

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

J. G., Appellant

and

PEACE CORPS, Yerevan, Armenia, Employer

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**Docket No. 06-2151
Issued: February 28, 2006**

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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 25, 2006 appellant filed a timely appeal from a July 19, 2006 merit decision of the Office of Workers' Compensation Programs denying her claim for disability compensation. 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 has established that she was disabled beginning July 14, 2005 due to her accepted employment injury.

FACTUAL HISTORY

On August 29, 2005 appellant, then a 58-year-old former peace corps volunteer, filed a claim for a traumatic injury in March 2004 to her neck, shoulder, arm and right side sustained when she was thrown against other passengers on a bus which skidded on ice in Armenia. She received treatment for her injury in Armenia. In October 2004, appellant was medically evacuated to the United States because of her continued complaints of pain. In a report dated October 25, 2004, Dr. Peter A. Moskovitz, Board-certified orthopedic surgeon, discussed her

history of right neck pain after a motor vehicle accident in Armenia. He diagnosed cervical spondylosis and cervicobrachialgia and recommended a magnetic imaging resonance (MRI) scan. In a progress report dated November 1, 2004, Dr. Moskovitz noted that an MRI scan revealed a new disc herniation on the right side at C5-6 “concordant with appellant’s symptoms.”

Appellant returned to Armenia and completed her tour of service on July 14, 2005. On October 14, 2005 the Office accepted her claim for cervicobrachial syndrome. On January 3, 2006 appellant filed a claim for compensation on account of disability (Form CA-7), requesting compensation beginning July 14, 2005.

On August 4, 2005 Dr. Sadie Arrington, Board-certified in family practice, diagnosed essential benign hypertension, paresthesias and diarrhea. On August 26, 2005 she diagnosed neck and limb pain.

On September 15, 2005 Dr. David L. Hammer, Board-certified in family medicine, discussed appellant’s complaints of pain on January 7, 2004 after riding on public transportation. He noted that she had been diagnosed with cervical spondylosis and cervicobrachialgia.¹

In a form report dated September 19, 2005, Dr. Wan-jiu Chen, an internist, diagnosed cervicobrachial syndrome and checked “yes” that the injury was caused or aggravated by the described employment incident of a bus accident in Armenia in 2004. He did not indicate any dates of total or partial disability. In a narrative report of the same date, Dr. Chen discussed appellant’s history of being thrown inside a bus in Armenia in 2003. He noted that the pain medication she took for the injury “seemed to be less effective recently.” Dr. Chen suspected a “rather severe whiplash injury of the neck with resultant neck strain.”

In reports dated December 21, 2005, Dr. Fred C. Williams, Jr., a Board-certified neurosurgeon, described appellant’s history of an employment injury while in Armenia with a history of pain in the neck and right upper extremity. He described her complaints of numbness and tingling in the right hand. Dr. Williams listed findings of “[n]eck pain and radiculopathy in the distribution of C6 with correlated weakness and hypertension.” He diagnosed cervical radiculopathy “likely secondary to [a] herniated nucleus pulposus.” Dr. Williams suspected nerve root compression from the HNP at C5-6 and recommended an MRI scan.²

By letter dated March 24, 2006, the Office requested additional factual and medical information from appellant, including a comprehensive medical report addressing her current condition and its relationship to her federal employment. In a response received April 3, 2006, appellant described her pain in the neck, shoulder, arm, hand and right side of the back. She noted that she was depressed and related that she worked part time “in an after school program.”

In a report dated February 15, 2006, Dr. Williams discussed appellant’s complaints of pain and numbness, tingling and weakness in the right upper and lower extremity. He diagnosed

¹ In an addendum dated December 30, 2005, Dr. Hammer discussed appellant’s hypertension.

² The record also contains reports dated December 27, 2005 and January 9, 2006 by a physician’s assistant associated with Dr. Williams.

herniated discs at C5-6 and C6-7 with radiculopathy. Dr. Williams recommended surgical intervention. On March 28, 2006 He related that appellant was partially disabled due to cervical intervertebral disc displacement and cervical spinal stenosis. He noted that she could not lift over 25 pounds or engage in vigorous activity.

In a letter dated April 11, 2006, Dr. Bruce Kenofer, Ph.D a licensed clinical psychologist, noted that appellant was “struggling with symptoms of depression in reaction to physical injuries that she received” while working for the employing establishment. He found that she had trouble with daily activities “due to her physical symptoms as well as her feelings of depression.” Dr. Kenofer recommended psychotherapy.

By decision dated July 19, 2006, the Office denied appellant’s claim on the grounds that the medical evidence was insufficient to establish that she was disabled beginning July 2005 due to her accepted employment injury.

LEGAL PRECEDENT

Section 10.730 of Title 20 of the Code of Federal Regulations addresses the issue of the conditions of coverage for Peace Corps volunteers injured while serving outside the United States. This regulation interprets section 8142(c)(3) of the Federal Employees’ Compensation Act.³ Section 10.730 provides that an injury sustained by a Peace Corps volunteer while he or she is located outside the United States shall be presumed to have been sustained in the performance of duty and any illness contracted during such time shall be presumed to be proximately caused by the employment. However, this presumption will be rebutted by evidence that the injury or illness was caused by the claimant’s willful misconduct, intent to bring about the injury or death of self or another, or was proximately caused by the intoxication by alcohol or illegal drugs of the injured claimant; or the illness is shown to have preexisted the period of service abroad; or the injury or illness is a manifestation of symptoms of or consequent to, a preexisting congenital defect or abnormality.

The Board notes that the term disability as used in the Act means the incapacity because of an employment injury to earn the wages that the employee was receiving at the time of injury.⁴ Whether a particular injury caused an employee disability for employment is a medical issue which must be resolved by competent medical evidence.⁵ When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in the employment held when injured, the employee is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.⁶ 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

³ 5 U.S.C. §§ 8101-8193; § 8142.

⁴ *Sean O’Connell*, 56 ECAB ____ (Docket No. 04-1746, issued December 20, 2004).

⁵ *Paul E. Thames*, 56 ECAB ____ (Docket No. 04-1019, issued April 26, 2005).

⁶ *Id.*

claimed. To do so would essentially allow employee's to self-certify their disability and entitlement to compensation.⁷

ANALYSIS

The Office accepted that appellant sustained cervicobrachial syndrome due to a March 2004 injury while working in Armenia for the employing establishment. She completed her term of employment on July 14, 2005. On January 3, 2006 appellant filed a claim requesting disability compensation beginning July 14, 2005.

In a report dated August 4, 2005, Dr. Arrington diagnosed benign hypertension, paresthesias and diarrhea. On August 26, 2005 she diagnosed neck and limb pain. Dr. Chen, in a report dated September 19, 2005, diagnosed cervicobrachial syndrome and checked "yes" that the condition was caused or aggravated by appellant's 2004 employment injury. He opined that appellant sustained a "rather severe whiplash injury of the neck with resultant neck strain" due to her injury on a bus in Armenia. Dr. Hammer, in a report dated September 15, 2005, reviewed appellant's complaints since her 2004 injury on public transportation and noted that she had been diagnosed with cervical spondylosis and cervicobrachialgia. None of the physicians, however, found that she was totally disabled from employment and thus, these reports are of little probative value. The Board does 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 employee's to self-certify their disability and entitlement to compensation.⁸

On December 21, 2005 Dr. Williams described appellant's employment injury and subsequent complaints of neck and right upper extremity pain with numbness and tingling in the right hand. He diagnosed cervical radiculopathy most likely due to a herniated disc at C5-6. In a report dated February 15, 2006, Dr. Williams diagnosed herniated discs with radiculopathy at C5-6 and C6-7. He recommended surgery. Dr. Williams did not address the relevant issue of whether appellant was disabled due to her employment injury and thus, his opinion is insufficient to meet her burden of proof.⁹

In a letter dated March 28, 2006, Dr. Williams opined that appellant was partially disabled due to cervical intervertebral disc displacement and cervical spinal stenosis. He noted that she could not lift over 25 pounds or engage in vigorous activities.¹⁰ Dr. Williams, however, did not discuss the cause of appellant's cervical disc displacement and spinal stenosis. The Board has held that medical evidence that does not offer any opinion regarding the cause of an

⁷ *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁸ *Id.*

⁹ *Id.*

¹⁰ The record contains reports dated December 27, 2005 and January 9, 2006 signed only by a physician's assistant. These reports are of no probative value as a physician's assistant is not considered a physician under the Act. See 5 U.S.C. § 8101(2); *Allen C. Hundley*, 53 ECAB 551 (2002).

employee's condition is of diminished probative value on the issue of causal relationship.¹¹ Moreover, Dr. Williams did not provide any objective medical evidence supporting his disability findings. Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work.¹²

On April 11, 2006 Dr. Kenofer, diagnosed depression due to physical injuries appellant sustained while working for the employing establishment. The Office has not accepted appellant's claim for depression. Thus, it is her burden to establish that the diagnosed condition was due to the accepted work injury through the submission of rationalized medical evidence.¹³ Dr. Kenofer did not provide any rationale for his finding that appellant sustained depression due to her employment injury. Further, he noted that appellant had "increasing difficulties in functioning" due to her physical symptoms and depression, but did not assert that she was disabled from work for any particular date.¹⁴ Dr. Kenofer's opinion is insufficient to show that she was disabled beginning July 14, 2005 due to her employment injury.

The issue of whether a claimant's disability is related to an accepted condition is a medical question which must be established by probative medical evidence.¹⁵ As the record contains no rationalized medical evidence supporting that appellant was disabled beginning July 14, 2005 she has not met her burden of proof.

CONCLUSION

The Board finds that appellant has not established that she was disabled beginning July 14, 2005 due to her accepted employment injury.

¹¹ *Conrad Hightower*, 54 ECAB 796 (2003).

¹² *See Fereidoon Kharabi*, *supra* note 7.

¹³ *See Joan R. Donovan*, 54 ECAB 615 (2003).

¹⁴ *See Fereidoon Kharabi*, *supra* note 7.

¹⁵ *See Paul E. Thames*, *supra* note 5.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 19, 2006 is affirmed.

Issued: February 28, 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