United States Department of Labor
Employees' Compensation Appeals Board

J.M., Appellant	)	
	)	
and	)	**Docket No. 06-1729**
	)	**Issued: November 2, 2006**
U.S. POSTAL SERVICE, Collierville, TN, Employer	)	

Appearances:
Appellant, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 24, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' December 15, 2005 and April 20, 2006 merit decisions denying her claim for wage-loss benefits and its May 26, 2006 nonmerit decision denying her request for reconsideration. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office properly denied the employee's claim for wage-loss compensation from August 29 through October 18, 2005; and (2) whether the Office properly refused to reopen appellant's case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On March 8, 2004 appellant, a 45-year-old city carrier, filed a traumatic injury claim alleging that she injured her lower back as she was rising from a stooping position while casing mail. Her claim was accepted for a lumbar strain. Appellant returned to work on May 19, 2004.

Appellant submitted a report dated May 29, 2005 from Dr. Moacir Schnapp, a treating physician. Noting that appellant had "apparently had a lifting injury at work in March 2004," Dr. Schnapp provided a diagnosis of lumbar spondylosis and sacroiliitis. His examination revealed exquisite tenderness over the right sacroiliac with positive facet maneuvers; decreased range of motion of the lumbar spine for flexion, extension and rotation; and no signs of dystrophy, atrophy or fasciculations. Deep tendon reflexes were depressed in both ankles with sluggish recovery, and straight leg raising and fabere maneuvers were negative. Indicating that appellant complained of low back pain for the past year, Dr. Schnapp stated that he wanted to put her on an extreme rehabilitation program before allowing her to return to work. In notes dated September 19, 2005, Dr. Schnapp repeated his diagnosis of lumbar spondylosis and stated that he planned to place appellant on some restrictions but informed her that she would have to return to work. In a September 19, 2005 attending physician's report, Dr. Schnapp provided diagnoses of lumbar spondylosis and sacroiliitis. He indicated that appellant's period of total disability was from August 29 through October 18, 2005. In response to the question as to whether he believed appellant's condition was caused or aggravated by her employment, Dr. Schnapp placed a checkmark in the "yes" box. In a September 19, 2005 duty status report, Dr. Schnapp indicated that the date of appellant's injury was March 6, 2004 and provided diagnoses of lumbar spondylosis and sacroiliitis. In response to the question as to whether appellant was advised to resume work, he placed a checkmark in the "no" box. In a September 19, 2005 work excuse, Dr. Schnapp stated that appellant was totally disabled for four weeks (until October 18, 2005) and that she needed to be off work in order to participate in physical therapy.

On September 20, 2005 appellant submitted a claim for lost wages for the period September 12 through October 18, 2005.

In notes dated September 26, 2005, Dr. Schnapp diagnosed lumbar spondylosis and lumbar radiculopathy, and stated that he would keep appellant "on the present exercises before allowing her to return to work."

In order to determine whether appellant suffered residuals from the March 6, 2004 employment injury, the Office referred appellant to Dr. Carl W. Huff for a second opinion examination, which occurred on September 19, 2005. In a September 29, 2005 work capacity evaluation, Dr. Huff indicated that appellant could return to work with no limitations and that she had reached maximum medical improvement with regard to her accepted lumbar strain. In a report dated October 10, 2005, Dr. Huff provided a history of the March 6, 2004 employment injuries and appellant's medical treatment, family and social background. He reported his findings on physical examination and reviewed EMG reports, MRI scan and x-ray findings. Dr. Huff opined that appellant had no residuals from the March 6, 2004 injury and that her complaints were entirely subjective. He found that there were no structural abnormalities identified on examination, or in any x-ray or EMG study.

Appellant submitted notes dated October 3, 2005 from Dr. Schnapp, which contained diagnoses of lumbar spondylosis and lumbar radiculopathy and indicated that appellant's function had improved substantially. In notes dated October 10, 2005, Dr. Schnapp diagnosed lumbar spondylosis and sacroiliitis.

By letter dated October 18, 2005, the Office informed appellant that the information submitted was insufficient to establish her claim, and advised her to submit a physician's opinion, supported by medical rationale, establishing the existence of a causal relationship between her disability and the accepted employment injury for the alleged period.

Notes dated October 24, 2005 from Dr. Schnapp reflect that appellant had returned to work. In notes dated November 7, 2005, Dr. Schnapp reiterated his diagnoses of lumbar spondylosis and sacroiliitis. The record contains an undated questionnaire completed by appellant for Dr. Dan Murphy, a clinical psychologist. The record also contains a July 12, 2005 bone scan report from Dr. Jerry Engleberg, a treating physician, reflecting no abnormal lumbosacral spine activity, and a July 12, 2005 report of a magnetic resonance imaging (MRI) scan of the lumbar spine, reflecting an impression of no lumbar disc herniation or significant neural compromise.

In a decision dated December 15, 2005, the Office denied appellant's claim for compensation for the period September 12 through October 18, 2005, finding that the evidence did not support that she was disabled during the claimed period.

In a December 8, 2005 letter to Dr. Murphy, Dr. Schnapp stated that appellant had lumbar facet arthropathy with sacroiliitis. The record contains an August 29, 2005 operative report from Dr. Schnapp, who performed a nerve block on that date; October 12, 2005 notes from Dr. Schnapp, who stated that appellant would be able to return to work on October 19, 2005 a note from Dr. Schnapp dated January 31, 2006 confirming that appellant had been "taken off work from August 29, 2005 until October 18, 2005"; and a note from Dr. Schnapp dated January 31, 2006 reflecting that appellant was working daily.

In an undated letter received by the Office on February 6, 2006, appellant requested reconsideration of the December 15, 2005 decision, and clarified that her claim was for the period August 29 through October 18, 2005. In support of her request, appellant submitted a copy of the September 19, 2005 attending physician's report in which Dr. Schnapp indicated that she was disabled from August 29 through October 18, 2005. Appellant also submitted notes dated March 20, 2006 in which Dr. Schnapp stated that appellant was working more than eight hours per day and an April 5, 2006 operative report of a nerve block.

By decision dated April 20, 2006, the Office denied appellant's claim for lost wages for the period August 29 through October 18, 2005, as addressed in the request for reconsideration. The Office found that the medical evidence failed to show a causal relationship between appellant's current medical condition and her March 6, 2004 injury.

On May 13, 2006 appellant submitted another request for reconsideration. In a letter of that date, she stated that she was submitting additional medical documentation to support her claim that she was disabled from August 29 through October 18, 2005. In support of her request, appellant submitted notes from Dr. Schnapp dated April 26, 2006, describing her alleged pain

radiating from her back to her hips and posterior thighs; copies of Dr. Schnapp's notes dated August 29, September 19 and 26, and October 3, 10 and 24, 2005; and notes dated October 24, 2005, in which Dr. Schnapp recommended limiting appellant's work schedule to 8 hours per day for 30 days. On a form dated May 4, 2006, Dr. Schnapp indicated that appellant had been totally disabled from August 29 through October 18, 2005 and was able to return to work on October 19, 2005. In the "remarks" section of the form, Dr. Schnapp stated, "Due to her work injury from March 2004 [appellant] was to return to work 8-hour workdays for 30 days then return to work full duty."

By decision dated May 26, 2006, the Office denied appellant's request for reconsideration, on the grounds that the evidence submitted was duplicative and, therefore, insufficient to warrant a review of its prior decision.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.[2] For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.[3] Whether a particular injury causes an employee to become disabled for work, and the duration of that disability, are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.[4] The Board will not require the Office to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.[5]

The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.[6] 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 implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant,[7] must be one of reasonable medical certainty,[8] and must be supported by medical

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[1] 5 U.S.C. §§ 8101-8193.

[2] *See Amelia S. Jefferson*, 57 ECAB ___ (Docket No. 04-568, issued October 26, 2005); *see also Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

[3] *See Amelia S. Jefferson, supra* note 2. *See also David H. Goss*, 32 ECAB 24 (1980).

[4] *See Edward H. Horton*, 41 ECAB 301 (1989).

[5] *See William A. Archer*, 55 ECAB ___ (Docket No. 04-1138, issued August 27, 2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

[6] *See Viola Stanko,* claiming as widow of *Charles Stanko,* 56 ECAB ___ (Docket No. 05-53, issued April 12, 2005); *see also Naomi A. Lilly*, 10 ECAB 560, 572-573 (1959).

[7] *William Nimitz, Jr*., 30 ECAB 567, 570 (1979).

[8] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[9]

Under the Act, the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.[10] Disability is thus not synonymous with physical impairment, which may or may not result in incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in the Act.[11]

ANALYSIS -- ISSUE 1

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between her claimed total disability from August 29 through October 18, 2005 and the accepted lumbar strain.[12] The reports of appellant's physician do not provide a rationalized medical opinion finding her disabled for work for the claimed period due to her accepted condition. Therefore, the medical evidence submitted is insufficient to meet her burden of proof.[13]

The medical evidence of record submitted in support of appellant's claim, consists of numerous reports from her treating physician, Dr. Schnapp. In his initial report dated May 29, 2005, Dr. Schnapp noted that appellant "apparently had a lifting injury at work in March 2004" and provided diagnoses of lumbar spondylosis and sacroiliitis. This report does not, and cannot by virtue of its date, address the period of alleged disability. Therefore, it lacks probative value. In notes dated September 19, 2005, Dr. Schnapp provided a diagnosis of lumbar spondylosis and stated that appellant would have to return to work. A duty status report dated September 19, 2005 and notes dated September 26 and October 3, 2005, reflect diagnoses of lumbar spondylosis and lumbar radiculopathy. Notes dated October 10 and 24 and November 7, 2005 contain diagnoses of lumbar spondylosis and sacroiliitis. None of these reports contains any opinion addressing the period of appellant's alleged disability, or an explanation as to how appellant's current condition was causally related to the accepted injury. The Board notes that the Office accepted this claim for lumbar strain and not lumbar spondylosis, lumbar radiculopathy or sacroiliitis. In the absence of a reasoned explanation as to how appellant's newly diagnosed condition was due to the accepted work injury and how that condition caused appellant to be disabled during the period in question, these reports lack probative value. In a September 19, 2005 attending physician's report, Dr. Schnapp diagnosed lumbar spondylosis and sacroiliitis and indicated that appellant was disabled from August 29 through October 18, 2005. In response to the question as to whether he believed appellant's condition was caused or

[9] *See William E. Enright*, 31 ECAB 426, 430 (1980).

[10] 20 C.F.R. § 10.5(f).

[11] *Cheryl L. Decavitch*, 50 ECAB 397, 401 (1999).

[12] *See Amelia S. Jefferson, supra* note 2.

[13] *Alfredo Rodriguez*, 47 ECAB 437 (1996).

aggravated by her employment, he placed a checkmark in the "yes" box. Dr. Schnapp's report fails to establish a causal relationship between the diagnosed lumbar spondylosis and sacroiliitis and the March 6, 2004 employment incident. First, as noted above, appellant's claim was not accepted for lumbar spondylosis and sacroiliitis. Moreover, although Dr. Schnapp used a checkmark to indicate a belief that the injury caused appellant's current condition, he failed to explain how or why. A mere checkmark or affirmative notation in response to a form question on causal relationship is not sufficient to establish a claim.[14] He has failed to explain how appellant's current condition was physiologically related to the March 6, 2004 work incident. Finally, the Board notes that Dr. Schnapp opined on September 19, 2005 that appellant had been disabled since August 29, 2005 and would continue to be disabled through October 18, 2005. He could not have known with certainty on September 19, 2005 that appellant would be disabled through October 18, 2005, or at any time in the future. For all of these reasons, this report lacks probative value. Similarly, Dr. Schnapp opined in a September 19, 2005 work excuse that appellant would be disabled through October 18, 2005 and that she needed to be off work to participate in physical therapy. For reasons stated above, this document lacks probative value. October 12, 2005 notes indicated that appellant would be able to return to work on October 19, 2005. However, because Dr. Schnapp did not address the alleged period of disability or explain a causal relationship between appellant's current condition and the accepted injury, these notes lack probative value. Similarly, his December 8, 2005 letter to Dr. Murphy provided a diagnosis of lumbar facet arthropathy with sacroiliitis, but no explanation linking the newly diagnosed condition to the accepted condition. In a January 31, 2006 note, Dr. Schnapp confirmed that appellant had been "taken off work from August 29, 2005 until October 10, 2005." Although Dr. Schnapp addressed the alleged period of disability, he provided no opinion as to the cause of the disability and no explanation connecting the disability to the accepted employment injury. Accordingly, this note lacks probative value. Finally, on a form dated May 4, 2006, Dr. Schnapp indicated that appellant had been totally disabled from August 29 through October 18, 2005 and was able to return to work on October 19, 2005. In the "remarks" section of the form, Dr. Schnapp stated, "Due to her work injury from March 2004 [appellant] was to return to work 8-hour workdays for 30 days then return to work full duty." Dr. Schnapp provided no diagnosis, no medical rationale or objective findings to support the alleged period of disability, and no explanation as to how appellant's current condition was related to the accepted lumbar strain. The report, therefore, is of limited probative value and does not satisfy appellant's burden of proof.

In his October 10, 2005 second opinion report, Dr. Huff opined that appellant had no residuals from her March 6, 2004 injury and that her complaints were entirely subjective. Based on his September 19, 2005 examination and review of the entire medical record, he opined that appellant could return to work with no limitations and had reached maximum medical improvement with regard to her accepted lumbar strain. Dr. Huff did not address the entire period of appellant's alleged disability; however, his well-reasoned opinion established that appellant was not disabled as a result of her accepted lumbar strain on September 19, 2005. Although the Board does not rely exclusively on Dr. Huff's report, it considers his report to be persuasive evidence that appellant was not disabled during the period before and after September 19, 2005.

[14] *See Gary J. Watling*, 52 ECAB 278 (2001).

Because appellant has not submitted any reasoned medical evidence to show that she was disabled from August 29 through October 18, 2005 as a result of her accepted employment injury, the Board finds that the Office properly denied her claim for wage-loss compensation.

LEGAL PRECEDENT -- ISSUE 2

Under section 8128(a) of the Act,[15] the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,[16] which provides that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence that:

> "(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or
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> "(ii) Advances a relevant legal argument not previously considered by the [Office]; or
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> "(iii) Constitutes relevant and pertinent new evidence not previously considered by [the Office]."

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.[17]

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.[18]

ANALYSIS -- ISSUE 2

Appellant's May 13, 2006 request for reconsideration neither alleged, nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, she did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).

In support of her request for reconsideration, appellant submitted notes from Dr. Schnapp dated April 26, 2006, describing appellant's alleged pain radiating from her back to her hips and posterior thighs; copies of Dr. Schnapp's notes dated August 29, September 19 and 26, and October 3, 10 and 24, 2005; and notes dated October 24, 2005, in which Dr. Schnapp

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[15] 5 U.S.C. § 8128 (a).

[16] 20 C.F.R. § 10.606(b).

[17] 20 C.F.R. § 10.608(b).

[18] *See Helen E. Paglinawan*, 51 ECAB 591 (2000).

recommended limiting appellant's work schedule to eight hours per day for 30 days. On a form dated May 4, 2006, Dr. Schnapp indicated that appellant had been totally disabled from August 29 through October 18, 2005 and was able to return to work on October 19, 2005. In the "remarks" section of the form, Dr. Schnapp stated, "Due to her work injury from March 2004 [appellant] was to return to work 8-hour workdays for 30 days then return to work full duty." The Office denied appellant's claim on the grounds that the medical evidence failed to show a causal relationship between appellant's current medical condition and her March 6, 2004 injury. As none of Dr. Schnapp's reports addressed that issue, they do not constitute relevant and pertinent new evidence not previously considered by the Office.[19] Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review. Moreover, the unrationalized reports merely repeat evidence already in the case record and, therefore, have no evidentiary value.[20]

The Board finds that the Office properly determined that appellant was not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2), and properly denied her May 13, 2006 request for reconsideration .

CONCLUSION

The Board finds that appellant has not established that she was disabled for work and entitled to wage-loss compensation for the period August 29 through October 18, 2005.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 26 and April 20, 2006 and December 15, 2005 are affirmed.

Issued: November 2, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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[19] *See Susan A. Filkins*, 57 ECAB ___ (Docket No. 06-868, issued June 16, 2006).

[20] *See Helen E. Paglinawan*, *supra* note 18.