

injured her back and left arm while in the performance of duty.¹ On December 27, 2002 the Office accepted appellant's claim for left scapula strain, left scapula contusion and thoracic strain when struck by an office door in her upper back. By decision dated June 4, 2004, the hearing representative affirmed the August 29, 2003 rescission decision. Appellant requested review by the Board. By decision dated October 26, 2005, the Board reversed the Office's decision rescinding acceptance of her claim.² The facts and the circumstances of the case as set forth in the Board's prior decision are adopted herein by reference.

The relevant medical evidence submitted prior to the Board's decision includes a June 10, 2003 disability slip for the period November 2002 to July 10, 2003 by Dr. Richard M. Thomas, a treating chiropractor, attending physician's reports (Form CA-20) dated May 9 and July 10, 2003 by Dr. Ugo Nwokoro, a treating physician, and a June 21, 2003 Miami Valley Emergency Hospital report. Dr. Nwokoro, in the May 9, 2003 attending physician's report, noted that appellant sustained blunt force trauma to her back and left shoulder on November 15, 2002 and that appellant was partially disabled from November 20, 2002 and continuing. In the July 10, 2003 attending physician's report, he diagnosed thoracic lumbar strain, left upper extremity dysthemia and pain and post-traumatic stress disorder. Dr. Nwokoro opined that appellant was partially disabled beginning November 2, 2002 and that the conditions were related to her employment injury. He noted that appellant had no preexisting conditions prior to her November 2, 2002 employment injury when attributing the diagnosed conditions to the employment injury. The June 21, 2003 hospital report stated that appellant lost her balance and fell while stepping into a depression in her yard. Diagnoses included left lumbar pain and exacerbation of her chronic pain as a result of this injury.

Following the Board's October 26, 2004 decision, the Office accepted appellant's claim for left scapula strain, left scapula contusion and thoracic strain on November 15, 2005. It noted that it had received her claims for wage-loss compensation (Form CA-7) for the period May 12 to August 1, 2003 and that evidence was currently insufficient to support her wage-loss claim. Appellant was advised as to the medical evidence to submit to support her claim. The Office also informed her that the medical evidence revealed that she sustained an intervening injury on June 21, 2003 which broke the chain of causation with her accepted employment injury.³

In response to the Office's request for additional evidence appellant submitted laboratory reports, radiology reports and triage reports regarding her pelvic condition for the period November 7, 2000 to March 30, 2002, a September 2, 2003 functional capacity evaluation, an August 22, 2003 disability determination, physical therapy notes, a December 6, 2004 report by Dr. J. William McIntosh, an attending psychologist, a December 8, 2006 report regarding an

¹ Appellant stopped work on November 15, 2002 and has not returned. Effective January 27, 2004, appellant elected to receive disability retirement benefits.

² *Kelly Y. Simpson*, 57 ECAB 197 (2005).

³ Appellant filed a claim for a schedule award on September 22, 2006. As no final decision has been issued on appellant's request for a schedule award, the Board's jurisdiction to consider this matter. 20 C.F.R. § 501.2(c); *see Linda Beale*, 57 ECAB 429 (2006) (the Board's jurisdiction extends only to a review of final decisions by the Office issued within one year of the date of the filing of an appeal).

impairment rating by Dr. Martin Fritzhand, an examining physician, and office notes and progress notes for the period November 21, 2002 to November 18, 2004.

By decision dated September 5, 2007, the Office denied appellant's claim for wage-loss compensation for the period May 12 to August 1, 2003. It found that she failed to submit the necessary medical evidence to establish her disability for work.

On September 9, 2007 appellant, through counsel, requested a telephonic hearing before an Office hearing representative, which was held on January 4, 2008. By decision dated March 20, 2008, the Office hearing representative affirmed the denial of her wage-loss claim.

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.⁴ Whether a particular injury causes an employee to be disabled for work and the duration of that disability are medical issues which must be proved by the weight of substantial and reliable medical evidence.⁵ The claimant has the burden of proving that he is disabled for the period claimed as a result of the employment injury. The medical evidence of record must directly address the particular period of disability for which compensation is sought; to do otherwise would essentially allow employee's to self-certify their disability and entitlement to compensation.⁶

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed disability for the period May 12 to August 1, 2003 and her left shoulder contusion, thoracic strain and left scapula strain.⁷ The Board has held that the mere belief that a condition was caused or aggravated by employment factors or incidents is insufficient to establish a causal relationship between the two.⁸ 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.⁹

ANALYSIS

The Office accepted appellant's claim for left scapula strain, left scapula contusion and thoracic strain. Appellant requested compensation benefits for wage loss from May 12 to

⁴ See *Robert A. Flint*, 57 ECAB 369 (2006); *Prince E. Wallace*, 52 ECAB 357 (2001).

⁵ See *Carol A. Lyles*, 57 ECAB 265 (2005); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁶ *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *William A. Archer*, 55 ECAB 674 (2004).

⁷ *Sandra D. Pruitt*, 57 ECAB 126 (2005); *Alfredo Rodriguez*, 47 ECAB 437 (1996).

⁸ *Alfredo Rodriguez*, *supra* note 7.

⁹ *Fereidoon Kharabi*, *supra* note 5.

August 1, 2003. The issue of whether a claimant's disability is related to an accepted condition is a medical question that must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to employment factors and supports that conclusion with sound medical reasoning.¹⁰

The medical evidence addressing appellant's periods of disability consists of a June 10, 2003 disability slip by Dr. Thomas, a treating chiropractor, attending physician reports dated May 9 and July 10, 2003 by Dr. Nwokoro, a treating physician, and a June 21, 2003 Miami Valley Emergency Hospital report.

In a June 10, 2003 disability slip, Dr. Thomas indicated that appellant was disabled for the period November 2002 to July 10, 2003. In assessing the probative value of chiropractic evidence such as Dr. Thomas' disability slip the initial question is whether the chiropractor is considered a physician under section 8101(2) of the Act. A chiropractor is not considered a physician under the Act unless it is established that there is a spinal subluxation as demonstrated by x-ray to exist.¹¹ As Dr. Thomas did not diagnose a subluxation as demonstrated by x-ray, he is not a physician as defined under the Act and his reports are of no probative medical value.

The reports by Dr. Nwokoro are insufficient to meet appellant's burden of proof. In the May 9 and July 10, 2003 attending physician's reports, Dr. Nwokoro noted appellant was partially disabled from working. However, he provided no explanation as to how her partial disability was causally related to her accepted November 15, 2002 employment injury. Moreover, these reports identify no specific dates of disability, but merely note the beginning date of partial disability. The Board has held that medical reports not containing rationale on causal relation are entitled to little probative value.¹² As Dr. Nwokoro provided no supporting rationale, his reports are insufficient to establish appellant's claim for disability.

The remaining medical evidence is insufficient to support appellant's claim for wage-loss disability. The medical evidence addresses conditions not accepted by the Office such as her depression and pelvic condition, do not address the issue of disability or predate or postdate the period of disability claimed by appellant. Moreover, the June 21, 2003 Miami Valley Emergency Hospital report noted that appellant sustained a new nonemployment-related injury when lost her balance and fell while stepping into a depression in her yard.

For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.¹³ The issue of whether a claimant's disability is related to an accepted condition is a medical question which must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to employment factors and

¹⁰ *Sandra D. Pruitt*, *supra* note 7.

¹¹ *Paul Foster*, 56 ECAB 208 (2004); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

¹² *S.S.*, 59 ECAB ____ (Docket No. 07-579, issued January 14, 2008).

¹³ *Amelia S. Jefferson*, 57 ECAB 183 (2005).

supports that conclusion with sound medical reasoning.¹⁴ The Board finds that there is no such evidence in this case.

CONCLUSION

The Board finds that appellant has not established that her disability for the period May 12 to August 1, 2003 is causally related to the accepted November 15, 2002 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 20, 2008 is affirmed.

Issued: December 24, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

¹⁴ *Sandra D. Pruitt, supra* note 7.