

February 16, 2005 appellant accepted a job working eight hours a day with restrictions that included no lifting over five pounds. On February 10, 2005 appellant filed a claim for leave buy back from December 28, 2004 to March 18, 2005.

In a November 12, 2004 report, Dr. Douglas B. Merrill, an attending Board-certified physiatrist, stated that appellant should perform modified duty through January 1, 2005 with no lifting or carrying over five pounds, only occasional bending and no heavy pushing or pulling.

In a December 7, 2004 report, a physician, whose name is illegible, indicated that appellant could work 8 hours a day with no lifting over 5 pounds, breaks after standing for 15 minutes, limited pushing, pulling, grasping and fine manipulation and no kneeling, bending, stooping, twisting or reaching above the shoulder.

In a January 14, 2005 report, Dr. Ansumana A. Gebeh, an attending Board-certified physiatrist, noted that appellant could perform modified work from January 15 to February 15, 2005. In a report dated January 21, 2005, Dr. Gebeh stated that appellant's work restrictions included only occasional lifting up to 5 pounds, a 15-minute break after each half hour of standing, only occasional reaching above the shoulder and limited bending, twisting, squatting, kneeling and climbing.

In reports dated February 3 and 15, 2005, Dr. Susan E. Scholey, an attending Board-certified physiatrist, indicated that appellant was able to perform modified work as of January 15, 2005 with limited bending, twisting and climbing and only occasional lifting or carrying up to five pounds.

In reports dated February 4 and 18, 2005, Dr. Satya N. Chatterjee, an attending general surgeon, stated that appellant was capable of performing a desk job with no lifting over five pounds. On February 18, 2005, however, he was totally disabled from work.

In reports dated February 4 and 11, 2005, Dr. Saja M. Janmohamed, an attending Board-certified internist, found appellant totally disabled from February 11 to 12, 2005.

In a June 29, 2005 report, Dr. John R. Chu, a Board-certified orthopedic surgeon and an Office referral physician, provided findings on physical examination. He stated that appellant was capable of working with restrictions of occasional lifting, pushing and pulling up to 10 pounds and only occasional bending or stooping.

By decision dated October 25, 2005, the Office denied appellant's claim for leave buy back for December 28, 2004 to March 18, 2005.

Appellant requested reconsideration and submitted additional evidence. In reports dated October 20, 2005 and March 4 and 7, 2006, Irving Hellman, Ph.D, a licensed clinical psychologist, indicated that appellant could perform modified work. In a report dated March 1, 2006, Dr. Merrill stated that appellant wanted documentation that he could not perform modified work. Appellant was concerned about developing a strangulated inguinal hernia. Dr. Merrill advised him that his work restrictions would not place him at any significant risk for a strangulated hernia or any greater risk than the normal activities of daily living at home. He found that appellant could perform modified work.

By decision dated June 6, 2006, the Office denied modification of the October 25, 2005 decision.

LEGAL PRECEDENT

A claimant 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.¹ Monetary compensation benefits are payable to an employee who has sustained wage loss due to disability for employment resulting from the employment injury.² 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.³

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 the period for which compensation is claimed.⁴ 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.⁵

ANALYSIS

Appellant sustained a left inguinal hernia in the performance of duty on November 3, 2004. On February 10, 2005 he filed a claim for leave buy back for lost wages from December 28, 2004 to March 18, 2005.

On November 12, 2004 Dr. Merrill stated that appellant could perform modified duty with no lifting or carrying over five pounds, only occasional bending and no heavy pushing or pulling. On December 7, 2004 another attending physician also indicated that appellant could work eight hours a day with restrictions, including no lifting over five pounds. On January 14, 2005 Dr. Gebeh indicated that appellant could perform modified work with only occasional lifting up to 5 pounds, a 15-minute break after each half hour of standing, only occasional reaching above the shoulder and limited bending, twisting, squatting, kneeling and climbing. On February 3, 2005 Dr. Scholey found that appellant was able to perform modified work with limited bending, twisting and climbing and only occasional lifting or carrying up to five pounds. On February 4, 2005 Dr. Chatterjee stated that appellant was capable of performing a desk job

¹ *David H. Goss*, 32 ECAB 24 (1980).

² *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

³ *Edward H. Horten*, 41 ECAB 301 (1989).

⁴ *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]. Forms CA-7 and CA-7b are used for this purpose.”

⁵ *Id.*

with no lifting over five pounds. Although Dr. Chatterjee indicated that appellant was totally disabled on February 18, 2005, he provided no medical rationale explaining why appellant was no longer able to perform modified work as of that date.

Dr. Janmohamed indicated that appellant was totally disabled from February 11 to 12, 2005 but he provided no medical rationale explaining the cause of the disability. On June 29, 2005 Dr. Chu stated that appellant was capable of working with restrictions of occasional lifting, pushing and pulling up to 10 pounds and only occasional bending or stooping. On March 1, 2006 Dr. Merrill noted that appellant requested medical documentation stating that he could not perform modified work. He was concerned about developing a strangulated inguinal hernia. However, Dr. Merrill advised appellant that his work restrictions would not place him at any significant risk for a strangulated hernia or any greater risk than the normal activities of daily living at home. He found that appellant could continue to perform modified work. The Board finds that appellant failed to provide sufficient medical evidence to establish that he was totally disabled from December 28, 2004 to March 18, 2006, due to his November 3, 2004 accepted inguinal hernia.

CONCLUSION

The Board finds that appellant failed to establish that his disability from December 28, 2004 to March 18, 2005 was causally related to his November 3, 2004 employment-related inguinal hernia. Therefore, the Office properly denied his application for leave buy back.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 6, 2006 and October 25, 2005 are affirmed.

Issued: January 12, 2007
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board