United States Department of Labor
Employees' Compensation Appeals Board

D.B., Appellant	)	
and	)	**Docket No. 07-602**
	)	**Issued: September 6, 2007**
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Overland Park, KS, Employer	)	

Appearances:
Donna R. Broxterman, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 27, 2006 appellant filed a timely appeal from the December 30, 2005, February 15 and June 2, 2006 merit decisions of the Office of Workers' Compensation Programs which denied compensation for claimed disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the disability issue. The Board also has jurisdiction to review the Office's August 14, 2006 nonmerit decision denying reconsideration.

ISSUES

The issues are: (1) whether appellant's disability beginning October 11, 2005 is causally related to her March 25, 2005 employment injury; and (2) whether the Office properly denied her July 10, 2006 request for reconsideration.

FACTUAL HISTORY

On March 25, 2005 appellant, then a 35-year-old tax examining technician, sustained an injury in the performance of duty. She stated:

> "I have a footrest under my desk which got stuck in an up position. Somehow the computer desk was in the up position and I was under it trying to put the footrest down. I drug the footrest out and upon standing hit the side portion (unmoving) part of the desk."

Appellant reported that the injury was to the middle of her back at the bottom of the spinal column. The Office accepted her claim for low back contusion and paid compensation for the wage loss she incurred while seeking medical attention for this injury.

In an October 28, 2005 form report, Dr. Bradley A. Appl, a family practitioner, related that appellant's low back pain worsened "for no apparent reason or event." He noted decreased range of motion and paralumbar spasm. Dr. Appl diagnosed exacerbation chronic low back pain. He did not check a box to indicate whether appellant's condition was a result of an employment activity. Dr. Appl noted that appellant was totally disabled from October 11 to 21, 2005. On a second form report dated October 28, 2005, he indicated that appellant's condition was not caused or aggravated by an employment activity. Dr. Appl indicated that appellant was totally disabled through November 11, 2005. On a November 15, 2005 form report, he indicated that appellant's condition was caused or aggravated by an employment activity. Dr. Appl diagnosed back contusion and muscular back and neck pain. He indicated that appellant remained totally disabled.

Appellant claimed compensation for wage loss from October 11 to 21 and 31 to November 11 and 15 to 25 and 29 to December 9, 2005.

On November 17, 2005 Dr. Appl reported as follows:

> "[Appellant] first injured her back in approximately late March of this year. She was under a desk picking up something and upon arising struck her back on the corner of the desk. This was associated with pain which has persisted to this time. Despite the pain [appellant] continued to work up until this fall at which time she has had increased lower back pain with loss of range of motion in her lower back along with upper back and neck pain. While she had no further injury this is most likely related to the injury last spring."

In a decision dated December 30, 2005, the Office denied compensation for the periods of disability claimed. It found that Dr. Appl's opinion was insufficient to demonstrate that appellant's disability was causally related to her March 25, 2005 employment injury.

Appellant claimed compensation for additional periods of wage loss. She submitted a January 5, 2006 report from Dr. Robert M. Drisko, II, an orthopedist, who related appellant's history and noted negative findings on physical examination, some probable spasm in the lower lumbar area and a little tenderness over the left sacroiliac. An x-ray report was essentially normal. Dr. Drisko thought appellant's main problem was post-traumatic lumbar strain. He

released her to work four-hour days. On a January 5, 2006 form report, Dr. Drisko indicated that appellant's post-traumatic lumbar strain and parascapular myofascitis were caused or aggravated by an employment activity.

In a decision dated February 15, 2006, the Office reviewed the merits of appellant's claim and denied modification of its December 30, 2005 decision. The Office found that appellant's record lacked a well-rationalized medical opinion that her disability after October 10, 2005 was causally related to her March 25, 2005 employment injury.

On March 2, 2006 Dr. Drisko reported that appellant was getting worse. On March 7, 2006 he provided a comprehensive physical medicine and rehabilitation evaluation. Dr. Drisko diagnosed lumbar strain, possible mild left lower extremity weakness and possible chronic pain syndrome. After describing his treatment plan, Dr. Drisko thoroughly explained to appellant "about no objective physical findings were noted that would be consistent with fibromyalgia or decrease in her functional status."

On March 7 and May 2, 2006 form reports, Dr. Ann Lee, a pain management specialist, diagnosed lumbar strain and possible chronic fatigue syndrome. With an affirmative mark she indicated that appellant's condition was caused or aggravated by an employment injury. Dr. Lee reported the history of injury as "back injury."

In a decision dated June 2, 2006, the Office reviewed the merits of appellant's claim and denied modification of its February 15, 2006 decision. The Office again noted the absence of a well-rationalized medical opinion that her disability after October 10, 2005 was causally related to her March 25, 2005 employment injury.

On July 10, 2006 appellant requested reconsideration. She admitted, "I don't really have new information that I know of at this time," but she did not know if someone actually talked to the workers' compensation coordinator in Dr. Drisko's office and got new information. Appellant asked the Office to reconsider her case and to let Dr. Drisko's coordinator know what is needed, "as she deals with cases like this daily & they are perplexed by the hold-up in my case and have tried to straighten this ou[t] for me from the beginning." Regarding the accepted condition of low back contusion, appellant noted that the orthopedic doctor diagnosed two other conditions that the Office never "accepted" and that maybe that was part of the problem.

In a decision dated August 14, 2006, the Office denied appellant's July 10, 2006 request for reconsideration. It found that, because her request neither raised substantive legal questions nor included new and relevant evidence, it was insufficient to warrant a reopening of appellant's case for a review of the merits of her claim.

LEGAL PRECEDENT -- ISSUE 1

The Federal Employees' Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.[1] "Disability" means incapacity, because of employment injury, to earn the wages that the

[1] 5 U.S.C. § 8102(a).

employee was receiving at the time of injury.[2] When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in her employment, she is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.[3]

A claimant seeking benefits under the Act has the burden of proof to establish the essential elements of her claim by the weight of the evidence,[4] including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.[5]

For each period of disability claimed, the employee has the burden of proving that she was disabled for work as a result of her accepted employment injury.[6] When a physician's opinion on causal relationship consists only of checking "yes" to a form question, that opinion has little probative value and is insufficient to establish causal relationship.[7] A claimant's burden includes the necessity of furnishing an affirmative opinion from a physician who supports his or her conclusion with sound medical reasoning. Medical conclusions unsupported by rationale are of little probative value.[8]

Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work.[9] The Board has held that, when a physician's statements regarding an employee's ability to work consist only of a repetition of the employee's complaints that he or she hurt too much to work, without objective signs of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.[10] The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.[11]

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[2] *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948).

[3] *Bobby W. Hornbuckle*, 38 ECAB 626 (1987).

[4] *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

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

[6] *David H. Goss*, 32 ECAB 24 (1980).

[7] *E.g., Lillian M. Jones*, 34 ECAB 379 (1982).

[8] *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

[9] *See Dean E. Pierce*, 40 ECAB 1249 (1989); *Paul D. Weiss*, 36 ECAB 720 (1985).

[10] *John L. Clark*, 32 ECAB 1618 (1981).

[11] *Fereidoon Kharabi*, 52 ECAB 291 (2001).

ANALYSIS -- ISSUE 1

Appellant sustained an injury in the performance of duty on March 25, 2005. The Office accepted her claim for low back contusion and paid benefits. On or about October 28, 2005 she told her family practitioner, Dr. Appl, that her low back pain worsened "for no apparent reason or event." Appellant, therefore, has the burden of proof to establish that this worsening and the resulting disability are causally related to her March 25, 2005 employment injury.

Dr. Appl indicated that appellant was totally disabled beginning October 11, 2005, but he did not explain how a low back contusion on March 25, 2005 totally disabled her for work six months later. On a form report dated October 28, 2005, he offered no opinion on causal relationship. On another form report of the same date, Dr. Appl indicated that appellant's condition was not caused or aggravated by employment activity. Two weeks later, he indicated that it was. Regardless, checking a box on a form report does not supply the medical rationale needed to establish causal relationship. Appellant must submit an affirmative opinion from a physician who supports his or her conclusion with sound medical reasoning. This is where her claim fails. Dr. Appl stated on November 17, 2005 that, while appellant had no further injury, "this is most likely related to the injury last spring." He provided no medical reasoning for this opinion and the form reports of Dr. Drisko, the orthopedist, and Dr. Lee, the pain management specialist, add no additional medical rationale to support appellant's claim.

The medical evidence appellant submitted to support her claim has little probative or evidentiary value because her physicians offered mere conclusions, opinions without sound medical explanation. She has not met her burden of proof. The Board will affirm the denial of appellant's claim for compensation.

LEGAL PRECEDENT -- ISSUE 2

The Act provides that the Office may review an award for or against payment of compensation at any time on its own motion or upon application.[12] The employee shall exercise this right through a request to the district Office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."[13]

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.[14]

[12] 5 U.S.C. § 8128(a).

[13] 20 C.F.R. § 10.605 (1999).

[14] *Id*. § 10.606.

An application for reconsideration must be sent within one year of the date of the Office decision for which review is sought.[15] A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.[16]

ANALYSIS -- ISSUE 2

Appellant's July 10, 2006 requested reconsideration meets none of the criteria for obtaining a merit review of her claim. She stated that she really had no new information. Appellant simply wanted the Office to let Dr. Drisko's coordinator know what was needed. She has the burden of proof to establish the critical element of causal relationship and the Board trusts that she now knows what is required: a well-reasoned medical opinion clearly explaining how her March 25, 2005 low back contusion became totally disabling on October 11, 2005 and for the specific periods claimed thereafter.[17] As appellant submitted no new and relevant evidence with her request for reconsideration, as she advanced no relevant legal argument and as she failed to show how the Office erroneously applied or interpreted a specific point of law, the Board will affirm the Office's decision to deny her request.

CONCLUSION

The Board finds that appellant has not met her burden to establish that her disability beginning October 11, 2005 is causally related to her March 25, 2005 employment injury. The Board also finds that the Office properly denied appellant's July 10, 2006 request for reconsideration.

[15] *Id*. § 10.607(a).

[16] *Id*. § 10.608.

[17] To the extent that her doctors attribute her total disability for work beginning October 11, 2005 to medical conditions other than the accepted low back contusion, appellant maintains the burden of proof to establish that the March 25, 2005 incident at work caused or aggravated these conditions.

ORDER

IT IS HEREBY ORDERED THAT the August 14, June 2 and February 15, 2006 and December 30, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 6, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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