

work on February 2, 2004 and to full-time work three weeks later. She stopped work on July 7, 2004.

On September 20, 2004 appellant filed a claim (Form CA-7), requesting compensation for the period March 12, 2004 to February 15, 2005. She requested wage-loss compensation for the period July 28, 2004 to February 15, 2005 and intermittent leave buyback for the period March 12, 2004 to February 15, 2005. Section 15 of the form was not completed by the employing establishment.

In a letter dated January 19, 2005, the Office noted receipt of appellant's claim for compensation and informed her that the employing establishment needed to complete section 15.

Appellant submitted treatment notes dated March 12 to August 30, 2004 from Dr. Mark W. Newman, a treating osteopath, who diagnosed cervical spine degenerative joint disease, sacroileitis, suprascapular neuralgia and trapezius myositis with trigger points. On March 12, 2004 she was treated with a sacroiliac injection and C3-7 cervical medial branch block. Dr. Newman treated appellant with C3-7 cervical medial branch block on April 1, 2004. He also noted that she complained of left shoulder pain radiating into her upper arm, which was "exacerbated with activity." On April 26, 2004 Dr. Newman noted that appellant "received a suprascapular nerve block as well as trigger point injections. In a May 24, 2004 report, he noted that she had complaints of left trapezius spasms and pain and intermittent numbness and continual weakness of the left upper arm. Appellant also had complaints of right arm pain. On July 5, 2004 Dr. Newman reported that she had been doing well until about two weeks prior when she reported an increase in pain. Appellant related the increased pain to work she was doing prior to her daughter's graduation. In August 9, 2004 treatment notes, she reported "a significant increase with her low back pain.

In an October 6, 2004 report, Dr. Jeffrey D. Moore, a treating Board-certified orthopedic surgeon, noted that appellant had problems with persistent activity-related low back pain and bilateral lower extremity symptoms since a January 2004 employment-related fall. A review of her history "is significant for having some low back pain related to a couple of motor vehicle accidents" in 1998. Appellant related that "the back symptoms resolved" and she had no symptoms or problems until her January 2004 fall at work. Dr. Moore diagnosed L5-S1 progressive degenerative disc disease with mild central disc herniation. He opined that it was "possible [appellant] sustained an annular tear and progressive herniation of the disc from her" work-related injury. On October 15, 2004 Dr. Moore performed L4-5, L5-S1 lumbar discography.

In a time analysis form, appellant noted the intermittent use of sick leave, leave without pay and annual leave for the period March 12 to November 30, 2004 due to exacerbation of shoulder and back pain. She noted that the leave used for the period December 1, 2004 to February 4, 2005 was for back injury surgery and recovery. Appellant used 8 hours of sick leave, 8 hours of annual leave and 368 hours of leave without pay during the period December 1, 2004 to February 5, 2005 due to back surgery and recovery. For the period March 12 to November 30, 2004 appellant used 48 hours of sick leave, 80.5 hours of annual leave and 739 hours of leave without pay.

On February 18, 2005 appellant refiled her claim (Form CA-7), requesting compensation for the period March 12, 2004 to February 15, 2005. She requested wage-loss compensation for the period July 28, 2004 to February 15, 2005 and intermittent leave buyback for the period March 12, 2004 to February 15, 2005. The employing establishment controverted the claim contending that appellant remained off work due to a nonemployment-related back condition.

On April 24, 2005 the Office received a December 1, 2004 anterior lumbar interbody fusion operative report from Dr. Russell W. Campbell and Dr. Moore and treatment notes for the period October 27, 2004 to February 9, 2005 by Dr. Moore. The December 1, 2004 operative report listed a diagnosis of severe L5-S1 degenerative joint disease. In an October 27, 2004 treatment note, Dr. Newman diagnosed a L5-S1 complete annular tear based upon an October 15, 2004 discography. On November 22, 2004 he reported that appellant had been assaulted by her daughter the prior week and as a result of this “had some increased back pain.” Dr. Newman opined that appellant’s “recent injury obviously represents a minor strain type of injury to her back.” On December 15, 2004 he noted no complications from the surgery and that was “somewhat concerned about her continued back pain, which is probably just muscular related.” On January 19, 2005 Dr. Moore reported that appellant had complaints of low back pain with intermittent right thigh numbness. Appellant also had complaints of pain in her neck and some right upper extremity numbness. On February 9, 2005 Dr. Moore diagnosed degenerative cervical spondylosis involving primarily C6-7. He recommended reevaluation for assistance with pain control by Dr. Newman as appellant continued “to be moderately symptomatic.” On February 22, 2005 Dr. Moore diagnosed severe degenerative disc disease and anterior lumbar interbody fusion. He stated that appellant had surgery on December 1, 2004 and he anticipated three to six months of postoperative disability.

By decision dated May 11, 2005, the Office denied appellant’s request for leave buyback for the period March 12, 2004 to February 15, 2005 and for wage-loss compensation for the period July 27 through September 17, 2004. The Office found that the medical evidence attributed appellant’s disability to a degenerative disc disease in her back which was not an accepted condition.

On May 23, 2005 appellant requested an oral hearing before an Office hearing representative which was held on December 8, 2005. Subsequent to the hearing she submitted additional evidence, including a November 30, 2005 functional capacity evaluation and progress notes dated January 18, 2006 from Dr. Newman

By decision dated February 23, 2006, an Office hearing representative affirmed the denial of her claim for disability as modified.¹ The hearing representative determined that appellant’s claim was for a recurrence of disability and found the evidence insufficient to support her recurrence claim.

¹ The Board notes that, following the February 23, 2006 hearing representative’s 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).

LEGAL PRECEDENT

Under the Federal Employees' Compensation Act, the term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of injury.² Whether a particular injury causes an employee to be disabled for work and the duration of that disability are medical issues which must be proved by the weight of substantial and reliable medical evidence.³ The claimant has the burden of proving that she is disabled for the period claimed as a result of the employment injury. The medical evidence of record must directly address the particular period of disability for which compensation is sought; to do otherwise would essentially allow employee's to self-certify their disability and entitlement to compensation.⁴

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed disability for the period March 12, 2004 to February 15, 2005.⁵ 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.⁶ 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.⁷

ANALYSIS

The Office accepted appellant's claim for left shoulder sprain and right wrist sprain. Appellant filed a claim for wage-loss compensation for the period July 28, 2004 to February 15, 2005 and intermittent leave buyback commencing March 12, 2004. It is her burden of proof to establish that her disability for the period on and after March 12, 2004 was due to her accepted January 7, 2004 employment injury. The Board finds that appellant did not submit sufficient medical evidence to establish employment-related disability for the period claimed, due to her accepted injury.

Dr. Newman provided work excuse notes for March 12 to 15, April 1 to 2 and July 7 to 14, 2004 in which he indicated that she was unable to work. In reports dated March 12

² See *Robert A. Flint*, 57 ECAB ____ (Docket No. 05-1106, issued February 7, 2006); *Prince E. Wallace*, 52 ECAB 357 (2001).

³ See *Carol A. Lyles*, 57 ECAB ____ (Docket No. 05-1492, issued December 13, 2005); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁴ *Amelia S. Jefferson*, 57 ECAB ____ (Docket No. 04-568, issued October 26, 2005); see also *William A. Archer*, 55 ECAB 674 (2004).

⁵ *Sandra D. Pruitt*, 57 ECAB ____ (Docket No. 05-739, issued October 12, 2005); *Alfredo Rodriguez*, 47 ECAB 437 (1996).

⁶ *Alfredo Rodriguez*, *supra* note 5.

⁷ *Fereidoon Kharabi* *supra* note 3.

to August 30, 2004, he diagnosed cervical spine degenerative joint disease, sacroileitis, suprascapular neuralgia and trapezius myositis with trigger points. Dr. Newman also indicated giving appellant cervical nerve blocks on March 12 and April 1, 2004. On April 26, 2004 he gave her “a suprascapular nerve block as well as trigger point injections.” On May 24, 2004 Dr. Newman noted that appellant had complaints of left trapezius spasms and pain and intermittent numbness and continual weakness of the left upper arm. Appellant also had complaints of right arm pain. In a July 5, 2004 treatment note, Dr. Newman reported that she had been doing well until about two weeks prior when appellant reported an increase in pain. Appellant related that the increased pain “may have been related to work she was doing prior to her daughter’s graduation.” In August 9, 2004 treatment notes, she reported “a significant increase with her low back pain.” The notes of Dr. Newman are insufficient to support appellant’s claim that she was totally disabled. He did not address the issue of whether appellant was rendered totally disabled from working on the dates he saw her. Dr. Newman failed to discuss the cause of appellant’s left trapezius and low back pain and, thus, his reports are of diminished probative values.⁸ The Board has held that a diagnosis of “pain,” without more by way of rationale, does not constitute the basis for the payment of compensation.⁹ Moreover, the July 5, 2004 treatment suggests that appellant sustained a new injury as she attributed an increase in pain to work she had been performing related to her daughter’s graduation. Dr. Newman did not provide explanation as to why appellant’s accepted employment injuries prevented her from performing the duties of her position for the period March 12, 2004 through February 15, 2005.¹⁰ The Board has held that a medical report is of limited probative value on a given medical question if it is unsupported by medical rationale.¹¹ Dr. Newman’s reports are insufficient to establish disability for the period March 12, 2004 to February 15, 2005.¹²

In an October 6, 2004 report, Dr. Moore noted that appellant “has had problems with persistent activity-related low back pain and bilateral lower extremity symptoms since” a January 2004 employment-related fall. A review of her history was also significant for some low back pain related to several motor vehicle accidents in 1998. Appellant related that her back symptoms had resolved and she had no symptoms or problems until her January 2004 fall at work. Dr. Moore diagnosed L5-S1 progressive degenerative disc disease with mild central disc herniation. He opined that it was “possible she sustained an annular tear and progressive herniation of the disc from her January 2004 employment fall.” On October 15, 2004 Dr. Moore performed L4-5, L5-S1 lumbar discography. He offered no opinion as to the cause of appellant’s back condition other than noting her statement that her back problems arising from her

⁸ *A.D.*, 58 ECAB ___ (Docket No. 06-1183, issued November 14, 2006); *Linda I. Sprague*, 48 ECAB 386 (1997).

⁹ *Robert Broome*, 55 ECAB 339 (2004).

¹⁰ See *Sandra D. Pruitt*, 57 ECAB ___ (Docket No. 05-739, issued October 12, 2005); *Michael E. Smith*, 50 ECAB 313 (1999) (the issue of whether a claimant’s disability is related to an accepted condition is a medical question which must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to employment factors and supports that conclusion with sound medical reasoning).

¹¹ *T.F.*, 58 ECAB ___ (Docket No. 06-1186, issued October 19, 2006).

¹² Appellant would be entitled to wage-loss compensation for medical appointments if the medical appointment or treatment was for her accepted left shoulder sprain and right wrist sprain.

automobile accidents had resolved and that she had no symptoms until the January 2004 employment injury. Dr. Moore's opinion is insufficient to establish that appellant was disabled from October 6, 2004 to February 15, 2005 due to residuals of her accepted injury. The Office has not accepted degenerative disc disease and Dr. Moore did not address the causal relationship of her diagnosed degenerative condition to the January 2004 injury.

The operative report of Drs. Campbell and Moore detailed the surgery performed for anterior lumbar interbody fusion. The Board notes that neither physician addressed the issue of causal relationship between appellant's back surgery and her accepted employment injury. In addition, there is no evidence that the Office authorized the surgery. For these reasons, this report is insufficient to support appellant's claim for compensation.

The record also contains a November 30, 2005 functional capacity evaluation and a progress note dated January 18, 2006 from Dr. Newman. This evidence does not address the issue of whether appellant was disabled for the period March 12, 2004 to February 15, 2005 due to her accepted employment injuries. These reports are insufficient to establish her claim for compensation for the period in question.

Appellant had the burden of proving by the preponderance of the reliable, probative and substantial evidence that she was disabled for work as a result of her employment injury. The Board finds that appellant has failed to establish her entitlement to compensation due to her accepted left shoulder sprain and right wrist sprain for the period March 12, 2004 through February 15, 2005.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she was disabled on and after March 12, 2004 resulting from the January 7, 2004 employment injury.

ORDER

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

Issued: November 2, 2007
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