

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

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**MAY S. LIN, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Oakland, CA, Employer**

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**Docket No. 06-236  
Issued: March 7, 2006**

*Appearances:*  
*May S. Lin, 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  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On November 3, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' October 28, 2005 merit decision denying her claim for periods of employment-related disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant met her burden of proof to establish that she sustained disability during the periods November 11 to December 1, 2004 and December 7, 2004 to May 13, 2005 due to her accepted employment injury.

**FACTUAL HISTORY**

On September 3, 2004 appellant, then a 47-year-old sales and service associate, filed an occupational disease claim alleging that she sustained injury due to her job duties, which included lifting heavy objects, extending her body to reach mail, twisting her torso, and standing

on concrete floors for extended periods. Appellant did not stop work but began to work in a limited-duty position for the employing establishment.

The Office accepted that appellant sustained low back repetitive stress injury or chronic strain.<sup>1</sup>

Appellant stopped work from November 11 to December 1, 2004 and claimed that she sustained disability during this period due to her accepted employment injury.<sup>2</sup>

Appellant submitted a November 19, 2004 form report in which Dr. D. Young stated that she was unable to work from November 19 to December 1, 2004.<sup>3</sup>

By letter dated March 8, 2005, the Office requested that appellant submit additional medical evidence in support of her claim.

Appellant submitted a March 23, 2005 report in which Chin-Shu Chen, an attending licensed acupuncturist, stated that he treated her from October 26, 2004 to March 1, 2005. Mr. Chen indicated that appellant's condition had greatly improved and noted that she had returned to work.<sup>4</sup> Appellant also submitted several form reports dated in mid 2005 in which Jon Vrban, a family nurse practitioner, indicated that she should perform limited-duty work, including no lifting more than 10 pounds.

Appellant also stopped work for periods between December 7, 2004 and May 13, 2005 and claimed that she sustained disability during this period due to her accepted employment injury.<sup>5</sup>

She submitted several more form reports dated between early and mid 2005 in which Mr. Vrban indicated that she should perform limited-duty work.

By letter dated May 24, 2005, the Office requested that appellant submit additional medical evidence in support of her claim regarding the period December 7, 2004 to May 13, 2005.

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<sup>1</sup> The record contains several reports in which an attending physician detailed appellant's condition between August and October 2004 and indicated that she had low back pain and sciatica and could only perform limited-duty work.

<sup>2</sup> Appellant took sick leave during this period and requested leave buy back for this leave usage.

<sup>3</sup> The report did not list Dr. Young's first name and the physician's specialty is unclear. Appellant also submitted a form report with an illegible signature which indicated that she was unable to work from November 11 to 24, 2004.

<sup>4</sup> The record also contains other documents detailing appellant's acupuncture treatment.

<sup>5</sup> Appellant took several full days of sick leave during this period but she generally used sick leave or leave without pay to take several hours off work per day during this period. She returned to full duty for the employing establishment on May 14, 2005.

Appellant submitted a June 30, 2005 report in which Dr. Paul M. Johnson, an attending physician Board-certified in occupational medicine, indicated that she developed low back pain radiation down her left leg which was “related to repetitive heavy lifting and twisting at her waist while working.” Dr. Johnson indicated that appellant was diagnosed with sciatica and stated that diagnostic showed degenerative disc disease at L4-5 and L5-S1. He noted that appellant was on limited-duty work from the time of her initial visit on August 31, 2004 to her present visit on “June 30, 2007” and stated that she “had no loss time during this time.” Dr. Johnson noted:

“She continues to have limitations of repeated bending and heavy lifting which causes back pain for her when she is doing these activities.”

\* \* \*

“In my opinion her lumbar degenerative disc disease has been aggravated by the repetitive bending and lifting she does at work.... She has permanent limitations of bending and twisting at the waist occasionally with a weight limit of 20 pounds.”<sup>6</sup>

By decision dated August 9, 2005, the Office denied appellant’s claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained disability during the periods November 11 to December 1, 2004 and December 7, 2004 to May 13, 2005 due to her accepted employment injury.<sup>7</sup>

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>8</sup> has the burden of establishing the essential elements of her claim including the fact that the individual is an “employee of the United States” within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>9</sup> The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the

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<sup>6</sup> Appellant submitted a July 9, 2005 letter in which she argued that Dr. Johnson erred when he said that she had not lost time from work since August 31, 2004, when he listed her age as 47 rather than 48 years old, and when he listed the date of last examination as June 30, 2007.

<sup>7</sup> In a letter dated May 24, 2005, the Office indicated that appellant did not file all the proper forms for her leave buy-back request for the period November 11 to December 1, 2004 and indicated that no further action would be taken on this matter until she filed the proper forms. The Board notes that the August 9, 2005 decision effectively denied appellant’s disability claim for both the periods November 11 to December 1, 2004 and December 7, 2004 to May 13, 2005 because she did submit adequate medical evidence in support of her claim.

<sup>8</sup> 5 U.S.C. §§ 8101-8193.

<sup>9</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

compensable 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.<sup>10</sup>

### ANALYSIS

The Office accepted that appellant sustained low back repetitive stress injury or chronic strain due to her work duties and she claimed that she sustained disability during the periods November 11 to December 1, 2004 and December 7, 2004 to May 13, 2005 due to her accepted employment injury.<sup>11</sup>

The Board finds that appellant did not submit sufficient medical evidence to establish that she sustained disability during the periods November 11 to December 1, 2004 and December 7, 2004 to May 13, 2005 due to her accepted employment injury.

Appellant submitted a June 30, 2005 report of Dr. Johnson, an attending physician Board-certified in occupational medicine, but this report did not contain a clear opinion that she sustained disability during the periods November 11 to December 1, 2004 and December 7, 2004 to May 13, 2005 due to her accepted employment injury.<sup>12</sup> Dr. Johnson stated that appellant had “limitations of repeated bending and heavy lifting which causes back pain for her when he is doing these activities” and noted that she had “permanent limitations of bending and twisting at the waist occasionally with a weight limit of 20 pounds.” He did not provide a clear opinion that these limitations were due to the accepted employment injury, low back repetitive stress injury or chronic strain, let alone provide an opinion that the employment injury caused partial or total disability for specific periods. Dr. Johnson stated that appellant’s lumbar degenerative disc disease had been aggravated by the repetitive bending and lifting she did at work. However, it has not been accepted that this preexisting condition was aggravated by employment factors and Dr. Johnson did not provide a rationalized medical opinion establishing such a relationship.<sup>13</sup> He did not describe appellant’s work duties in any detail or explain the medical mechanism through which the duties could have aggravated her back condition.<sup>14</sup>

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<sup>10</sup> See *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

<sup>11</sup> Appellant claimed total disability for some dates and partial disability for other dates during these periods.

<sup>12</sup> See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee’s claimed condition or disability is of limited probative value on the issue of causal relationship).

<sup>13</sup> See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (finding that a medical opinion not fortified by medical rationale is of little probative value).

<sup>14</sup> Dr. Johnson indicated that appellant “had no loss time” between August 2004 and June 2005, but is unclear what he meant by this statement. Appellant indicated that Dr. Johnson erred when he listed her age as 47 rather than 48 years old, but she did not explain the relevance of this comment. She alleged that he erred when he listed the date of last examination as June 30, 2007, but it is clear that he meant to say that the date of last examination was June 30, 2005.

Appellant also submitted several form reports dated between early and mid 2005 in which Mr. Vrban, an attending family nurse practitioner, indicated that appellant should perform limited-duty work, including no lifting more than 10 pounds. However, the reports of a nonphysician cannot be considered by the Board in adjudicating causal relationship.<sup>15</sup> Appellant also submitted a November 19, 2004 form report in which Dr. Young stated that she was unable to work from November 19 to December 1, 2004, but the report contained no opinion on the cause of the work stoppage.<sup>16</sup>

### CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained disability during the periods November 11 to December 1, 2004 and December 7, 2004 to May 13, 2005 due to her accepted employment injury.

### ORDER

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' August 9, 2005 decision is affirmed.

Issued: March 7, 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

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<sup>15</sup> See *Arnold A. Alley*, 44 ECAB 912, 920-21 (1993). For the same reason, the acupuncture treatment reports of record would not constitute medical evidence.

<sup>16</sup> The report did not list Dr. Young's first name and the physician's specialty is unclear.