

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

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MATTIE M. COLE, Appellant)	
)	
and)	
)	Docket No. 05-1799
U.S. POSTAL SERVICE, POST OFFICE,)	Issued: March 6, 2006
Tampa, FL, Employer)	
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Appearances:
Lenin V. Perez., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 30, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated April 5 and August 1, 2005, denying her entitlement to wage-loss benefits from March 13, 1999 to May 31, 2002. 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 is entitled to wage-loss benefits for total disability from March 13, 1999 to May 31, 2002.

FACTUAL HISTORY

On or about April 26, 2000 appellant, then a 35-year-old distribution clerk, filed an occupational injury claim (Form CA-2), alleging that she experienced vascular migraine headaches and neck pain as a result of duties relating to her federal employment. She stopped working on March 13, 1999 and was terminated effective June 16, 2000 due to leave without pay in excess of one year.

Appellant submitted a report dated April 24, 2000 from Dr. Erick A. Grana, a Board-certified psychiatrist, who diagnosed migraine headaches and cervical muscle strain. He stated that appellant had been involved in a motor vehicle accident in July 1998. Dr. Grana opined that appellant's job duties aggravated her neck pain and that her employment conditions caused a permanent aggravation of her migraine headaches because of the bright lights and loud noises. In a May 22, 2000 report, he indicated that she continued to experience "headaches that [appeared] to be vascular in origin."

Appellant provided a report dated April 28, 1999 from Dr. Susan J. Steen, a Board-certified neurologist, who treated appellant for vascular migraine headaches, which had "increased in frequency and intensity and [occurred] multiple times during the week." Dr. Steen stated that appellant's "work environment is very conducive to bringing on her headaches due to the noise and light in the employing establishment where she works and she has had increased frequency of headaches." She opined that appellant was "disabled from the employing establishment's work due to her headaches."

In a May 5, 2000 note written on a prescription pad, Dr. Jimmie J. Wilbur, a treating physician, stated that appellant "continues to be disabled due to migraine headache and cervical strain." In a report dated June 12, 2000, he opined that her exposure to dust and noise for long hours during the course of the day exacerbated her migraine headaches, which in turn contributed to the onset of her recent depression. Dr. Wilbur recommended that appellant be placed on permanent light duty, working 4 to 6 hours per day with 15-pound lifting restrictions.

On November 14, 2000 the Office denied appellant's claim, finding that she failed to establish a causal relationship between her alleged condition and factors of her federal employment. By decision dated April 25, 2002, the Office vacated the November 14, 2000 decision. The Office accepted appellant's claim for aggravation of cervical muscle strain, but found that she had failed to establish a causal relationship between her migraine headaches and the factors of employment.

On May 31, 2002 appellant filed a claim for lost wages for the period March 13, 1999 to May 31, 2002.

Appellant submitted a December 16, 2001 report from Dr. Grana, who reiterated his diagnoses of migraine headaches and cervical muscle strain. Objective findings included tenderness to palpation with muscle spasms. He opined that appellant's 1998 motor vehicle accident predisposed her to further cervical pain which was exacerbated by repetitive movement of her neck and shoulders while performing duties of her employment. Dr. Grana stated that her headaches were definitely aggravated by her employment conditions, including bright lights and noises. He opined that appellant's disability was "total as her limitations would include avoidance of light, noises, no prolonged sitting or standing and no repetitive use of her neck or upper extremities." It was "also likely" that she would miss two to three days per week due to severe migraines.

In a report dated December 18, 2001, Dr. Wilbur opined that appellant's neck pain was caused by the repetitive use of her head and neck while moving, lifting and carrying in the course of her employment. While her migraine condition was preexisting, the constant use of

appellant's neck and arms caused additional pain, which would have exacerbated her migraine headaches. He added that exposure to dust and noise would also exacerbate appellant's migraine headaches. In a March 18, 2002 report, Dr. Wilbur stated that she had a permanent aggravation of her cervical strain and recommended work restrictions, including a 15-pound lifting restriction and 4 to 6 hours of standing, with frequent breaks. Appellant had no limitation regarding walking and climbing, so long as she was not required to do so constantly. Dr. Wilbur opined that dust and noise did not cause her migraine headaches, but that limiting exposure to dust and noise would minimize aggravation of the headaches.

On June 17, 2002 the Office notified appellant that the evidence submitted was insufficient to establish that she was disabled from work for the claimed period. It advised her to submit additional medical information in support of her claim.

Appellant submitted notes from a massage therapist for the period May 15 through July 24, 2002 reflecting treatment for cervical pain.

In a form provided by the Office on June 27, 2002, appellant indicated that she worked for the Hillsborough County, Florida School Board from August 2000 through May 2001. Tax Form 1120 dated November 7, 2000 showed that she had gross receipts/sales in the amount of \$7,758.00 for tax year 1999.

By decision dated November 6, 2002, the Office denied appellant's claim for compensation on the grounds that the medical evidence failed to establish that she was totally disabled from March 13, 1999 to May 31, 2002.

On November 18, 2002 appellant requested an oral hearing.

On March 4, 2003 the Office referred appellant, together with a statement of accepted facts and the medical record, to Dr. Vydialinga Raghavan, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated April 30, 2003, he noted her history, reviewed the medical record and listed examination findings. Dr. Raghavan indicated that forward flexion was 50 degrees; extension was 40 degrees; right and left lateral flexion was 30 degrees; rotation right and left was 40 degrees; Spurling's sign was negative; biceps, triceps and supinator was 2+ on both sides; and knee and ankle was 2+ on both sides. He found no evidence of radiculopathy in either upper extremity. Dr. Raghavan found tenderness in the occipital protuberance on the left side over the distribution of the occipital nerve on the left, but no sensory deficit along the occipital nerve on the left. He diagnosed resolved cervical muscle strain, with occipital neuralgia and migraine headache, which Dr. Raghavan indicated were not part of the allowed claim. Based on the accepted facts, the objective studies and a clinical examination, there was no evidence that appellant had ongoing residuals of the work-related injury and did not require any further treatment. Dr. Raghavan stated that there was no medical correlation between the work-related cervical muscle strain and her current problem, namely occipital neuralgia and migraine headaches.

At the June 18, 2003 hearing, appellant testified that appellant's last day of work was January 26, 1999. She was unable to return to work because the employing establishment could

not find reasonable accommodations for her. Appellant ultimately retired June 2000 and worked as a teacher from the fall of 2000 to the spring 2001.

In a July 15, 2003 report, Dr. Rodolfo Cari, a treating physician, provided assessments of: migraine headaches; cervical herniated nucleolus pulposus C5-6, C6-7, C7-T1 indenting on thecal sac; cervical lordosis; disc bulge C4-5; occipital neuralgia; lumbar L5-S1; lumbar degenerative disc disease; lumbar stenosis; lumbar spondylosis; and lumbar muscle spasms. Appellant also submitted a report of a magnetic resonance imaging (MRI) scan of the cervical spine.

In a July 17, 2003 report, D. Wilbur stated that appellant had been permanently and totally disabled as a result of cervical strain aggravated and perpetuated by her federal employment since 1999. He opined that she continued to be disabled.

By decision dated August 5, 2003, an Office hearing representative affirmed the November 6, 2002 decision, denying appellant's claim for compensation.

On August 8, 2003 the Office notified appellant of its proposed termination of benefits based on Dr. Raghavan's March 4, 2003 report.¹

On August 10, 2004 appellant filed a notice of recurrence of disability, alleging that her condition had progressively worsened since January 1992. By letter dated August 23, 2004, the Office notified appellant that her case was still open and that it was unnecessary for her to file a recurrence claim.

On July 20, 2004 appellant requested reconsideration. On August 4, 2004 appellant, through her representative, filed a motion for reconsideration.

Appellant submitted reports from Dr. H. Gerard Siek, Jr., a treating physician. In a May 27, 2004 report, he indicated that he was treating appellant for low back pain, shooting and burning, located postero-laterally on the left side and radiating to the left leg. Dr. Siek diagnosed right paracentral disc protrusion L5-S1, with mild disc space narrowing; lumbar sprain; and early spondylosis, L4 vertebral body. Dr. Siek recommended "retirement on workers' compensation." In a July 22, 2004 report, he diagnosed bulging disc, cervical spine and myofascitis, chronic, cervical region. Dr. Siek opined that appellant's neck, left shoulder and arm pain were due to and aggravated by repetitive motion required by her employment duties.

By decision dated September 1, 2004, the Office denied appellant's request for reconsideration as untimely. She sought review of the September 1, 2004 decision by the Board. By order dated March 2, 2005, the Board found that appellant's request was timely and set aside the Office's September 1, 2004 decision. The case was remanded for further consideration of the evidence submitted with her request for reconsideration.²

¹ There is no evidence of record reflecting that the Office issued a final decision regarding the proposed termination of benefits. As this matter is in an interlocutory posture, it is not before the Board on this appeal. *See* 20 C.F.R. § 501.2(c).

² Docket No. 05-17 (issued March 2, 2005).

In a November 1, 2004 report, Dr. Siek indicated that appellant experienced mild limitation of motion with pain, mainly in the left side of the upper neck and aggravation of pain by rotation to the left. In a February 3, 2005 report, he opined that her migraine condition “should very definitely be a job-related compensable problem in addition to her chronic myofascitis of the neck.” Dr. Siek stated that “it is well known that inflammation of the muscles from a neck sprain develops into a chronic myofascitis and the inflammation is usually greatest along the muscle attachments along the suboccipital line. The greater occipital nerve goes through the area of inflammation and is irritated. In many cases, this irritation causes severe headaches on that side of the head.”

On March 11, 2005 appellant filed a claim for compensation for the period January 26 to March 11, 2005.³

By decision dated April 5, 2005, the Office denied modification of the November 6, 2002 decision on the grounds that appellant provided no rationalized medical opinion establishing that she was disabled from work from March 13, 1999 to May 31, 2002.

In an April 18, 2005 report, Dr. Siek diagnosed chronic myofascitis of the cervical spine; central disc protrusions at C-5-6, C6-7 and C7-T1, all indenting the thecal sac and a small disc bulge at C4-5; and migraine headaches. He opined that the headaches were work related, in that appellant never had headaches until after she started working at the employing establishment. Dr. Siek stated that the cause of the headaches was repeated bending over to get files off the floor and the strenuous activities that involve the neck in performing the duties of a letter carrier. He further indicated that appellant’s headaches are present only when her neck severely bothers her.

On June 13, 2005 appellant requested reconsideration of the Office’s April 5, 2005 decision.

Appellant submitted an April 29, 2005 report from Dr. David P. Kalin, a treating physician. Based upon his review of her history, medical records and his examination of appellant, Dr. Kalin opined that her current condition resulted from the cumulative effects of her work-related neck injury and the repetitive activities of her employment responsibilities. He diagnosed: chronic cervical musculoskeletal ligamentous strain with left paracervical suprascapular myofascitis, normal with C5-6, C6-7, C7-T1 central disc protrusion indenting upon the thecal sac projecting between transversing nerve roots, bulge C4-5 and loss of normal cervical lordosis suggestive of cervical muscle spasm; intermittent dysesthesia and weakness in the left upper extremity, rule out cervical radiculopathy, brachial plexopathy, thoracic outlet syndrome and peripheral neuropathy; chronic lumbosacral musculoskeletal ligamentous strain with right paracentral disc protrusion indenting the thecal sac projecting to close proximally to right transversing nerve root, loss of normal lumbar lordosis, early spondylosis L4 vertebral body; history of chronic recurrent myofascial headaches with occipital neuralgia, rule out migraine; history of intermittent post-traumatic pain and causalgia left lower extremity, rule out lumbar radiculitis, plexitis; status post tonsillectomy, 1970; status post resection superficial scar

³ As the Office has not issued a final decision regarding the March 11, 2005 claim for benefits, this matter is in an interlocutory posture. It is not before the Board on this appeal. *See* 20 C.F.R. § 501.2(c).

left knee, 1976; status tubal ligation, 1990; status post motor vehicle accident without sequelae, 1998; history of recurrent anemia presumably from urine bleeding; allergy to compazine; overweight, rule out dysmetabolic syndrome. Dr. Kalin recommended that appellant avoid overly repetitive, strenuous or sudden movements of the neck, left shoulder, arm and hand, repetitive bending or twisting, kneeling or squatting, climbing stairs, walking for longer than five blocks, driving for longer than 30 minutes and any and all other activities which may aggravate her underlying condition.

By decision dated August 1, 2005, the Office denied modification of its April 5, 2005 decision.

LEGAL PRECEDENT

Under the Federal Employees' Compensation Act, the term "disability" means incapacity, because of an employment injury, to earn wages that the employee was receiving at the time of the injury.⁴ Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.⁵ An employee who has had a physical impairment causally related to her federal employment, but who nonetheless has the capacity to earn wages she was receiving at the time of injury, has no disability as that term is used in the Act and is not entitled to compensation for loss of wage-earning capacity.⁶ When, however, the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing her employment, she is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.⁷

For each period of disability claimed, appellant has the burden of proving by the preponderance of the reliable, probative and substantial evidence that she is disabled for work as a result of her employment injury.⁸ Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.⁹

Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work. Appellant's burden of proving she was disabled on particular dates requires that she furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is

⁴ See *Lyle E. Dayberry*, 49 ECAB 369 (1998); see also *Frazier V. Nichol*, 37 ECAB 528 (1986).

⁵ See *Lyle E. Dayberry*, *supra* note 4.

⁶ *Id.* See also *Gary L. Loser*, 38 ECAB 673 (1987).

⁷ See *Lyle E. Dayberry*, *supra* note 4; see also *Bobby W. Hornbuckle*, 38 ECAB 626 (1987).

⁸ See *Fereidoon Kharabi*, 52 ECAB 291 (2001); see also *David H. Goss*, 32 ECAB 24 (1980).

⁹ See *Fereidoon Kharabi*, *supra* note 8; see also *Edward H. Horton*, 41 ECAB 301 (1989).

causally related to the employment injury and supports that conclusion with medical reasoning.¹⁰ Where no such rationale is present, the medical evidence is of diminished probative value.¹¹

ANALYSIS

The Board finds that appellant has failed to establish that she was totally disabled due to an employment-related condition from March 13, 1999 to May 31, 2002 entitling her to monetary compensation.

Appellant's claim was accepted for an aggravation of cervical muscle strain. On May 31, 2002 she filed a (CA-7) form claiming compensation for the period from March 13, 1999 to May 31, 2002. She did not submit any probative medical evidence demonstrating total disability for this period time due to her accepted condition.

Dr. Grana's reports are of diminished probative value for several reasons. In his April 24, 2000 report, Dr. Grana diagnosed migraine headaches and cervical muscle strain and opined that appellant's job duties had caused a permanent aggravation of her migraine condition because of the bright lights and loud noises. However, the report did not address the issue of whether or not appellant was totally disabled at that time. Moreover, her claim was accepted for aggravation of cervical muscle strain only. The Office found that appellant had failed to establish a causal relationship between her migraine headaches and the factors of her employment. In a December 16, 2001 report, Dr. Grana opined that her disability was total "as her limitations would include avoidance of light, noises, no prolonged sitting or standing and no repetitive use of her neck or upper extremities." He also noted that it was "likely that she would miss two to three days per week due to severe migraines." As noted, Dr. Grana's reference to appellant's migraines is not relevant to her present claim for compensation, as this condition has not been established as causally related to her employment injury. Moreover, he did not provide a rationalized explanation as to why she was totally disabled from performing the specific requirements of her job, due to her work-related condition during the period in question.

Dr. Steen's April 28, 1999 report is not probative with regard to the entire period of alleged disability, in that it did not address when appellant's disability began and is not relevant to any disability subsequent to the date of the report. She opined that appellant was disabled from postal service work due to her headaches. However, she did not provide any discussion of her disability due to her accepted condition.

Similarly, Dr. Wilbur's reports do not support appellant's claim that she was disabled due to her work-related condition. On May 5, 2000 he recommended that she be placed on permanent light duty, working 4 to 6 hours per day with a 15-pound lifting restriction. In a December 18, 2001 report, Dr. Wilbur did not opine that she was totally disabled. Rather, he indicated that appellant had no limitations with respect to walking or climbing and recommended work restrictions, including four to six hours of standing with frequent breaks. In a July 17, 2003 report, Dr. Wilbur stated that appellant had been permanently and totally disabled as a result of

¹⁰ *Ronald A. Eldridge*, 53 ECAB 218 (2001).

¹¹ *Mary A. Ceglia*, 55 ECAB ____ (Docket No. 04-113, issued July 22, 2004).

cervical strain aggravated by her federal employment since 1999 and that she continued to be disabled. However, he failed to provide a rationalized explanation as to how appellant's current disabling condition was causally related to the employment injury. Dr. Wilbur's blanket statement that she was disabled due to her work-related injuries is insufficient to establish appellant's claim. The Board has held that a medical opinion not fortified by medical rationale is of diminished probative value.¹² Moreover, Dr. Wilbur failed to provide an adequate opinion establishing that appellant was disabled from March 13, 1999 to May 31, 2002.¹³

Reports from Dr. Cari, Dr. Kalin and Dr. Siek also lack probative value. Dr. Cari did not provide any explanation regarding a causal relationship between appellant's diagnosed condition and the work-related injury, nor does he address her alleged period of disability. Although Dr. Kalin opined, in an April 29, 2005 report, that appellant's current condition resulted from the cumulative effects of her work-related neck injury and repetitive employment responsibilities, he failed to address the specific period of alleged disability. In fact, Dr. Kalin did not find that she was disabled from working, but rather recommended restrictions. The reports submitted by Dr. Siek do not address the period of appellant's alleged disability and, therefore, lack probative value.

The Board finds that appellant's disability during the period in question is not supported by the facts of the case. She testified and her tax return reflect that she was employed as a teacher from August 2000 through May 2001. There is no medical evidence of record explaining how or why appellant was able to perform the duties of a teacher, but disabled from performing the duties of her a distribution clerk.

Appellant had the burden of proving by the preponderance of the reliable, probative and substantial evidence that she was disabled for work as a result of her employment injury. For the reasons stated above, the Board finds that she failed to sustain her burden of proof in establishing that she was totally disabled due to her accepted employment condition from March 13, 1999 to May 31, 2002.¹⁴

CONCLUSION

The Board finds that appellant has not established entitlement to wage-loss benefits from March 13, 1999 to May 31, 2002.

¹² See *Brenda L. DuBuque*, 55 ECAB ____ (Docket No. 03-2246, issued January 6, 2004); see also *David L. Scott*, 55 ECAB ____ (Docket No. 03-1822, issued February 20, 2004) and *Willa M. Frazier*, 55 ECAB ____ (Docket No. 04-120, issued March 11, 2004).

¹³ *Mary A. Ceglia*, *supra* note 11.

¹⁴ See *Fereidoon Kharabi*, *supra* note 8. (The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the particular period of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.)

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 1 and April 5, 2005 are affirmed.

Issued: March 6, 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