United States Department of Labor
Employees' Compensation Appeals Board

G.B., Appellant	)	
and	)	**Docket No. 06-1532**
	)	**Issued: April 20, 2007**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Santa Clarita, CA, 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 June 28, 2006 appellant filed a timely appeal from a March 23, 2006 decision[1] of the Office of Workers' Compensation Programs denying her claim for leave buy back for the period August 24 to 25, 2005 and compensation for lost wages for August 27 to November 3, 2005. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether appellant met her burden of proof to establish that she was entitled to leave buy back for the period August 24 to 25, 2005 and for compensation for partial disability from August 27 to November 3, 2005.

[1] Appellant indicated that she is not appealing a merit decision dated June 22, 2006.

FACTUAL HISTORY

On June 12, 2001 appellant, then a 46-year-old clerk, filed an occupational disease claim alleging that on March 31, 1999 she first realized her cervical degenerative disc disease had been permanently aggravated by her employment. She noted that on May 15, 1998 she first became aware of this condition.[2] The Office accepted the claim for cervical radiculopathy and authorized cervical surgery, which was performed on June 29, 2004. Appellant reduced her work hours from eight hours per day to four hours per day effective June 23, 2003 and returned to full-time modified work on July 12, 2003. On September 3, 2003 she reduced her hours to four hours per day and returned to full-time modified work on October 10, 2003. Appellant stopped work on October 27, 2003, returned to part-time modified work on March 19, 2004 and stopped again on June 28, 2004. She returned to work on November 4, 2004 for four hours per day. On April 13, 2005 appellant accepted a modified job offer working four hours per day.

On May 11, 2005 Dr. Katrina Vlachos, a treating Board-certified physiatrist, reviewed and approved a May 9, 2005 proposal to increase appellant's work hours from four hours to eight hours in her limited-duty job. She released appellant to an eight-hour light-duty job on May 18, 2005 and again on June 15, 2005. In a May 25, 2005 report, Dr. Vlachos reviewed and approved a limited-duty job offer working eight hours per day.

On June 6, 2005 the employing establishment offered appellant a modified job working eight hours per day. Appellant returned to working eight hours per day in the modified job on June 19, 2005. On June 29, 2005 she underwent surgery and stopped work. The employing establishment offered appellant a modified job on June 12, 2005. On July 26, 2005 the employing establishment revised the June 12, 2005 job offer working eight hours per day to comply with restrictions by her physician. The job restrictions included intermittent and continuous lifting and carrying up to five pounds for two hours per day; intermittent standing up to four hours per day with sit/stand option; no twisting, pulling, pushing, climbing, kneeling, or standing and two hours per day of reaching above the shoulder.

The Office subsequently received an August 24, 2005 attending physician's supplemental report by Dr. John T. Harbaugh, a treating physician Board-certified in family practice and occupational health, diagnosing situational tension. He stated that she could return to light-duty work on August 27, 2005 for four hours per day. Dr. Harbaugh found that appellant was totally disabled for the period August 24 to 26, 2005. Appellant's last visit was on August 12, 2005 when she reported that "she had increased symptoms, but was tolerating it." She related having a panic attack prior to going to work on August 22, 2005 which she attributed "to anxiety because of her situation and work." The panic attack appellant alleged was due to her supervisors rejecting her family medical leave request form. They informed her that she was ineligible for leave under the Family Medical Leave Act as she had not worked the required number of hours. A physical examination revealed bilateral neck tenderness and bilateral tenderness in the shoulder trapezius musculature. The report noted that on August 12, 2005 appellant reported that "she had increased symptoms, but was tolerating it." Dr. Harbaugh stated that appellant "is

[2] She has been on limited duty since April 13, 1999 due to her accepted carpal tunnel syndrome under claim number 13-1190901.

willing to try going back to work again at a four-hour per day limit." He opined that appellant could return to work four hours per day on August 27, 2005.

In an August 31, 2005 report, Dr. Harbaugh diagnosed lumbosacral strain with lumbar disc disease, left leg sciatica and nonemployment-related status post cervical discectomy and fusion. He reported that August 12, 2005 was the date of the most recent examination. Dr. Harbaugh noted, "work restrictions as per [employing establishment's] job offer of [July] 26, [20]05" for eight hours. On September 8, 2005 he diagnosed cervical disc bulge with cervical radiculitis.

In an October 7, 2005 attending physician's report, Dr. Harbaugh diagnosed cervical disc bulges with cervical radiculitis. He checked "yes" to the question whether he believed the diagnosed condition had been caused or aggravated by appellant's employment. Under remarks, Dr. Harbaugh placed appellant on light duty working four hours per day with restrictions for the period September 9 to October 9, 2005.

On October 11, 2005 the Office received appellant's claims for compensation (Form CA-7) and a September 8, 2005 attending physician's report by Dr. Harbaugh, a treating physician Board-certified in family practice and occupational health. Appellant requested leave buy back for the period August 25 to 26, 2005 and intermittent compensation for the period August 27 to October 7, 2005. In an attached time analysis CA-7a form, appellant noted that she worked four hours per day and used four hours of leave without pay for the period August 28 to October 6, 2005 and used 16 hours of sick leave for August 24 and 25, 2005. Dr. Harbaugh limited appellant to four hours per day starting August 27, 2005.

By letter dated October 18, 2005, the Office advised appellant of the evidence needed to establish a recurrence claim due to her employment-related condition. It was to address whether her light-duty assignment had changed and a report from her attending physician describing objective findings of a worsening in her employment-related condition and which also explained how she could no longer perform her duties when she stopped work. Appellant was informed that the information contained on CA-17 and CA-20 forms was insufficient to support her claim.

The Office subsequently received attending physician's supplemental reports dated October 17 and 29, 2005, a November 3, 2005 report and a November 2, 2005 attending physician's report by Dr. Harbaugh, a claim for intermittent compensation for the period October 7 to November 3, 2005 and a time analysis form for the period October 9 to November 3, 2005. Dr. Harbaugh stated that he reduced appellant's hours due to "her increasing complaints of pain and flares of pain in her" neck and shoulder muscles, which he concluded was "reasonable concerning the patient's given complaints and history of neck fusion." He reported mild to moderate bilateral tenderness in the neck and trapezi.

By decision dated November 23, 2005, the Office denied appellant's claim for leave buy back and her wage-loss request. The Office informed appellant that this was considered a recurrence of disability and the medical evidence was insufficient to support a change in her condition or a change in the light-duty requirements.

Subsequent to the decision, the Office received reports dated November 11, 17 and 29, 2005 report by Dr. Harbaugh. On November 17, 2005 Dr. Harbaugh diagnosed chronic neck pain, status post cervical. He stated that appellant's work hours had been reduced to six hours from eight hours because her medication required adjustment and "[h]er pain complaints increased significantly." Objective evidence included increased neck stiffness. Dr. Harbaugh noted that she was seen for neck and shoulder pain and for review of a job offer by the employing establishment. He indicated that appellant would continue working "six hours per day as she transitions back to" working eight hours per day. Dr. Harbaugh also noted that he had reviewed the proposed job offer and found it compatible with the restrictions set for appellant.

On December 7, 2005 appellant, through counsel, requested reconsideration. He contends that appellant never accepted the June 19, 2005 limited-duty position requiring that she work eight hours a day. Appellant contended that the employing establishment withdrew the limited-duty job offer where she was working four hours per day and offered her a limited-duty job requiring eight hours a day. Therefore, the withdrawal of the four-hour limited-duty position without following Office procedure constituted a recurrence pursuant to section 2.1500.3(b)(1)(c).

By decision dated March 23, 2006, the Office found the evidence insufficient to warrant modification of the denial of her recurrence claim.[3] The Office rejected appellant's argument regarding limited-duty position as appellant's treating physicians had both released appellant to work eight hours per day and approved the increase to eight hours.

LEGAL PRECEDENT

Appellant has the burden of proving by the preponderance of the reliable, probative and substantial evidence that she was disabled for work as the result of an employment injury.[4] Monetary compensation benefits are payable to an employee who has sustained wage loss due to disability for employment resulting from the employment injury.[5] Whether a particular employment injury causes disability for employment and the duration of that disability are medical issues which must be proved by a preponderance of reliable, probative and substantial medical evidence.[6]

In situations where compensation is claimed for periods where leave was used, the Office has the authority and the responsibility to determine whether the employee was disabled during

[3] The Board notes that, following the March 23, 2006 decision, the Office received additional evidence. However, the Board may not consider new evidence on appeal. *See* 20 C.F.R. § 501.2(c); *Donald R. Gervasi*, 57 ECAB ___ (Docket No. 05-1622, issued December 21, 2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

[4] *Frankie A. Farinacci*, 56 ECAB ___ (Docket No. 05-1282, issued September 2, 2005); *David H. Goss*, 32 ECAB 24 (1980).

[5] *Amelia S. Jefferson*, 57 ECAB ___ (Docket No. 04-568, issued October 26, 2005); *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

[6] *Sandra D. Pruitt*, 57 ECAB ___ (Docket No. 05-739, issued October 12, 2005); *Edward H. Horten*, 41 ECAB 301 (1989).

the period for which compensation is claimed.[7] The Office determines whether the medical evidence establishes that an employee is disabled by an employment-related condition during the period claimed for leave buy back, after which the employing establishment will determine whether it will allow the employee to buy back the leave used.[8]

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden to establish by the weight of reliable, probative and substantial evidence a recurrence of total disability.[9] As part of this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the light-duty requirements.[10]

Under the Federal Employees' Compensation Act[11] the term disability is defined as incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.[12] Disability is thus not synonymous with physical impairment which may or may not result in incapacity to earn the wages. An employee who has a physical impairment causally related to a federal employment injury but who nonetheless has the capacity to earn wages he or she was receiving at the time of injury has no disability as that term is used in the Act,[13] and whether a particular injury causes an employee disability for employment is a medical issue which must be resolved by competent medical evidence.[14] Whether a particular injury causes an employee to be disabled for work and the duration of that disability, are medical issues that must be proved by a preponderance of the reliable, probative and substantial medical evidence.[15]

The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and

---

[7] *Glen M. Lusco*, 55 ECAB 148 (2003); *Laurie S. Swanson*, 53 ECAB 517 (2002); *see also* 20 C.F.R. § 10.425, which provides: "The employee may claim compensation for periods of annual and sick leave which are restorable in accordance with the rules of the employing [establishment]. CA-7 and CA-7b forms are used for this purpose."

[8] *Glen M. Lusco*, *supra* note 7*; Laurie S. Swanson*, *supra* note 7.

[9] *Richard A. Neidert*, 57 ECAB ___ (Docket No. 05-1330, issued March 10, 2006).

[10] *J.F.*, 58 ECAB ___ (Docket No. 06-186, issued October 17, 2006); *Shelly A. Paolinetti*, 52 ECAB 391 (2001); *Terry R. Hedman*, 38 ECAB 222 (1986).

[11] 5 U.S.C. §§ 8101-8193.

[12] *See Prince E. Wallace*, 52 ECAB 357 (2001).

[13] *Cheryl L. Decavitch*, 50 ECAB 397 (1999); *Maxine J. Sanders*, 46 ECAB 835 (1995).

[14] *Donald E. Ewals*, 51 ECAB 428 (2000).

[15] *Tammy L. Medley*, 55 ECAB 182 (2003); *see Donald E. Ewals*, *supra* note 14.

entitlement to compensation.[16] Furthermore, it is well established that medical conclusions unsupported by rationale are of diminished probative value.[17]

ANALYSIS

The Office accepted appellant's claim for cervical radiculopathy and authorized cervical surgery. Appellant filed a claim for leave buy back from August 24 to 25, 2005 and then four hours of disability for the period August 27 to November 3, 2005. She did not file a notice of recurrence of disability, but she had returned to full-time work and it is her burden of proof to establish an employment-related disability on or after August 24, 2005.

The Board finds that appellant did not submit sufficient medical evidence to establish either total disability for the period August 25 to 26, 2005 or partial disability for the period August 27 to November 3, 2005.

The October 7, 2005 attending physician's report from Dr. Harbaugh contains a diagnosis of cervical disc bulges with cervical radiculitis. The report does not contain a reasoned medical opinion explaining how the disability reported for the period September 9 to October 9, 2005 was related to the employment injury. The only reference to the cause of the disability is a checkmark of "yes" to the question as to whether the condition was employment related with no explanation. The Board has held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.[18]

The record contains an October 4, 2005 report from Dr. Harbaugh diagnosing situational tension as a result of a panic attack. Dr. Harbaugh opined that appellant was totally disabled for the period August 24 to 26, 2005. A physical examination revealed bilateral neck tenderness and bilateral tenderness in the shoulder trapezius musculature. Dr. Harbaugh indicated that appellant had a panic attack on August 22, 2005 prior to her going to work. He noted that appellant attributed the attack "to anxiety because of her situation and work." Dr. Harbaugh related that appellant "is willing to try going back to work again at a four-hour per day limit." Dr. Harbaugh's October 4, 2004 report is insufficient to meet appellant's burden. He does not attribute appellant's total disability for August 25 and 26, 2005 due to a worsening of her accepted condition. Instead, the disability was due to a panic attack completely unrelated to appellant's accepted cervical degenerative disc disease. When a claimant stops working at the employing establishment for reasons unrelated to an employment-related physical condition, she has no disability within the meaning of the Act.[19] Therefore the Office properly denied her request for leave buy back for August 25 and 26, 2005. With respect to appellant's partial disability commencing August 27, 2005, Dr. Harbaugh released appellant to working four hours per day based upon her statement that she was willing to try that. Dr. Harbaugh provided

[16] *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

[17] *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

[18] *D.D.*, 57 ECAB ___ (Docket No. 06-1315, issued September 14, 2006).

[19] *Richard A. Neidert*, 57 ECAB ___ (Docket No. 05-1330, issued March 10, 2006).

rationale opinion explaining why appellant cannot work eight hours in the modified position as she had been doing prior to the panic attack. He merely notes that appellant is willing to try working four hours per day. There is no discussion of appellant's job duties or explanation of how the employment-related condition had changed such that appellant could not continue to work full time. This report is insufficient to support her claim for partial disability beginning August 27, 2005.

Appellant subsequently submitted several reports by Dr. Harbaugh including a November 3, 2005 report in which he attributed appellant's partial disability to her subjective complaints without mentioning appellant's August 22, 2005 panic attack. Dr. Harbaugh appears to give contradictory opinions regarding the cause of appellant's disability. In an October 4, 2005 report, he attributed appellant's total disability to her panic attack, but subsequently stated that her disability was a result of her subjective complaints of pain. Dr. Harbaugh did not explain how appellant's accepted cervical condition could have worsened such that she was totally disabled for the period August 24 to 26, 2005 and partially disabled for the period August 27 to November 3, 2005. He stated that he reduced appellant's hours based upon her subjective complaints of pain without any supporting objective evidence. The Board has held that a medical opinion not based upon objective evidence is entitled to little probative value.[20] As Dr. Harbaugh has failed to provide an opinion supported by objective evidence and rationale, his reports are insufficient to support appellant's burden of proof.

The record also contains reports by Dr. Harbaugh dated November 11, 17 and 29, 2005 in which he increased appellant's work hours. These reports concern appellant's partial disability for periods subsequent to November 3, 2005. As these reports do not address the period of partial disability in question, they are not relevant to the issue at hand.

Appellant was advised by an October 18, 2005 letter of the medical and factual evidence needed to establish her claim for recurrence of disability. However, she did not submit such evidence. The Office properly found that appellant submitted insufficient evidence to meet her burden of proof in establishing the claimed recurrence of total disability from August 24 to 26, 2005 and partial disability from August 27 to November 3, 2005.

The Board finds that appellant has not submitted the necessary detailed medical opinion evidence complete with objective physical findings to support a change in the nature and extent of her injury-related condition or to support the period of disability claimed. The Board also finds that appellant has not submitted any evidence supporting a withdrawal of her limited-duty job.

[20] Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work. When a physician's statements regarding an employee's ability to work consist only of a repetition of the employee's complaints that he or she hurt too much to work without objective signs of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation. *William A. Archer*, 55 ECAB 674 (2004).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she was entitled to leave buy back for the period August 24 to 25, 2005 and for compensation for partial disability from August 27 to November 3, 2005.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 23, 2006 is affirmed.

Issued: April 20, 2007
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