

pulling or reaching above her shoulders. Dr. Jeffrey A. Wunder, an attending Board-certified physiatrist, provided reports dating from July 31 to September 18, 1996 in which he advised that appellant could work modified duty with no climbing, kneeling, reaching or driving and minimal bending, stooping and twisting with a 10-pound lifting restriction. On October 8, 1996 he advised that he did not approve a job described by appellant and indicated this on an employing establishment job offer dated September 26, 1996 which described appellant's regular manual distribution duties. On October 4, 1996 appellant was issued a notice of removal by the employing establishment for misappropriation of postal funds. In a duty status report dated October 16, 1996, Dr. Wunder reiterated his previous restrictions and advised that appellant should not case mail. Appellant resigned on October 18, 1996 and on November 20, 1996 Dennis Shearer, supervisor of customer service at the employing establishment, indicated that this was due to a pending disciplinary action.

In 1998 the Office determined that a conflict in medical evidence had been created between Dr. Wunder and Office referral physicians, Dr. Stephen H. Shogan, Board-certified in neurosurgery, and Dr. Jeffrey M. Hrutkey, Board-certified in orthopedic surgery.¹ The Office then referred appellant to Dr. William M. Johnson, a Board-certified neurosurgeon, for an impartial evaluation regarding whether she continued to have residuals of her accepted condition and was surgery warranted. In a report dated January 28, 1999, Dr. Johnson advised that a cervical MRI scan demonstrated only a small annular tear at C6-7 and that surgery was not warranted. Dr. Wunder continued to submit reports and on June 19, 1999 advised that an MRI scan was normal. In an April 6, 1999 decision, the Office denied appellant's request for authorization for surgery.

Appellant continued to receive medical benefits, and on December 31, 2001 the Office expanded the accepted condition to include disc herniation at C4-5 and authorized surgical repair that was performed on January 22, 2002 by Dr. Hans C. Coester, a Board-certified neurosurgeon. A June 5, 2002 cervical spine MRI scan demonstrated postoperative changes. Dr. Wunder submitted a number of reports dating from February 19 to December 17, 2002 in which he advised that appellant could work modified duty with a 10-pound lifting restriction and no lifting above her head. In his report dated December 17, 2002, Dr. Wunder noted that appellant had recently fallen and fractured her left elbow. In reports dated February 17 and March 28, 2003, Dr. W. Carlton Reckling, a Board-certified orthopedic surgeon, noted positive physical findings and diagnosed chronic headaches, chronic neck pain, cervical spondylosis at C5-6, status post fusion at C4-5, thoracic outlet syndrome on the left and ulnar nerve compression at the left elbow. He recommended pain management. By report dated May 6, 2003, Dr. Charles Bradley Sisson, Board-certified in anesthesiology, noted appellant's past medical history, her physical complaints and made physical findings. He diagnosed status post anterior cervical fusion at C4-5 with chronic cervicgia, cervicogenic migrainous headaches, cervical radiculopathy of the left upper extremity in the C7-8 distribution, left shoulder pain, rule-out rotator cuff tear, opioid habituation, depression and chronic pain. A June 5, 2003 electromyography (EMG) and nerve conduction study of the upper extremities was normal. On August 23, 2003 Dr. Richard J.

¹ The Office had previously referred appellant to Dr. Stephen Dinenberg, an orthopedic surgeon, and in a June 23, 1997 report he advised that, based on examination findings and review of the record, she had no current orthopedic pathology and no diagnosis related to the July 8, 1996 employment injury, stating that she had no objective evidence of residuals of cervical strain.

Sanders, a Board-certified surgeon, noted the history of injury and appellant's complaints of chronic pain in her neck, shoulders, arms and hands with upper extremity weakness and tremors. He reported positive findings on physical examination and diagnosed cervical spine disease, bilateral thoracic outlet syndrome, left worse than right and possible left forearm and carpal tunnel syndrome. Dr. Sisson followed appellant for pain management and drug dependency and performed nerve blocks on August 5 and September 4, 2003. A December 30, 2003 MRI scan of the cervical spine demonstrated postsurgical changes, unchanged myelomalacia and mild degenerative disc disease at C3-4, C5-6 and C6-7. In a January 3, 2004 report, Dr. Coester noted appellant's past medical history and complaints of severe pain. He reviewed the MRI scan, noting diffuse degenerative disease and advised that cervical spine surgery was not warranted. Dr. Coester recommended neurological evaluation with nerve conduction studies. An electromyogram performed on April 6, 2004 demonstrated minimal median neuropathy on the left. By report dated April 8, 2004, Dr. Gergana Popova, Board-certified in family medicine, noted appellant's past medical history and complaints of chronic pain. She diagnosed chronic pain syndrome, most likely with narcotic dependence and protein S deficiency. In an April 12, 2004 report, Dr. Shogan noted appellant's continued complaint of neck pain and advised that further cervical spine surgery was not needed.²

On April 5, 2004 she filed a Form CA-7 claim for compensation for the period January 22, 2001 to April 30, 2004 and the employing establishment controverted the claim, advising that appellant had resigned on October 18, 1996 with charges pending. This was confirmed by a Form-50 history report. On May 28, 2004 Dr. Sanders requested authorization for thoracic outlet syndrome surgery, which was authorized on June 28, 2004.

By letter dated July 13, 2004, the Office informed appellant of the specific evidence needed to support her disability claim. In reports dated April 21 and May 5, 2004, Dr. Robert M. Monger, Board-certified in internal medicine and rheumatology, noted her past medical history including a diagnosis of rheumatoid arthritis and her complaints of chronic pain secondary to her cervical condition with bilateral thoracic outlet syndrome causing arm and hand pain. He advised that she had no evidence of rheumatoid arthritis. On July 22, 2004 Dr. Sanders performed authorized thoracic outlet repair on the left.³ In a statement dated November 1, 2004, Kathleen Allen of the employing establishment again advised that appellant resigned due to a pending disciplinary action. She stated that appellant's job at that time was no overhead work, pushing, pulling or work with her left shoulder.

By decision dated August 25, 2004, the Office denied appellant's claim for wage-loss compensation on the grounds that the medical evidence did not support disability due to her accepted conditions. The Office noted that appellant would be entitled to wage-loss compensation for postoperative recovery but that she submitted no medical documentation to support disability due to her employment-related conditions. On September 16, 2004 appellant, through counsel, requested reconsideration and submitted an August 31, 2004 report in which Dr. Sanders noted that appellant developed pneumonia postoperatively and still required nasal oxygen. By decision dated December 16, 2004 the Office denied modification of the August 25,

² The record also contains laboratory test results and physical therapy reports.

³ Appellant also submitted records from this hospitalization dating from July 22 through August 2, 2004.

2004 decision. The Office again noted that appellant would be entitled to wage-loss compensation for postoperative recovery but that she submitted no medical documentation to support disability due to her employment-related conditions. On August 25, 2005 appellant, through her attorney, requested reconsideration and submitted reports dated March 24, April 15, May 12 and July 11, 2005, in which Dr. Byron D. Jones, a Board-certified physiatrist, noted appellant's complaints and that she sustained a nerve injury with diaphragmatic paralysis following her July 2004 surgery. Dr. Jones advised that her condition was worsening. A July 1, 2005 MRI scan of the cervical spine demonstrated surgical fusion at C4-5, a disc protrusion at C5-6 with cord compression and increased stenosis. In an affidavit dated August 25, 2005, appellant described her regular job duties of distributing mail and the September 26, 1996 job offer. She also described her work history since resigning from the employing establishment. This included bartending, retail sales, clean up at construction sites and as a personal care provider at a nursing facility. Appellant last worked in October 2001. Dr. Bradley D. Vilims, a Board-certified anesthesiologist, performed cervical steroid injection on October 18, 2005. On October 24, 2005 Dr. Sanders diagnosed partial improvement following left thoracic outlet syndrome surgery, cervical spine disease, left shoulder arthritis, bilateral pectoral minor syndrome, pulmonary insufficiency and recovery from phrenic nerve paresis. By decision dated November 28, 2005, the Office denied modification of the prior decision.⁴

LEGAL PRECEDENT

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. 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.⁵

Under the Federal Employees' Compensation Act⁶ 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.⁷ Disability is thus not synonymous with physical impairment which may or may not result in an 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,⁸ and whether a particular injury causes an employee disability for employment is a medical

⁴ By decision dated January 28, 2005, the Office approved an attorney's fee of \$8,696.55 for work before the Office from December 31, 2003 to December 30, 2004 and in a December 23, 2005 decision approved an attorney's fee of \$10,168.45 for work before the Office from December 14, 2004 to August 25, 2005. These decisions have not been appealed to the Board.

⁵ *Shelly A. Paolinetti*, 52 ECAB 391 (2001); *Robert Kirby*, 51 ECAB 474 (2000); *Terry R. Hedman*, 38 ECAB 222 (1986).

⁶ 5 U.S.C. §§ 8101-8193.

⁷ *See Prince E. Wallace*, 52 ECAB 357 (2001).

⁸ *Cheryl L. Decavitch*, 50 ECAB 397 (1999); *Maxine J. Sanders*, 46 ECAB 835 (1995).

issue which must be resolved by competent medical evidence.⁹ 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.¹⁰

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 entitlement to compensation.¹¹ Furthermore, it is well established that medical conclusions unsupported by rationale are of diminished probative value.¹²

ANALYSIS

In this case, the Office accepted that on July 8, 1996 appellant sustained an employment-related cervical strain. On October 18, 1996 she resigned. In December 2001, the Office expanded the accepted condition to include disc herniation at C4-5, and appellant underwent authorized surgical repair on January 22, 2002. On April 5, 2004 she filed a claim for compensation for the period January 22, 2001 to April 30, 2004, and in decisions dated August 25 and December 16, 2004 and November 11, 2005, the Office denied the claim. The Office noted that appellant would be entitled to wage-loss compensation for postoperative recovery but that she submitted no medical documentation to support disability due to her employment-related conditions.

Appellant has contended that she resigned in October 1996 because she was forced to work outside her physical limitations. The record, however, shows that on October 4, 1996 she was issued a notice of removal by the employing establishment for misappropriation of postal funds. The employing establishment advised that she resigned with charges pending, and a Form-50 history form supports this. Appellant did not claim that she worked outside her physical restrictions until she submitted an affidavit on August 25, 2005 and in that affidavit merely described her regular job duties and restrictions. The job offer accepted by appellant on August 15, 1996 described her duties as six hours of answering the telephone and two hours of letter distribution with a 10-pound lifting restriction and no carrying, pushing, pulling or reaching above her shoulders. The medical evidence contemporaneous with her resignation includes Dr. Wunder's reports dating from July 31 to September 18, 1996 in which he advised that appellant could work modified duty with no climbing, kneeling, reaching or driving and minimal bending, stooping and twisting with a 10-pound lifting restriction. On October 8, 1996 he advised that he did not approve a job described by appellant and indicated this on an employing establishment job offer dated September 26, 1996 which described appellant's regular manual distribution duties. In a duty status report dated October 16, 1996, Dr. Wunder reiterated

⁹ *Donald E. Ewals*, 51 ECAB 428 (2000).

¹⁰ *Tammy L. Medley*, 55 ECAB 182 (2003); *see Donald E. Ewals*, *id.*

¹¹ *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹² *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

his previous restrictions and advised that appellant should not case mail. While there is a job description dated September 26, 1996 that was not approved by Dr. Wunder, this is for her regular manual distribution duties, and there is no indication in the record that she was actually performing this job when she resigned, including in her affidavit. Rather, the record supports that she was still performing the restricted-duty position that was within her medical restrictions. As stated above, the evidence contemporaneous with appellant's resignation indicates that this was because charges were pending. The Board therefore finds that the record supports that the job appellant was working at the time she resigned was not outside her restrictions and her argument to the contrary is without merit.

Appellant also failed to meet her burden of proof to establish that she was totally disabled beginning on January 22, 2001. In her August 24, 2005 affidavit, she stated that she continued to work until October 2001. While she submitted numerous medical reports covering the period in question which discuss her complex medical condition and treatment regimen, most of these do not discuss any type of work restrictions or disability, and medical evidence that does not offer any opinion regarding the cause of an employee's condition or disability is of limited probative value on the issue of causal relationship.¹³ The only reports of record which discuss work restrictions are those dating from February 19 to December 17, 2002 in which Dr. Wunder provided a 10-pound lifting restriction and advised that appellant should not lift above her head. These are within the restrictions that were in place when she resigned and therefore do not show that she was totally disabled from her limited-duty job. In its decisions dated August 25 and December 16, 2004, the Office noted that appellant would be entitled to wage-loss compensation for postoperative recovery but that she submitted no medical documentation to support disability due to her employment-related conditions. Appellant submitted no such evidence. The medical evidence of record, therefore, does not establish that she had an employment-related disability for the period January 22, 2001 to April 30, 2004.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she was entitled to wage-loss compensation for the period January 22, 2001 to April 30, 2004 causally related to her accepted conditions.

¹³ See *Willie M. Miller*, 53 ECAB 697 (2002).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 28, 2005 be affirmed

Issued: February 7, 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