

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

---

**P.C., Appellant**

**and**

**DEPARTMENT OF THE ARMY, ARMY  
CORPS OF ENGINEERS, Portland, OR,  
Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 07-2229  
Issued: April 21, 2008**

*Appearances:*

*Robert E. Repp, Esq., for the appellant*

*No appearance, for the Director*

Oral Argument March 17, 2008

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge

DAVID S. GERSON, Judge

COLLEEN DUFFY KIKO, Judge

**JURISDICTION**

On September 4, 2007 appellant timely filed an appeal from a July 25, 2007 merit decision of the Office of Workers' Compensation Programs denying his claim for wage-loss compensation for the period June 7 through July 6, 2007. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

**ISSUE**

The issue is whether appellant established that he was disabled from June 7 through July 6, 2007.

**FACTUAL HISTORY**

On April 22, 2007 appellant, then a 47-year-old cook, was participating in a lifeboat drill when another passenger in the boat fell into him knocking him into the seat. On June 6, 2007 the Office accepted appellant's claim for lumbar back sprain.

On June 12, 2007 appellant filed a claim for compensation for the period June 7 through 22, 2007. On June 30, 2007 appellant filed a claim for the period June 25 through July 6, 2007.

Medical reports were submitted in support of appellant's claim. In a May 30, 2007 light-duty agreement, the employing establishment restricted appellant to minimal stooping, twisting, bending and minimal pushing, pulling or lifting repetitively of more than 10 pounds. In a June 8, 2007 workers' compensation form, Dr. Victor Breen diagnosed lumbar strain with no modified-duty restrictions. In a June 8, 2007 note, he stated that appellant still had pain in his back and was performing modified work. In a separate June 8, 2007 note, Dr. Breen diagnosed alcohol dependence.

In a June 19, 2007 letter, the Office informed appellant that the evidence was insufficient to establish that he was disabled on the claimed dates.

Additional medical reports were received. In a June 22, 2007 note, Dr. Breen noted that appellant had spasms in his lower back when he sat down. He also relayed that appellant felt he could not perform light duty because he got back spasms when going back and forth to physical therapy. In a July 2, 2007 note, Dr. Scott Young, a Board-certified orthopedic surgeon, reviewed appellant's work injury history. He relayed that appellant's symptoms were predominantly of lower back pain with intermittent radiating symptoms down the left leg. Dr. Young also noted that appellant sustained a strain/contusion superimposed on significant degenerative disc disease at L5-S1. In a July 6, 2007 note, Dr. Breen noted that appellant was improving with less pain. He also noted that appellant stated that he could not travel for light duty.

On July 25, 2007 the Office denied appellant's claim for compensation finding that the medical evidence was insufficient to support that he was disabled due to the April 22, 2007 injury during the claimed time period from June 7 through July 6, 2007.

### **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.<sup>1</sup> Whether a particular injury causes an employee to be disabled for work and the duration of that disability are medical issues that must be proved by the weight of substantial and reliable medical evidence.<sup>2</sup>

A claimant, for each period of disability claimed, has the burden of proving by the preponderance of the reliable, probative and substantial evidence that he or she is disabled for work as a result of the employment injury. Whether a particular injury causes an employee to be

---

<sup>1</sup> See *Robert A. Flint*, 57 ECAB \_\_\_\_ (Docket No. 05-1106, issued February 7, 2006); *Prince E. Wallace*, 52 ECAB 357 (2001).

<sup>2</sup> See *Carol A. Lyles*, 57 ECAB \_\_\_\_ (Docket No. 05-1492, issued December 13, 2005); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

disabled for employment, and the duration of that disability, are medical issues which must be established by probative and substantial evidence.<sup>3</sup>

In this case, appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence that his claimed disability during the period June 7 through July 6, 2007 was due to his accepted back condition.<sup>4</sup> 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.<sup>5</sup>

### ANALYSIS

The Office accepted that appellant sustained a lumbar strain as a result of his April 22, 2007 employment injury. Appellant filed claims for wage-loss compensation alleging that he became disabled from work for the period June 7 through July 6, 2007. However, he failed to submit medical evidence establishing that he was disabled during this period and that his disability was a result of his accepted employment injury. The Board finds that appellant has not met his burden of proof to establish his claim for compensation.

Appellant bears the burden to establish through medical evidence that he was totally disabled during this time period and that his disability was causally related to his accepted injury. The medical evidence submitted consists of reports from Drs. Breen and Young.

Dr. Breen's reports do not indicate that appellant was disabled from work during the specified period. In the June 8, 2007 note, he stated that appellant had back pain and was performing modified work. In the June 22, 2007 report, Dr. Breen stated that appellant thought he could not perform light duty. He reported normal findings on examination. In the July 6, 2007 note, Dr. Breen found that appellant was improving and he again reported normal findings on examination. Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled from work. When a physician's statements regarding an employee's ability to work consist only of a repetition of the employee's complaints that he hurts 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.<sup>6</sup> In all of his reports, Dr. Breen never opined that appellant was disabled from working, let alone that he was disabled from work due to the April 22, 2007 employment injury.

Likewise Dr. Young's report also failed to state that appellant was disabled from work during the claimed time period. He did note abnormal findings of degenerative disc disease after reviewing a May 24, 2007 bone scan, but he offered no opinion regarding disability. It is appellant's burden to prove that he is disabled for work as a result of his employment injury.

---

<sup>3</sup> *Fereidoon Kharabi, supra* note 2.

<sup>4</sup> *Alfredo Rodriguez*, 47 ECAB 437 (1996).

<sup>5</sup> *Fereidoon Kharabi, supra* note 2.

<sup>6</sup> *Id.*

Appellant has not proven that he was disabled from work during the claimed time period, likewise he has not established that his disability was due to his employment injury.

**CONCLUSION**

Appellant failed to establish that he was disabled for the period June 7 through July 6, 2007 due to his accepted injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 25, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 21, 2008  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board