

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

R.G., Appellant)	
)	
and)	
)	Docket No. 06-1354
)	Issued: September 25, 2006
U.S. DEPARTMENT OF THE INTERIOR,)	
NATIONAL PARK SERVICE,)	
Port Angeles, WA, Employer)	

Appearances: *Case Submitted on the Record*
John E. Goodwin, Esq., for the appellant
Office of Solicitor, for the Director

DECISION AND ORDER

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

JURISDICTION

On May 25, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated March 24, 2006 denying his entitlement to wage-loss benefits on or after July 21, 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 on or after July 21, 2002.

FACTUAL HISTORY

On February 4, 2005 appellant, then a 59-year-old temporary laborer, filed an occupational injury claim alleging that he sustained low back injuries as a result of his federal employment. He indicated that the date of injury was July 21, 2002, but he delayed in filing his claim because he did not realize that his condition was an occupational illness, rather than a traumatic injury, until August 9, 2004. Appellant stopped working on July 22, 2002.

On May 2, 2005 appellant filed a claim for compensation beginning July 21, 2002. On June 14, 2005 his claim was accepted for displaced lumbar intervertebral disc.

In support of his claim for compensation, appellant submitted a July 25, 2002 emergency department report, electronically signed by Dr. Bradley D. Bigelow, Board-certified in emergency medicine, reflecting a diagnosis of acute left S1 radiculopathy. Appellant reported that, five days prior, he had developed a sudden tight feeling in his left hip and that his left leg had been numb ever since. A July 25, 2002 emergency department note reflected that he was discharged on that date. Appellant submitted a July 30, 2002 report of a magnetic resonance imaging (MRI) scan of the lumbar spine and July 25, 2002 reports of MRI scans of the left hip and of the left lower extremity. In a report dated July 30, 2002, Dr. Barry J. Landau, a Board-certified neurological surgeon, stated that he had a one-week history of left leg pain, weakness and numbness which had necessitated an emergency room visit two days earlier. He indicated that appellant had symptoms of severe lumbar radiculopathy, most likely caused by a herniated disc and profound weakness with pronounced footdrop and severe pain. A July 31, 2002 operative report from St. Joseph's Hospital reflected that, on that date, Dr. Landau performed a left L4-5 partial hemilaminectomy. The record contains an August 1, 2002 discharge summary bearing an illegible signature from St. Joseph's Hospital.

In a statement dated January 28, 2005, appellant alleged that his back problem began on July 21, 2002. While bending to pick up trash, he felt stiffness and a dull ache in his left hip, which progressed into his left leg. Appellant stated that he went to the emergency room on July 25, 2002. He further claimed that he had experienced pain and stiffness many times in 10 years of working at the employing establishment, due to daily lifting of more than 50 pounds and constant twisting, clearing trees and other heavy duties.

Appellant submitted an October 25, 2004 report from Dr. James D. Hopper, a treating physician, who indicated that appellant had experienced recurrent radicular low back pain since 1992. Dr. Hopper noted that appellant had presented to the emergency room in July 2002, when he experienced pain, numbness and weakness in his left leg. He stated that appellant had undergone a lumbar laminectomy on July 31, 2002 with microdisectomy and that further recurrences of weakness required a second laminectomy operation in 2003. He noted that appellant had some persisting numbness in the left leg and opined that the duties of a laborer would exacerbate his condition.

On September 23, 2002 Dr. Landau noted continued improvement, with intermittent left hip pain and modified left foot weakness. In a November 25, 2002 duty status report, he opined that appellant could return to work with restrictions, including that he carry and lift no more than 5 pounds continuously and 20 pounds intermittently. In an August 13, 2003 report, Dr. Landau indicated that he had some residual proximal leg pain; the left footdrop was completely resolved; and appellant had normal strength throughout the left lower extremities.

In a July 28, 2005 attending physician's report, Dr. Hopper provided a diagnosis of lumbar radiculopathy and opined that appellant had been totally disabled since July 2, 2002. In a separate section, he stated that he was advised on February 12, 2004 that he could return to work

with restrictions. Dr. Hopper stated that appellant had been hospitalized for his work-related condition on July 31, 2002 and discharged on August 2, 2002.

The record contains numerous notices of personnel action reflecting appellant's employment status and compensation from April 13, 2001 through November 20, 2002. Appellant submitted a Form EN1030B on October 6, 2005 reflecting that he had no nonfederal employment from July 21, 2001 through July 21, 2002; that he had received no work-related income since July 21, 2002; that he presently received a pension from the state of Washington for nonfederal employment; and that he also received unemployment compensation. He also submitted U.S. individual tax returns for calendar years 2002 through 2004 and a 1099R from the Washington Department of Retirement Systems for calendar year 2004.

By letter dated February 21, 2006, the Office informed appellant that the medical evidence provided was insufficient to establish that he was totally disabled during the period in question and provided him 30 days to submit additional evidence, including a contemporaneous medical report explaining how appellant's accepted condition caused his alleged disability.

By decision dated March 24, 2006, the Office denied appellant's claim for compensation beginning July 21, 2002, finding that he had provided no contemporaneous medical evidence to support his disability during the alleged period.

LEGAL PRECEDENT

Under the Federal Employees' Compensation Act,¹ the term disability means incapacity, because of an employment injury, to earn wages that the employee was receiving at the time of the injury.² Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.³ An employee who has had a physical impairment causally related to his federal employment, but who nonetheless has the capacity to earn the wages he 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.⁴ 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 his employment, he is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.⁵

For each period of disability claimed, appellant has the burden of proving by the preponderance of the reliable, probative and substantial evidence that he is disabled for work as a

¹ 5 U.S.C. §§ 8101-8193.

² See *Lyle E. Dayberry*, 49 ECAB 369 (1998); see also *Frazier V. Nichol*, 37 ECAB 528 (1986).

³ See *Lyle E. Dayberry*, *supra* note 2.

⁴ *Id.* See also *Gary L. Loser*, 38 ECAB 673 (1987).

⁵ See *Lyle E. Dayberry*, *supra* note 2; see also *Bobby W. Hornbuckle*, 38 ECAB 626 (1987).

result of his employment injury.⁶ 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.⁷ The Board will not require the Office to pay compensation in the absence of medical evidence directly addressing the particular period of disability for which compensation is sought. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.⁸

Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work. Appellant's burden of proving he was disabled on particular dates requires that he 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 causally related to the employment injury and supports that conclusion with medical reasoning.⁹ Where no such rationale is present, the medical evidence is of diminished probative value.¹⁰

ANALYSIS

The Board finds that appellant has failed to establish that he was totally disabled beginning July 21, 2002 due to an employment-related condition. His claim was accepted for displaced lumbar intervertebral disc. Appellant filed a claim for compensation alleging that he was totally disabled from working July 21, 2002. However, he did not submit any probative medical evidence demonstrating total disability for this period of time due to his accepted condition.

Medical evidence of record includes Dr. Bigelow's July 25, 2002 emergency room reports reflecting that appellant was treated and discharged on that date. Although Dr. Bigelow diagnosed acute left S1 radiculopathy, he did not address whether appellant was disabled. Therefore, these reports lack probative value.

Dr. Landau's reports are insufficient to establish that appellant was disabled from work during the period in question. In his July 30, 2002 report, Dr. Landau stated that he had symptoms of severe lumbar radiculopathy, most likely caused by a herniated disc and profound weakness with pronounced footdrop and severe pain. However, he did not opine whether or not appellant was disabled due to this condition. A July 31, 2002 operative report from St. Joseph's Hospital reflected that on that date, Dr. Landau performed a left L4-5 partial hemilaminectomy. An August 1, 2002 discharge summary indicates that appellant apparently stayed overnight at the hospital following his surgical procedure. Although he may have been disabled for some period of time surrounding the procedure performed on July 31, 2002, Dr. Landau did not assert that

⁶ *Fereidoon Kharabi*, 52 ECAB 291 (2001); *see also David H. Goss*, 32 ECAB 24 (1980).

⁷ *Fereidoon Kharabi*, *supra* note 6; *see also Edward H. Horton*, 41 ECAB 301 (1989).

⁸ *Fereidoon Kharabi*, *supra* note 6.

⁹ *Ronald A. Eldridge*, 53 ECAB 218 (2001).

¹⁰ *Mary A. Ceglia*, 55 ECAB ____ (Docket No. 04-113, issued July 22, 2004).

appellant was disabled from work on any particular date or explain how the disabling condition was causally related to the employment injury.¹¹ Therefore, these reports are of diminished probative value.¹² Dr. Landau's September 23, 2002 report reflected appellant's continued recovery following his lumbar laminectomy, but again, offered no opinion regarding his disability. In his November 25, 2002 duty status report, Dr. Landau opined that he could return to work with restrictions. However, the report did not address whether appellant was totally disabled for any specific period of time prior to the date of the report. Therefore, the report does not support his claim. Dr. Landau's August 13, 2003 report did not support his claim for disability, but rather indicated that, although he had some residual proximal leg pain, his left footdrop was completely resolved and that he had normal strength throughout the lower extremities.

In his October 25, 2004 report, Dr. Hopper indicated that appellant experienced recurrent radicular low back pain since 1992 and noted that he had presented to the emergency room in July 2002, when he experienced pain, numbness and weakness in his left leg. He stated that appellant had undergone a lumbar laminectomy on July 31, 2002 with microdisectomy and that further recurrences of weakness required a second laminectomy operation in 2003. Dr. Hopper noted that appellant had some persisting numbness in the left leg and opined that the duties of a laborer would exacerbate his condition. However, his report did not provide an opinion on appellant's disability for work during any specific period of time and is, therefore, irrelevant to the issue at hand.

In his July 28, 2005 attending physician's report, Dr. Hopper opined that appellant had been totally disabled since July 2, 2002. This report lacks probative value for several reasons. First, Dr. Hopper failed to support his conclusion that appellant was disabled with objective medical evidence or medical reasoning. His blanket statement that he was disabled 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.¹³ Moreover, Dr. Hopper's report is internally inconsistent and in conflict with the evidence of record. In one section of the report, Dr. Hopper indicates that appellant was disabled for the entire period July 2, 2002 through the date of the report. In a separate section, he stated that he was advised on February 12, 2004 that he could return to work with restrictions, reflecting that he was not disabled at that time. The Board also notes that there is no evidence of record supporting Dr. Hopper's opinion that appellant was disabled as of July 2, 2002. Rather, appellant alleged that his injury occurred on July 21, 2002 the day before he stopped working. Dr. Hopper's statement that he had been hospitalized for his work-related condition on July 31, 2002 and discharged on August 2, 2002 was also inaccurate, as the evidence reflects that he was discharged on August 1, 2002. Dr. Hopper's inaccurate factual and medical history reduces the probative value of his report.

¹¹ *Ronald A. Eldridge*, 53 ECAB 218 (2001).

¹² *Mary A. Ceglia*, *supra* note 10.

¹³ *Id.* See also *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); *Willa M. Frazier*, 55 ECAB ____ (Docket No. 04-120, issued March 11, 2004).

Appellant had the burden of proving by the preponderance of the reliable, probative and substantial evidence that he was disabled for work as a result of his employment injury. For the reasons stated above, the Board finds that he failed to sustain his burden of proof in establishing that he was totally disabled due to his accepted employment condition on or after July 21, 2002.¹⁴

CONCLUSION

The Board finds that appellant has not established entitlement to wage-loss benefits on or after July 21, 2002.

ORDER

IT IS HEREBY ORDERED THAT the March 24, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 25, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

¹⁴ See *Fereidoon Kharabi*, *supra* note 6. (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.)