



In a January 13, 2007 report, Dr. Edmundo Sagastume, an internist, diagnosed contusion of the lower back, wrist and left ankle. He indicated that appellant could return to modified work from January 13 to 16, 2007. Dr. Sagastume indicated that she should perform sit down work inside. In a January 16, 2007 duty status report, Dr. Gregory Zielinski, specializing in occupational medicine, indicated that appellant slipped off a step and sustained a contusion to her back. He also noted contusions to the left ankle. Dr. Zielinski recommended light work to include sitting down only with no lifting, pushing or pulling over 10 pounds. In a January 22, 2007 report, he indicated that appellant had an improving left ankle strain and resistant contusions to the back and left wrist. Dr. Zielinski recommended light work for appellant.

The Office subsequently received a disability certificate from Dr. Bryan K. Swilley, an osteopath Board-certified in family practice, who indicated that appellant was unable to work from February 1 to 13, 2007. In a February 13, 2007 report, Dr. Swilley, diagnosed lumbar disc disease and indicated that appellant could not return to work. In a March 1, 2007 disability certificate, Dr. Swilley, advised that appellant was disabled and to remain off work March 1 to 28, 2007. The Office also received a February 13, 2007 report from Dr. Timothy P. Sesi, a Board-certified physiatrist, who noted that appellant was seen for pain. He prescribed medication and recommended following up with her primary physician. In a March 13, 2007 report, Dr. Kenneth Richter, an osteopath, Board-certified in rehabilitative medicine diagnosed pain, post trauma and recommended continued therapy. A March 23, 2007 bone scan read by Dr. Kevin R. Carter, an osteopath, was normal.

Beginning April 18, 2007, appellant filed claims for compensation (Form CA-7) claiming disability compensation starting March 3, 2008.<sup>1</sup> In an April 23, 2007 statement, she alleged that she returned to the employing establishment on January 17, 2007 and was told that she could work within her restrictions. Appellant alleged that she was told to answer the telephones while the paperwork was being completed and that she was told that she would have to work "CSF." She alleged that she could not do anything and could not work. Appellant alleged that she began crying and left in tears after filling out a sick leave request.

In a May 24, 2007 report, Dr. Swilley noted that appellant slipped and fell on a porch while working. He noted that she had bulging lumbar discs, diagnosed lumbar disc disease and checked the box "yes" in response to whether he believed the condition was caused or aggravated by an employment activity. Dr. Swilley advised that appellant was totally disabled for the period January 13 through June 24, 2007. He indicated that appellant could resume light duty on June 25, 2007.

By letter dated June 4, 2007, the Office requested that appellant submit additional factual and medical evidence to support her claim for disability. It allotted appellant 30 days within which to submit the requested information.

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<sup>1</sup> Appellant also filed a claim for a recurrence of disability indicating that she stopped work on January 17, 2007. The employing establishment indicated that it allowed appellant to sit and stamp mail after her work injury. On June 4, 2007 the Office denied the claim for a recurrence of disability beginning January 17, 2007. It found that the evidence did not establish that the employing establishment was unable to accommodate appellant's medical restrictions. Appellant did not appeal this decision to the Board.

The Office received an April 18, 2007 attending physician's report from Dr. Swilley which repeated the contents of his earlier report. Dr. Swilley diagnosed lumbar disc disease and checked the box "yes" that appellant's condition was caused or aggravated by an employment activity. He indicated that appellant was totally disabled from January 13 to May 21, 2007. Additionally, a February 6, 2007 computerized tomography (CT) scan of the lumbar spine read by Dr. Michael J. Hecimovich, an osteopath, revealed mild broad-based disc bulging L3-4, L4-5 and S-1. It also revealed a disc bulge at L5-S1 which effaced the thecal sac and bilateral S1 nerve roots. The Office also received April 24 and May 15, 2007 reports from Dr. Richter, who diagnosed complicated pain syndrome and opined that they needed to "get her moving." In his May 15, 2007 report, the physician indicated that he was "not able to come up with the answer for what is causing it right now, but I do think we need to try to aggressively get her back to work."

By decision dated August 7, 2007, the Office denied the claim for the period March 3, 2007 and continuing. It advised appellant that the evidence of record failed to establish disability for the claimed period.

On August 17, 2007 appellant requested a hearing that was held on November 15, 2007. She submitted several medical reports. A March 13, 2007 magnetic resonance imaging (MRI) scan of the left hip and pelvis read by Dr. Babu R. Vemuri, a Board-certified diagnostic radiologist, was negative. An August 22, 2007 report from Ashraf I. Khan, an osteopath Board-certified in pain management, diagnosed lumbosacral radiculopathy, lumbar facet joint arthropathy and bilateral sacroiliac joint syndrome. An August 23, 2007 report from Dr. Richter noted that appellant had chronic complicated pain syndrome and recommended that appellant seek treatment with a neurosurgeon. On September 26, 2007 he indicated that appellant had chronic complicated pain syndrome and opined that she needed to start working again. A September 6, 2007 MRI scan from Dr. George Pappas, a Board-certified diagnostic radiologist, revealed lumbar disc herniation, spinal canal stenosis and neural foraminal narrowing. In a September 19, 2007 report, Dr. Paul D. Croissant, a Board-certified neurosurgeon, opined that he did not believe that appellant had a neurological back problem. He indicated that she had a manifestation of pain but that there was no evidence of a cause for the pain based on MRI scan findings or examination findings. Dr. Croissant also indicated that there was a disparity in findings with straight-leg raising as the study was normal when she sat but abnormal when she was supine.

Appellant also submitted several reports from Dr. Swilley. On June 14, 2007 Dr. Swilley noted that appellant was diagnosed with lumbar disc disease after a January 13, 2007 fall. He indicated that, before the fall, appellant related that she had no back problems. Dr. Swilley advised that a CT scan revealed broad based disc bulging at L3-4, L4-5 and L5-S1. He indicated that the L5-S1 disc bulge affected the S-1 nerve roots and indicated that appellant continued to have ongoing back pain in spite of her ongoing back pain. Dr. Swilley indicated that the CT scan results explained appellant's ongoing back pain. In reports dated November 9 and December 4, 2007, he noted that appellant was diagnosed with lumbar disc disease, following a fall while at work on January 13, 2007. Dr. Swilley indicated that appellant did not have any lower back problems prior to this fall. He indicated that a CT scan revealed broad based disc bulging at the following levels L3-4, L4-5 and opined that the L5-S1 disc bulge also affected the S-1 nerve

roots. Dr. Swilley opined that appellant continued to have back pain in spite of ongoing physical therapy.

By letter dated December 12, 2007, appellant's representative submitted additional evidence. The additional evidence included a December 3, 2007 report from Dr. David Drasnin, a clinical psychologist, who indicated that appellant was under his care for behavioral management of her chronic pain. He indicated that appellant was not able to return to her job as a letter carrier. Dr. Drasnin also submitted a December 14, 2007 report from Dr. Swilley, who repeated his diagnoses of lumbar disc disease and stated that appellant did not have any lower back problems prior to her fall at work. He noted that appellant continued to have lower back pain. The Office also received several physical therapy and nursing reports.

By decision dated January 31, 2008, the Office hearing representative affirmed the Office's August 7, 2007 decision. The Office found that the medical evidence was insufficient to establish that appellant was totally disabled for work on or after March 3, 2007, which was causally related to her accepted employment injuries.

### **LEGAL PRECEDENT**

A claimant seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of proof to establish the essential elements of her claim by the weight of the evidence,<sup>3</sup> 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.<sup>4</sup>

As used in the Act, the term "disability" means incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury.<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup> Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work. When a physician's statements regarding an employee's ability to work consist only of repetition of the

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

<sup>4</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>5</sup> *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.5(f).

<sup>6</sup> *Bobby W. Hornbuckle*, 38 ECAB 626 (1987).

<sup>7</sup> *See Fereidoon Kharabi*, 52 ECAB 291, 293 (2001); *Edward H. Horton*, 41 ECAB 301, 303 (1989).

employee's complaints that she hurt too much to work, without objective findings 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>8</sup> 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.<sup>9</sup>

### ANALYSIS

The Office accepted appellant's claim for contusions of the left wrist, left ankle, and back. In support of her claim for disability for the period beginning March 3, 2007 appellant provided several medical reports.

These included a March 1, 2007 disability certificate from Dr. Swilley, who advised that appellant was disabled and to remain off work March 1 to 28, 2007. However, Dr. Swilley did not provide any opinion on causal relationship. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>10</sup> Dr. Swilley also provided reports dated April 18 and May 24, 2007, in which he diagnosed bulging lumbar discs and lumbar disc disease. The Board notes that these conditions were not accepted by the Office. Furthermore, while Dr. Swilley checked the box "yes" in response to whether he believed the condition was caused or aggravated by an employment activity and advised that appellant was totally disabled for the period January 13 through June 24, 2007, he did not provide any reasoning. The Board has held, however, that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion has little probative value and is insufficient to establish a claim.<sup>11</sup> Thus, these reports are insufficient to establish that appellant was disabled beginning March 3, 2007 as a result of her employment-related conditions.

In reports beginning June 14, 2007, Dr. Swilley noted that appellant had lumbar disc disease and advised that, prior to her work injury, appellant related having no back problems. To the extent that he asserts that appellant's work injury caused lumbar disc disease and disability, the Board notes that the Office only accepted appellant's condition for contusions of the left wrist, left ankle and back. Further, Dr. Swilley did not provide a reasoned explanation regarding how the accepted January 13, 2007 injury caused or aggravated a degenerative lumbar

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<sup>8</sup> *G.T.*, 59 ECAB \_\_\_\_ (Docket No. 07-1345, issued April 11, 2008); see *Huie Lee Goal*, 1 ECAB 180,182 (1948).

<sup>9</sup> See *G.T.*, *id.* *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

<sup>10</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>11</sup> *Deborah L. Beatty*, 54 ECAB 340 (2003).

condition.<sup>12</sup> Furthermore, the Board has held that the fact that appellant's back condition was asymptomatic before her injury, but symptomatic afterward is insufficient to establish, absent supporting rationale, a causal relationship.<sup>13</sup>

Appellant also provided numerous reports from Drs. Sesí, Richter, Khan and Croissant, dating from February 13 to December 4, 2007, in which the physician's indicated that appellant was seen for pain or some type of pain syndrome or management. The Board has held, however, that a diagnosis of "pain" does not constitute the basis for the payment of compensation.<sup>14</sup> Furthermore, none of the aforementioned physician's provided an opinion that appellant was disabled and unable to work on or after March 3, 2007 as a result of her employment-related condition.<sup>15</sup> Also, the most recent reports from Drs. Richter and Croissant tend to indicate that appellant's continuing condition is not attributable to her accepted contusions.

Appellant also provided a December 3, 2007 report from Dr. Drasnin, a clinical psychologist, who indicated that she was under his care for behavioral management of her chronic pain and that she was unable to return to her job as a letter carrier. However, as noted above, a diagnosis of "pain" does not constitute the basis for the payment of compensation and he did not address how appellant's disability was causally related to her accepted contusions. Likewise, several diagnostic reports submitted by appellant are insufficient to establish appellant's claim as they did not address whether the claimed disability was causally related to appellant's accepted contusions.

The Office also received several physical therapy and nursing reports. However, lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under the Act.<sup>16</sup>

Although appellant alleged that she was disabled beginning March 3, 2007 as a result of her accepted employment injury, the medical evidence of record does not establish that her claimed disability during the above timeframe was related to her accepted employment injuries. The Board finds that appellant has failed to submit rationalized medical evidence establishing that her disability commencing March 3, 2007 was causally related to her accepted employment injury, and thus, she has not met her burden of proof.

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<sup>12</sup> Where an employee claims that a condition not accepted or approved by the Office was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury. *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>13</sup> See *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

<sup>14</sup> *John L. Clark*, 32 ECAB 1618 (1981).

<sup>15</sup> Medical evidence which does not offer any opinion regarding causal relationship is of limited probative value. See *Michael Smith*, 50 ECAB 313 (1999).

<sup>16</sup> *David P. Sawchuk*, 57 ECAB 316 (2006).

**CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish that she had disability beginning March 3, 2007 causally related to her employment-related conditions.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 31, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 2, 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