

FACTUAL HISTORY

On October 25, 2003 appellant, a 50-year-old letter carrier, filed a claim for a recurrence of disability on March 16, 2002 due to her accepted April 7, 1997 employment injury.¹ She also filed a claim for a recurrence of disability on September 26, 2002 due to the April 7, 1997 employment injury. The Office converted the March 16, 2002 recurrence claim into a new claim which was accepted for temporary aggravation of right median nerve injury, resolved.²

On June 14, 2004 the Office received appellant's claim for compensation (Form CA-7) for intermittent periods of disability from March 18, 2002 and January 23, 2003. An accompanying time analysis form reflected that she took 53.5 hours of leave without pay for the period October 30 to November 19, 2002. Appellant noted that she took leave without pay on October 30 to 31, November 4, 6, 7, 12, 13, 14, 18, 19 and 26, 2002. On August 11, 2004 the Office received a time analysis form requesting to buy back the 69.06 hours of sick leave she used for the period March 18, 2002 to January 23, 2003. Under agency comments, 60.97 hours were certified as no sick leave was used on November 25, 2002 and she used .91 hours of sick leave on January 8, 2003. The dates noted by appellant on the form were March 18 to 21 and 25 to 29, April 27 to 29, May 20, November 25 and December 26, 2002 and January 8 and 23, 2003.

The medical evidence pertaining to this period includes various therapy notes, progress notes and reports. The record contains progress notes dated September 25, 2002, chart notes dated September 19, 2002 and January 7, 2003, reports dated March 18 and November 25, 2002 by Dr. Scott M. Fried, a treating osteopath; therapy progress notes dated March 18, October 7, 10, 14, 16, 17, 21 and 23, November 4, 7, 13 and 14, 2002; November 19, 2002 work capacity evaluation; progress reports dated September 23 and 27 and October 28 2002 by occupational therapists; and a September 26, 2002 progress center report. In the March 18, 2002 report, Dr. Fried indicated: "we are going to take [appellant] out of work due to this current exacerbation." In the September 19, 2002 report, he noted that he saw appellant for discomfort in her upper extremities. Dr. Fried stated that he was enrolling appellant in a 12 week full course of physical therapy. In the January 7, 2003 chart note, he noted that appellant related that she was "intermittently symptomatic but is much better as compared to her last flare." Dr. Fried noted that appellant returned to full-duty work in December. With respect to appellant's recent exacerbation, Dr. Fried opined that this caused appellant to be disabled from work and "was directly and cause (sic) related to her work and repetitive strain activities."

In his January 7, 2003 report, Dr. Fried stated that appellant's recent disability from work "was directly and cause (sic) related to her work and repetitive strain activities." He further stated: "[t]his was due to significant exacerbation of her traumatically-induced median neuropathy and brachial plexitis."

¹ This was assigned file number 03-0226064. The Office accepted the claim for a dog bite of the right forearm and transient median nerve neuropathy, resolved. Subsequently, the Office expanded the claim to include an episode of depression and anxiety, resolved.

² This was assigned file number 03-2025854.

By letters dated July 7 and August 27, 2004, the Office noted that it had received appellant's CA-7 claim form for compensation for the period March 18, 2002 to January 23, 2003. It advised her that the medical evidence was insufficient to support total disability for the dates claimed, informed her of the factual and medical evidence needed to establish a recurrence claim and provided 30 days to submit such evidence. In the August 27, 2004 letter, the Office informed appellant that up to four hours are allowed for physical therapy and doctor's visits.

By decision dated April 12, 2005, the Office denied appellant's claim for intermittent wage-loss compensation for the period March 18, 2002 to January 23, 2003. It found that the medical evidence of record did not establish that she was totally disabled for work.

Appellant requested a review of the written record on April 19, 2005, which was subsequently changed to a request for an oral hearing by her representative. An oral hearing was held on December 13, 2005, at which appellant testified and was represented by counsel. In support of her claim appellant submitted evidence including disability certificates dated March 18 and December 2, 2002 by Dr. Fried, therapy progress notes dated November 13, 2002 and a November 4, 2002 progress report. In the March 18, 2002 disability certificate Dr. Fried indicated that appellant was totally disabled for the period March 18 to 25, 2002. The December 2, 2002 disability certificate merely noted that appellant was under his care without indicating any dates of partial or total disability.

In a decision dated March 1, 2006, the Office hearing representative affirmed as modified the April 12, 2005 decision. He found that appellant was entitled to compensation for total disability for the period March 18 through 21, 2002 and wage loss of four hours for physical therapy treatment on November 4, 7, 13, 14 and 19, 2002.³

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act⁴ has the burden of proving by the preponderance of the reliable, probative and substantial evidence that he was disabled for work as the result of an employment injury.⁵ Monetary compensation benefits are payable to an employee who has sustained wage loss due to disability for employment resulting from the employment injury.⁶ 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.⁷

³ The Board notes that, following the March 1, 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 5 U.S.C. §§ 8101-8193.

⁵ *Thomas M. Petroski*, 53 ECAB 484 (2002).

⁶ *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

⁷ *Fereidoon Kharabi*, 52 ECAB 291 (2001).

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed disability for 60.97 hours of leave without pay during the period March 18, 2002 to January 23, 2003 and her accepted temporary aggravation of right median nerve injury.⁸ The Board has held that the mere belief that a condition was caused or aggravated by employment factors or incidents is insufficient to establish a causal relationship between the two.⁹ The Board will not require the Office to pay compensation for disability in the absence of 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.¹⁰

ANALYSIS

The Office accepted appellant's claim for temporary aggravation of right median nerve injury. She filed a claim for wage-loss compensation for intermittent periods from March 18, 2002 through January 23, 2003 noting sick leave and leave without pay were utilized during the period. The Office advised appellant that to claim lost time from work she must file a CA-7 form and support her disability for work with medical evidence. In order to establish disability for the periods claimed from March 18, 2002 through January 23, 2003 she must submit rationalized medical evidence demonstrating that she was disabled for work due to her employment injury. The Office hearing representative found that appellant was entitled to compensation for total disability for the period March 18 through 21, 2002 and partial disability for physical therapy treatment on November 4, 7, 13, 14 and 19, 2002, as this was supported by medical evidence. Thus, the question is whether she submitted sufficient medical evidence to establish partial or total disability for the remaining dates she identified on her time analysis forms. These dates include March 25 to 29, April 27 to 29, May 20, October 30 and 31, November 6, 12, 16, 18, 25 and 26 and December 26, 2002 and January 8 and 23, 2003.

Appellant submitted various chart notes progress notes and reports from Dr. Fried as well as therapy and progress notes from occupational therapists. However, this medical evidence does not address or identify the dates appellant claimed wage-loss compensation, except for those dates identified by the hearing representative as establishing entitlement to compensation. The reports of the occupational therapists do not constitute competent medical opinion as they are not considered physicians as defined in the Act.¹¹ The record contains no medical evidence indicating that appellant was either partially or totally disabled for the remaining periods in question. Moreover, there is no medical evidence showing that appellant had physical therapy treatment or saw her physician on the remaining dates in question, which are March 25 to 29, April 27 to 29, May 20, October 30 and 31, November 6, 12, 16, 18, 25 and 26 and December 26, 2002 and January 8 and 23, 2003.

⁸ *Sandra D. Pruitt*, 57 ECAB ____ (Docket No. 05-739, issued October 12, 2005); *Alfredo Rodriguez*, 47 ECAB 437 (1996).

⁹ *Alfredo Rodriguez*, *supra* note 8.

¹⁰ *Fereidoon Kharabi*, *supra* note 7.

¹¹ *See* 5 U.S.C. § 8101(2).

The reports by Dr. Fried are insufficient to meet appellant's burden of proof. In both his September 19, 2002 and January 7, 2003 reports, Dr. Fried attributed appellant's recent disability to her repetitive activities and work. However, he fails to identify specific periods of disability. While Dr. Fried, in his September 19, 2002 report stated that appellant was being enrolled in a 12-week physical therapy program, the record contains no evidence that appellant attended physical therapy on the dates not accepted by the hearing representative. Similarly, a December 2, 2002 disability certificate by Dr. Fried is insufficient to establish any entitlement to wage-loss compensation as the physician merely noted that appellant was being treated by him with no mention of any date of treatment or periods of partial or total disability or the cause thereof. As noted, the Board does not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the period of disability for which disability is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.¹²

Appellant had the burden of proving by the preponderance of the reliable, probative and substantive evidence that she was disabled for work as a result of her employment injury. For the reasons stated by appellant, the Board finds that she failed to sustain her burden of proof in establishing entitlement to compensation due to her accepted employment injury for intermittent periods, except for those accepted by the hearing representative, for the period March 25, 2002 to January 23, 2003.

CONCLUSION

The Board finds that appellant has not established that she sustained intermittent periods of compensation, excluding the dates accepted by the hearing representative for the period March 25, 2002 to January 23, 2003.

¹² See *Amelia S. Jefferson*, 57 ECAB ____ (Docket No. 04-568, issued October 26, 2005); *Fereidoon Kharabi*, *supra* note 7.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 1, 2006 is affirmed.

Issued: January 18, 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