant did not meet any of the necessary regulatory requirements, the Board finds that she was not entitled to a merit review.¹³

⁹ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

¹⁰ 20 C.F.R. § 10.606(b)(1)-(2).

¹¹ *Id.* at § 10.607(a).

¹² *Edward W. Malaniak*, 51 ECAB 279 (2000).

¹³ *See James E. Norris*, 52 ECAB 93 (2000).

CONCLUSION

The Board finds that the Office properly denied continuation of pay for the period June 6 through 24, 2005 causally related to the June 3, 2005 employment injury. The Board further finds that the Office properly denied appellant's request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the October 27 and August 4, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 17, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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