United States Department of Labor
Employees' Compensation Appeals Board

C.M., Appellant	)	
and	)	**Docket No. 08-752**
	)	**Issued: August 5, 2008**
DEPARTMENT OF THE NAVY, PUGET SOUND NAVAL SHIPYARD, Bremerton, 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
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 16, 2008 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated October 31, 2007 denying his claim for wage-loss compensation for the period December 15, 2006 through January 19, 2007 and rescinding payment of continuation of pay for the period October 31 to December 14, 2006. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this decision.

ISSUES

The issues are: (1) whether appellant has established that he was disabled for work for the period December 15, 2006 through January 19, 2007 due to his accepted October 23, 2006 employment injury; and (2) whether the Office properly rescinded acceptance of total disability for the period October 31 to December 14, 2006.

FACTUAL HISTORY

On October 24, 2006 appellant, then a 32-year-old shipfitter helper, filed a traumatic injury claim alleging that on October 23, 2006 he injured his right wrist when he slipped on oil and hit his right hand on a cart rail. He did not stop work, but continued working in a light-duty job until December 14, 2006. The Office accepted the claim for closed fracture of the right upper end ulna and radius.

In reports dated October 31 and November 1, 2006, Dr. Kenneth R. Koskella, a treating Board-certified orthopedic surgeon, reported that appellant injured his wrist on October 23, 2006 when he slipped and banged his right wrist against a railing. He noted that appellant was then placed on light-duty work by the employing establishment. An x-ray interpretation revealed "increased space between the lunate and triquetium" with a "probably small avulsion fracture of the triquetium" seen on a lateral view. A physical examination of the right wrist revealed no swelling, obvious instability of the wrist or obvious deformity, but did reveal significant tenderness on palpation of the distal radioulnar joint. Range of motion of the right wrist included 50 degrees flexion, 45 degrees extension, 20 degrees radial deviation and 30 degrees ulnar deviation, which was painful. Based upon the objective evidence, Dr. Koskella diagnosed a sprained ligament and probable avulsion fracture. He stated that appellant was disabled from performing his date-of-injury job as "he cannot use his hand forcefully or climb ladders." However, Dr. Koskella indicated that appellant would be capable of performing a sedentary light-duty job which required minimal use of the right hand.

In a December 13, 2006 disability note, Dr. Koskella stated that appellant was totally disabled for work "unless desk job is available."

In a December 15, 2006 attending physician's report (Form CA-20), Dr. Koskella diagnosed avulsion fracture of the right triquetium based upon an x-ray interpretation. He noted that he first saw appellant on October 31, 2006 and that he was currently totally disabled as of October 31, 2006.

In a December 18, 2006 disability note, Dr. Koskella indicated that appellant was currently disabled from working.

In a January 9, 2007 duty status report (Form CA-17), Dr. Koskella indicated that appellant was disabled from using his right hand, but that he would be able to work a desk job. In a January 9, 2007 disability note, he stated that appellant was disabled from work due to his wrist injury and was waiting for authorization for surgery.

On January 9, 2007 appellant filed claims for compensation for the period December 15, 2006 through January 19, 2007.

In a letter dated January 12, 2007, the Office noted it had received appellant's claims for compensation (Form CA-7) for the period December 15, 2006 through January 19, 2007. It informed appellant that the medical evidence of record was insufficient to support his recurrence claim. The Office further noted that appellant had worked light duty for the period October 24 through 30, 2006 and received continuation of pay for the period October 31 through

December 14, 2006. It noted that his physician, Dr. Koskella, had indicated that he was capable of working a desk job and, thus, it was unclear why he was unable to work his light-duty job from December 15, 2006 through January 19, 2007. Appellant was then advised as to the type of medical and factual information required to support his claim and given 30 days to provide the requested information.

Subsequently, the Office received additional medical information including appellant's statement and January 9, 2007 treatment note and January 23, 2007 note by Dr. Koskella. In his statement appellant noted that he has been unable to work due to pain and the medication he takes makes him "extremely drowsy and generally fall asleep with[in] an hour of tak[ing] them." As a result, he related that he was unable to drive and usually did not hear his alarm clock going off. Appellant stated that "[g]etting to work is just as much of a hassle as is trying to stay awake while there."

Dr. Koskella noted that appellant was "having fairly significant right wrist pain, worse with any activity." He reported that a magnetic resonance imaging (MRI) scan revealed a lunatriquetral ligament tear of the right wrist and partial tear of the carpi ulnaris extensor. Dr. Koskella concluded that appellant was disabled from work due to his right wrist ligament tear. In the January 23, 2007 note, he noted that appellant was unable to drive due to his taking narcotics for his pain.

On March 27, 2007 Dr. Koskella stated that appellant could not perform any work that requires "other than minimal use of his right dominant hand" and that appellant "does occasionally need narcotic pain medication for pain control." He indicated that he was no longer actively involved in appellant's care as he was currently being treated by the University of Washington.

In a March 28, 2007 report, appellant was diagnosed with triquetral evulsion and lunatotriquetral tear. The report was electronically signed by Chad Carson Moloney, physician's assistant, and cosigned electronically on April 5, 2007 by Dr. Thomas E. Trumble, an attending Board-certified orthopedic surgeon with a subspecialty certification in hand surgery. A physical examination revealed decreased hand strength and ulnar dorsal wrist pain. Range of motion of the right wrist included 45 degrees flexion, 55 degrees extension, 70 degrees supination and 70 degrees pronation. Dr. Trumble and Mr. Moloney indicated that appellant was disabled from work due to his inability to use his right arm as a result of his employment injury. They also stated that appellant "has been unable to return to limited duty or light duty secondary to the use of narcotic pain medication.

On April 25, 2007 the Office requested that the Office medical adviser address whether appellant's pain and narcotic pain medication would preclude him from working. It noted the narcotic medication appellant was prescribed included hydrocodone and oxycodone. Specifically, the Office asked whether it was normal to immediately fall asleep after taking narcotic pain medication and was it "highly likely that he could be so doped up at work every day that he would fall asleep every day?" The Office medical adviser was also asked whether it was normal for appellant to be in constant pain four months after the injury.

In a report dated April 28, 2007, the Office medical adviser noted that drowsiness can be a reaction to the medication appellant was taking. He stated that appellant should not be driving while taking this medication and "he should not be in any safety sensitive positions." The Office medical adviser noted that he could not "speak to the level of pain" appellant was having as this varied from person to person. As to the use of pain medication, the Office medical adviser recommended contacting appellant's current physician, Dr. Trumble, with the Office's concerns.

By decision dated May 8, 2007, the Office denied appellant's claim for continuation of pay/compensation for disability for the period December 15, 2006 through January 19, 2007. It found that light-duty work was available at the employing establishment during this period and that the medical evidence did not establish that she was totally disabled for work.

On August 6, 2007 the Office received appellant's request for reconsideration dated May 8, 2007.[1]

On August 7, 2007 the Office received a July 11, 2007 report by Dr. Trumble and Mr. Moloney. With respect to appellant's disability during the period December 18, 2006 to his surgery in May 2007, he noted that "[i]t was imperative that the patient was off during that time, as he was unable to use his right upper extremity and was requiring a significant amount of narcotic medications for pain." Dr. Trumble opined that the pain medication also precluded appellant from performing any light-duty work.

By decision dated October 31, 2007, the Office denied appellant's request for modification of the denial of his claim for continuation of pay and wage-loss compensation for the period December 19, 2006 through January 19, 2007.[2] The Office also determined that appellant was not entitled to continuation of pay for the period October 31 to December 14, 2006, which effectively rescinded acceptance of this period.

LEGAL PRECEDENT -- ISSUE 1

Under 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.[3] Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.[4] An employee who has a physical impairment causally related to his federal employment, but who nonetheless has the capacity to earn the wages he was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.[5] When, however, the medical evidence establishes that the residuals or

[1] The attached envelope was postmarked August 1, 2007.

[2] The Office noted that appellant's claim for compensation for time lost during January 22 to April 27, 2007 would be addressed separately.

[3] *S.M.*, 58 ECAB ___ (Docket No. 06-536, issued November 24, 2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Conard Hightower*, 54 ECAB 796 (2003); 20 C.F.R. § 10.5(f).

[4] *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

[5] *Merle J. Marceau*, 53 ECAB 197 (2001).

sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his employment, he is entitled to compensation for any loss of wages.

To meet this burden, a claimant must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factor(s).[6] The opinion of the physician must be based on a complete factual and medical background, 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.[7]

The Board will not require the Office to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.[8]

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained closed fracture of the right upper end ulna and radius on October 23, 2006 in the performance of duty. On January 9, 2007 appellant filed claims for compensation for the period December 15, 2006 through January 19, 2007. On April 25, 2007 the Office requested an opinion from the Office medical adviser of whether appellant's pain and narcotic pain medication would preclude him from working. In a report dated April 28, 2007, the Office medical adviser noted that drowsiness can be a reaction to the medication appellant was taking. He stated that appellant should not be driving while taking this medication and "he should not be in any safety sensitive positions." As to appellant's pain, level he noted that pain levels varied from person to person.

It is well established that proceedings under the Act[9] are not adversarial in nature.[10] While appellant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.[11] It has an obligation to see that justice is done.[12] In this case, the Office requested that the Office medical adviser answer a question as to whether appellant's pain medication would impact his ability to work and whether appellant's

[6] *A.D.*, 58 ECAB ___ (Docket No. 06-1183, issued November 14, 2006).

[7] *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

[8] *See William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

[9] 5 U.S.C. §§ 8101-8193.

[10] *Rebecca O. Bolte*, 57 ECAB 687 (2006); *John J. Carlone*, 41 ECAB 354 (1989).

[11] *Phillip L. Barnes*, 55 ECAB 426 (2004); *Dorothy L. Sidwell*, 36 ECAB 699 (1989).

[12] *R.E.*, 59 ECAB ___ (Docket No. 07-1604, issued January 17, 2008); *Donald R. Gervasi*, 57 ECAB 281 (2005).

complaints of pain were normal. The Office medical adviser noted that pain levels varied from person to person and that appellant should not be driving while using the medication he was prescribed and did not directly address that portion of the Office's inquiry regarding appellant's ability to work. As the Office undertook development of the medical evidence by questioning the Office medical adviser regarding appellant's pain and the impact of the medication he took, issue, it should have secured an answer to its question or referred appellant for a second opinion evaluation.[13] It denied appellant's claim even though the Office medical adviser did not respond to the critical question posed by the Office. Moreover, the response provided is supportive of appellant's position that he was unable to work due to his medication. The case will be remanded to the Office for appropriate development, including a medical opinion which addresses the issue of disability. The Office shall then issue an appropriate decision in the case.

As the case must be remanded for further development on the issue of whether appellant was disabled from work due to his pain and pain medication, the Board finds that the second issue as to whether the Office properly rescinded acceptance of total disability for the period October 31 to December 14, 2006 is moot.

CONCLUSION

The Board finds that the case is not in posture for a decision. The case will be remanded for further development as to whether appellant was totally disabled from the light-duty job due to his pain and the pain medication he was taking.

[13] *Peter C. Belking*, 56 ECAB 580 (2005). (Once the Office has begun an investigation of a claim, it must pursue the evidence as far as reasonably possible. The Office has an obligation to see that justice is done).

ORDER

IT IS HEREBY ORDERED THAT the October 31, 2007 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further proceedings consistent with the above opinion.

Issued: August 5, 2008
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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