United States Department of Labor
Employees' Compensation Appeals Board

P.G., Appellant	)	
and	)	**Docket No. 07-1445**
	)	**Issued: October 19, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Ocean Park, WA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 7, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' February 8, 2007 merit decision denying her claim for disability for the period February 16 to July 7, 2006 and an April 19, 2007 nonmerit decision denying her request for further review of the merits of her claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over these decisions.

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish that she sustained total disability for the period February 16 to July 7, 2006; and (2) whether the Office properly denied her request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On December 14, 2005 appellant, then 49-year-old letter carrier, filed a traumatic injury claim alleging that she injured her back on December 8, 2005 while she was reaching up to case

mail. Between December 8, 2005 and January 2, 2006, she intermittently stopped work and used sick leave for these work stoppages.[1] Between January 3 and February 15, 2006, appellant received continuation of pay from the employing establishment. She did not work between February 16 and July 7, 2006 and was on leave-without-pay status during this period.

In a February 21, 2006 report, Dr. Paul F. Voeller, an attending Board-certified internist, indicated that appellant reported that she strained her upper back at work on December 8, 2005 due to twisting while casing mail. Appellant reported experiencing chest pain after her thoracic injury which now was improving. On examination Dr. Voeller stated that appellant exhibited minimal tenderness in the thoracic spine and diagnosed improving thoracic sprain, previous injury of lumbar sprain and carpal tunnel syndrome. The findings of February 27, 2006 magnetic resonance imaging (MRI) scan testing of appellant's thoracic spine revealed a degenerative disc bulge at T6-7 with minor narrowing between T5-6 and T9-10.

In a March 16, 2006 report, Dr. Voeller stated that on examination appellant was less tender on palpation of her midthoracic spine "where she was fairly tender before" and that her range of motion had slightly improved. He diagnosed thoracic sprain and indicated that she was released to "work with some restriction." Dr. Voeller stated that appellant should only perform casing of mail and should not lift more than 10 pounds. He indicated that she would have a follow-up appointment in a month. In a July 7, 2006 report, Dr. Voeller diagnosed improved thoracic sprain and indicated that she could "return to work and that would be at casing mail for the [employing establishment]." He stated that appellant should not lift more than 10 pounds. On July 10, 2006 appellant returned to limited-duty work at the employing establishment with a restriction from lifting more than 10 pounds.

On June 14, 2006 the Office accepted that appellant sustained a thoracic strain on December 14, 2005. In CA-7 forms completed in July 2006, appellant claimed that she had employment-related disability for the period February 16 to July 7, 2006. In a September 19, 2006 report, Dr. Voeller diagnosed thoracic sprain and indicated that appellant could lift up to 20 pounds.

In an October 3, 2006 letter, the Office advised appellant that the evidence of record did not establish her disability claim and provided her an opportunity to submit additional medical evidence before a decision was issued. The Office indicated that Terri Miller, an attending nurse, had released appellant to "full-time, light duty" on December 13, 2005 and stated that there was no objective medical evidence to show a worsening of her condition since December 13, 2005.[2]

Appellant submitted a November 9, 2006 report in which Dr. Voeller diagnosed thoracic sprain and indicated that she could lift and carry up to 20 pounds. Dr. Voeller stated, "[Appellant] asks for and receives a clarification of a note dated March 16, 2006 where it suggests that she should be returning to work, but I did not release her to return to work at that

[1] It is unclear whether appellant was given limited-duty work during this period.

[2] The record contains a December 13, 2005 note in which Ms. Miller indicated that appellant could work five hours per day and lift up to 50 pounds.

date, but instead released her to work with restrictions on July 7, 2006." Appellant also resubmitted copies of Dr. Voeller's February 21 and March 16, 2006 reports.

In a February 8, 2007 decision, the Office denied its claim for disability benefits between February 16 and July 7, 2006, based on insufficient medical evidence.

Appellant submitted further medical evidence consisting of reports, both clinical and narrative, from Dr. Voeller of February 27, 2007. The Office stated:

> "Your claim for total disability compensation effective from February 16 through July 7, 2006 has been denied. Objective, medical documentation establishing total disability is required before compensation for total disability is payable. There was insufficient medical documentation on file to indicate that your thoracic sprain worsened to the point you are disabled from work."

In an April 19, 2007 decision, the Office denied reconsideration of appellant's claim for disability compensation. The Office briefly discussed the contents of Dr. Voeller's February 27, 2007 report and found that, although he clarified his earlier reports, they were not new and relevant.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[3] has the burden of establishing the essential elements of her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[4] The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[5]

In determining whether a claimant has discharged his burden of proof and is entitled to compensation benefits, the Office is required by statute and regulation to make findings of fact.[6]

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[3] 5 U.S.C. §§ 8101-8193.

[4] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] *See Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

[6] 5 U.S.C. § 8124(a) provides: "The [Office] shall determine and make a finding of facts and make an award for or against payment of compensation." 20 C.F.R. § 10.126 provides in pertinent part that the final decision of the Office "shall contain findings of fact and a statement of reasons."

Office procedure further specifies that a final decision of the Office must include findings of fact and provide clear reasoning which allows the claimant to "understand the precise defect of the claim and the kind of evidence which would tend to overcome it."[7] These requirements are supported by Board precedent.[8]

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained a thoracic strain on December 14, 2005.[9] Appellant did not work between February 16 and July 7, 2006 and was on leave-without-pay status during this period. In CA-7 forms completed in July 2006, appellant claimed that she had employment-related disability for the period February 16 to July 7, 2006.

In its February 8, 2007 decision, the Office denied appellant's claim that she had employment-related disability between February 16 and July 7, 2006. The Board finds that the Office did not make adequate findings and provide sufficient reasoning for this decision. The Office only briefly discussed the relevant reports of Dr. Voeller, an attending Board-certified internist, and did not clearly address why some of his reports, which showed a limited work capacity, did not support at least some level of disability during the period in question. For example, in a March 16, 2006 report, Dr. Voeller indicated that appellant could only engage in casing of mail and could not lift more than 10 pounds due to her work-related thoracic strain. In a November 9, 2006 report, he suggested that appellant was totally disabled from March 16 to July 7, 2006 due to her work-related thoracic strain. The Office apparently felt that appellant could perform her preinjury rural carrier position for the entire period February 16 to July 7, 2006, but it did not describe the duties of this position and the record does not contain such a job description.[10]

For these reasons, the Office's denial of appellant's claim for disability between February 16 and July 7, 2006 does not contain sufficient findings of fact and clear reasoning to allow appellant to understand the precise defects of her claim and the evidence which would tend to overcome it. The case will be remanded to the Office for the issuance of a decision which adequately explains the Office's determinations regarding appellant's disability claim. After such development it deems necessary, the Office should issue an appropriate decision.[11]

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[7] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.4 (July 1997).

[8] *See James D. Boller, Jr.*, 12 ECAB 45, 46 (1960).

[9] Between December 8, 2005 and January 2, 2006, appellant used sick leave for periodic work stoppages and, between January 3 and February 15, 2006, she received continuation of pay from the employing establishment.

[10] In an October 3, 2006 informational letter, the Office indicated that Ms. Miller, an attending nurse, had released appellant to "full-time, light duty" on December 13, 2005 and stated that there was no objective medical evidence to show a worsening of her condition since December 13, 2005. The Board notes that as a nurse Ms. Miller would not be qualified to render a medical opinion. *See* 5 U.S.C. § 8101(2); *Bertha L. Arnold*, 38 ECAB 282, 285 (1986). The record does not appear to contain a medical report indicating that appellant could perform her regular-duty work between February 16 and July 7, 2006.

[11] In view of the Board's disposition of the first issue, it is not necessary to address the second issue.

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant met her burden of proof to establish that she sustained disability for the period February 16 to July 7, 2006. The case is remanded to the Office for further development.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' February 8, 2007 decision is set aside and the case remanded for further proceedings consistent with this decision of the Board.

Issued: October 19, 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