

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

G.T., Appellant)

and)

**DEPARTMENT OF DEFENSE, DEFENSE
FINANCING & ACCOUNTING SERVICE,
Columbus, OH, Employer**)

**Docket No. 07-1583
Issued: November 6, 2007**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 23, 2007 appellant filed a timely appeal from a May 3, 2007 merit decision by a hearing representative of the Office of Workers' Compensation Programs that affirmed the denial of her compensation claim. She also requested review of a June 23, 2006 decision of the Office denying her compensation claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the compensation issue.

ISSUE

The issue is whether appellant met her burden of proof in establishing that she had disability on and after March 16, 2006 causally related to her March 15, 2006 employment injury.

FACTUAL HISTORY

On March 16, 2006 appellant, then a 54-year-old financial prevalidation specialist, filed a traumatic injury claim stating that she injured her low back when she slipped in an icy parking

lot on the employing establishment's premises on March 15, 2006. In a March 20, 2006 attending physician's report, Dr. R. Earl Bartley, a Board-certified orthopedic surgeon, diagnosed lumbar and shoulder strains. Appellant stopped work on March 16, 2006 and returned on August 20, 2006 before ultimately retiring from the employing establishment on November 3, 2006.

On April 4, 2006 Dr. Bartley advised that he was treating appellant for back pain and that she could resume work on June 5, 2006.

On April 27, 2006 the employing establishment noted that appellant had a preexisting back condition for which it had allowed appellant to work at home.¹ The employing establishment subsequently advised the Office that, on the date of injury, appellant was at the work site to attend training. The employing establishment stated that she completed the training on March 15 and 16, 2006. The employing establishment stated that appellant was on sick leave on March 17, 2006 for an appointment with her family physician.

On April 28, 2006 appellant filed a claim for compensation for leave without pay taken from May 10 to 12, 2006. In a May 1, 2006 disability certificate, Dr. Bartley advised that appellant could resume work on August 20, 2006. In a work capacity evaluation prepared on the same day, he indicated that appellant was incapacitated for work and he did not know when she would be able to return to work but then provided work restrictions.

On May 4, 2006 the Office accepted appellant's claim for lumbar and right shoulder strains. The Office advised her that she could claim disability compensation on a Form CA-7 if her injury resulted in lost time from work.

By correspondence dated May 15, 2006, the Office requested that Dr. Bartley provide a detailed report explaining why he believed that appellant was completely incapacitated for work.

On May 23, 2006 appellant filed a claim for compensation covering the period May 14 to 27, 2006.² She explained that she was unable to work from home because she was directed to return all government equipment and she could not work without her equipment. In support of her compensation claim, appellant provided an April 21, 2006 magnetic resonance imaging (MRI) scan report from Dr. Martha Brogan, a Board-certified radiologist, diagnosing lumbar spondylosis "unchanged since July 6, 2005." She also provided an April 26, 2006 x-ray report from Dr. Stephen P. Probst, a diagnostic radiologist, diagnosing cervical degenerative changes at C5-6.

On June 6, 2006 appellant filed a claim for compensation covering the period May 28 to June 10, 2006. She submitted a May 1, 2006 note from Dr. Bartley indicating that she was seen for examination on that date and that her back condition had not changed.

¹ The record indicates that appellant had another claim, File No. 092042539, for which accepted conditions included a back contusion and a herniated disc at L2-3. Benefits for this claim were terminated on October 10, 2005. Matters pertaining to File No. 092042539 are not before the Board on the present appeal.

² Appellant received continuation of pay from March 20 to May 11, 2006.

By decision dated June 23, 2006, the Office denied appellant's claim for compensation beginning on March 16, 2006. The Office found that the medical evidence did not document how the March 15, 2006 work injury rendered her disabled beginning March 16, 2006.

On June 23, 2006 appellant filed a claim for compensation covering the period June 11 to 24, 2006.

On July 5, 2006 appellant requested an oral hearing. The hearing was held on January 9, 2007.

Following the hearing, appellant submitted additional medical reports. In a March 17 2006 report, Dr. Michael Delphia, an internist, advised that appellant was working from home due to a back injury and presented complaining of difficulty knowing when she needed to void. He diagnosed a neurogenic bladder and hypertension. In an April 18, 2006 treatment note, Dr. Delphia noted seeing appellant three weeks earlier for complaints of not being able to know when she had to void. He also noted that she had a history of a back injury two years earlier. Dr. Delphia diagnosed paresthesias and neurogenic bladder. In a July 11, 2006 treatment note, he stated that appellant was injured in a fall at work in 2004, that during 2005 she returned to work by working out of her home but that her job required some attendance at a training site. Dr. Delphia noted that, on March 15, 2006, appellant fell getting out of her car which reinjured her back and left shoulder. He stated that it was his understanding that she filed a workers' compensation claim but that either the claim was denied or that she was not receiving any money. Dr. Delphia noted an impression of possible left shoulder osteoarthritis. Other treatment notes from him noted appellant's status. In a July 18, 2006 x-ray report of the right hip, Dr. Marcella Dardani, a neuroradiologist, diagnosed minor degenerative changes. In a right shoulder x-ray performed on the same day, she diagnosed a small remote cortical abnormality involving the acromion. In an August 16, 2006 x-ray of appellant's lumbar spine, Dr. Joseph Yu, a radiologist, diagnosed straightening of the normal lumbar lordosis and multilevel degenerative disc disease and facet arthrosis.

In a July 17, 2006 report, Dr. Thomas Best, a Board-certified family practitioner, noted appellant's history of injury in March 2006 and advised that her history was significant for preexisting back problems but not for a shoulder condition. He attributed her shoulder pain to the subacromial bursa and her hip pain to the sacroiliac joint. On August 18, 2006 Dr. Best noted that appellant was due to return to work soon and recommended that she work from home. On July 14, 2006 Dr. Thomas V. Lloyd, a radiologist, provided an x-ray report diagnosing "normal right shoulder." Appellant also provided a May 8, 2006 MRI scan report from Dr. Mary C. Oehler, a neuroradiologist, diagnosing essentially normal thoracic spine and a small osteophyte at C5-6 and T9-10.

By decision dated May 3, 2007, the hearing representative affirmed the Office's denial of appellant's claim for compensation.

LEGAL PRECEDENT

For each period of disability claimed, the employee has the burden of proving that he or she was disabled for work as a result of the accepted employment injury.³ As used in the Federal Employees' Compensation Act, the term "disability" means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁴ Disability is thus not synonymous with physical impairment, which may or may not result in incapacity to earn wages.⁵ Whether a particular injury causes an employee to be disabled for employment, and the duration of that disability, are medical issues, which must be proved by a preponderance of the reliable, probative and substantial medical evidence.⁶ The Board will not require the Office to pay compensation in the absence of medical evidence directly addressing the particular period of disability for which compensation is sought. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.⁷

ANALYSIS

Appellant filed claims for wage-loss compensation alleging that she was completely incapacitated for work beginning on March 16, 2006. However, she did not submit probative medical evidence demonstrating total or partial disability for this period of time due to her accepted conditions.

In support of her claim for disability compensation, appellant submitted two disability certificates from Dr. Bartley. On April 4, 2006 Dr. Bartley indicated that appellant could return to work on June 5, 2006. On May 1, 2006 he stated that appellant would be disabled until August 20, 2006. Neither disability certificate is sufficient to establish that appellant was completely incapacitated due to her accepted condition. Dr. Bartley did not indicate that appellant was seen for examination on any particular date, did not detail any specific treatment provided and did not explain why her claimed disability was causally related to the March 15, 2006 employment incident, particularly in light of appellant's history of preexisting back problems. Appellant's diagnostic testing reports also do not establish her total incapacitation; although they support that appellant has certain back, hip and shoulder conditions, they do not provide any support or explanation for appellant's contention that her conditions are disabling.

Appellant also submitted treatment notes from Dr. Delphia. In March 17 and April 18, 2006, Dr. Delphia treated appellant for bladder problems and noted that she also had back symptoms since 2004 but noted no history of the March 15, 2006 back injury or any disability due to that back injury. In a July 11, 2006 treatment note, he first reported the history of the

³ *William A. Archer*, 55 ECAB 674 (2004).

⁴ *Patricia A. Keller*, 45 ECAB 278 (1993); 20 C.F.R. § 10.5(f).

⁵ See *Fred Foster*, 1 ECAB 21 (1947).

⁶ *Fereidoon Kharabi*, 52 ECAB 291 (2001); see also *Edward H. Horton*, 41 ECAB 301 (1989).

⁷ *Sandra D. Pruitt*, 57 ECAB ____ (Docket No. 05-739, issued October 12, 2005); *William A. Archer*, *supra* note 3; *Fereidoon Kharabi*, *id.*

March 15, 2006 work injury and indicated that appellant was not receiving monetary benefits. However, Dr. Delphia did not specifically address whether appellant had any periods of disability due to the March 15, 2006 work injury. Consequently, he provided no basis on which to attribute any disability to the March 15, 2006 employment injury.

Dr. Best's reports also do not establish appellant's total disability during the period claimed. He does not indicate the dates which he saw appellant for examination or detail any treatments provided during the period of claimed disability and does not make any reference to her total incapacitation. Although Dr. Best supports that appellant has certain back and shoulder conditions, he does not explain why those conditions are disabling. Moreover, he notes appellant's preexisting back conditions but does not explain why, if appellant is disabled for work, any disability is due to her March 15, 2006 fall and not to her prior history back problems.

The Board finds that the medical evidence is insufficient to establish that appellant had any disability beginning March 16, 2006 causally related to her March 15, 2006 employment injury.

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing total disability on and after March 16, 2006 as a result of her accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the May 3, 2007 and June 23, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 6, 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