

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

T.A., Appellant)

and)

DEPARTMENT OF COMMERCE, PATENT &)
TRADEMARK OFFICE, Arlington, VA,)
Employer)

**Docket No. 07-1725
Issued: February 12, 2008**

Appearances:

Harold Levi, Esq., for the appellant

Jim C. Gordon, Jr., Esq., for the Director

Oral Argument November 6, 2007

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 15, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated February 13 and June 6, 2007. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met his burden of proof in establishing that he had intermittent disability from July 21 to September 21, 2002 and from April 21 to September 14, 2003 causally related to his accepted employment condition.

FACTUAL HISTORY

This is the second appeal in the present case. In a September 23, 2005 decision, the Board affirmed the Office's decisions dated July 10 and September 5, 2003 and January 14, 2004. The Board determined that appellant failed to establish that he demonstrated a recurrence of disability causally related to his accepted work injury of December 19, 2001. The

Board also affirmed the denial of appellant's claims for an emotional condition.¹ The facts and circumstances of the case up to that point are set forth in the Board's prior decision and incorporated herein by reference.²

On September 27, 2006 appellant filed a Form CA-7, claim for compensation for intermittent periods from December 14, 2001 and March 24, 2004.

On August 23, 2002 Dr. Ella Webster, a Board-certified family practitioner, treated appellant for chronic back pain, which occurred after a fall at work in December 2001. Dr. Webster diagnosed arthralgias, myalgias and fibromyalgia. Appellant submitted a report from Dr. Wagdi Attia, a Board-certified internist, dated September 4, 2003. He was treated for post-traumatic stress disorder, which Dr. Attia opined was work related. In a September 4, 2003 report, Dr. Kamel F. Muakkassa, a Board-certified internist, noted a history of injury and diagnosed low back pain radiating into his right leg.

The Office referred appellant to a second opinion physician and also to an impartial medical examiner. On September 1, 2006 the Office expanded appellant's claim to include bilateral sacroiliac joint dysfunction and sprain and strain of the lumbar region.

Appellant submitted reports from Dr. Ramin M. Jebraili, a Board-certified orthopedic surgeon. On May 21, 2003 he was seen for lower back pain and bilateral radiculopathy caused by a tripping incident at work on December 19, 2001. Dr. Jebraili diagnosed sacroiliac strain and recommended restrictions on lifting and prolonged walking. On June 12, 2003 he treated appellant for low back pain with radiculopathy. Dr. Jebraili noted that appellant had two injections at his S1 joint and reported substantial improvement of his symptoms. He diagnosed right sacroiliitis and opined that appellant's condition may be disabling and effect his productivity in view of the diagnosed sacroiliitis and fibromyalgia. In notes dated July 3 and September 4, 2003, Dr. Jebraili advised that appellant was diagnosed with sacroiliitis strain and could work with restrictions of no prolonged walking or standing starting September 14, 2003. He administered a trigger point injection and opined that appellant would have permanent partial disability secondary to the right sacroiliitis. On May 26, 2005 Dr. Jebraili treated appellant for bilateral S1 joint pain and radiculopathy radiating into his lower back which was exacerbated upon sitting, standing and prolonged ambulation. He diagnosed bilateral S1 joint strain and opined that appellant's condition and symptoms were caused by his work injury.

On January 8, 2007 the Office found that the medical documentation established that appellant was entitled to four hours of compensation for the following dates: July 29, 2002, March 27, April 2, 4, 10, 14 and 17, May 7, 9, 12, 14, 19, 21, 24, 27 and 29, June 10, 17, 19, 20, 24, 26 and 30, 2003 and July 14, 16, 21, 23, 28 and 30, 2005, a total of 120 hours of compensation.

¹ Docket Nos. 04-115, 04-605 & 04-992 (issued September 23, 2005).

² The Office accepted appellant's claim for contusion of the right chest wall and contusion of the right elbow and forearm.

In a decision dated January 9, 2007, the Office granted appellant compensation for four hours per day on the following dates: July 29, 2002 and March 27, April 2, 4, 10, 14 and 17, May 7, 9, 12, 14, 19, 21, 24, 27 and 29, June 10, 17, 19, 20, 24, 26 and 30, 2003 for a total of 96 hours of compensation. On January 9, 2007 the Office asked appellant to submit additional information, including a comprehensive medical report from his treating physician, to establish disability related to the accepted conditions of his claim.

Appellant submitted magnetic resonance imaging (MRI) scans of the lumbosacral spine dated January 13, 2002 and April 24, 2003, which revealed no abnormalities. Treatment notes from Dr. Hoda Makawi, a Board-certified family practitioner, dated August 6 and 27, 2002, diagnosed back pain and depressive anxiety. She advised that appellant would be unable to work from August 5 to September 5, 2002. Treatment notes also reflect that appellant was seen on September 10, 17 and 24 and October 1, 2002 for back pain and advised that he was unable to work on those dates. Dr. Lydia B. Segal, a Board-certified family practitioner, noted that appellant was treated for back pain on October 31, November 11 and 25, 2002 and would be unable to work on those dates.

On January 3, 2003 Dr. Ziad A. Aki, a Board-certified internist, indicated that appellant could not work on February 2, 2003 due to back pain. Appellant received treatment on February 10, March 18 and 28, 2003. On April 21, 2003 Dr. Aki diagnosed chronic back pain and advised that appellant was undergoing physical therapy and would be excused from work until May 23, 2003. In a June 16, 2003 report, he noted that appellant had chronic low back pain and was disabled until further notice. Reports from Dr. William C. Lennen, a Board-certified orthopedist, dated April 23 and May 22, 2003, noted a history of appellant's work injury in December 2001 and subsequent treatment. He could not find any anatomic reason for appellant's pain and released him from his care.

Appellant submitted a May 21, 2003 report from Dr. Jebraili, who noted a history of injury and diagnosed sacroiliac strain. Dr. Jebraili recommended restrictions on lifting and walking. On July 3, 2003 he performed a trigger point injection at S1. In notes dated July 3 and 25, 2003, he noted treating appellant for sacroiliac strain. Dr. Jebraili performed a S1 joint injection and noted appellant's restrictions but advised that appellant could work limited duty. On August 13, 2003 he diagnosed sacroiliac strain and noted that appellant was not allowed to work and provided restrictions of no prolonged sitting or standing. In a return to work slip from the Dominion Clinic dated May 19, 2003, appellant was treated for acute back pain, sacroiliac joint dysfunction and lumbar strain and could return to work on June 15, 2003. Another return to work slip from Dominion Clinic dated July 5, 2003, noted appellant's treatment for fever, nausea, abdominal pain and back pain and could return to work on July 15, 2003.

In a February 13, 2007 decision, the Office accepted appellant's claim for compensation for the following dates as work related: Four hours for July 29, August 6 and 27, September 10, 17 and 24, October 1 and 31, November 25, 2002, February 10, March 5 and 27, April 21 and 23, May 20 and 27, June 10, July 1 and 3 and September 4, 2003. The Office denied his claim for compensation for wage loss from July 21 to September 21, 2002 and from April 19 to September 14, 2003, in addition to intermittent wage loss from October 1, 2002 to November 15, 2003. It found that the medical evidence was not sufficient to establish that

appellant's disability was due to his accepted work injury. Appellant was paid compensation for total disability beginning March 26, 2004.

On April 5, 2007 appellant requested reconsideration. He submitted a January 24, 2007 lumbar spine MRI scan that showed a broad based bulging disc to the right at C5-6 with foraminal narrowing. On February 6, 2007 Dr. Muakkassa treated appellant for hip pain. In a March 28, 2007 report, Dr. Jebraili noted a lumbar strain, sacroiliac dysfunction and right knee patellofemoral crepitation which occurred after appellant fell at work on December 19, 2001. He indicated that, in June 2003, it was hard for appellant to work while sitting in a chair for long periods of time or standing. Dr. Jebraili advised that appellant was seen by a Dr. Attar on May 19, 2003. He placed appellant off work until June 19, 2003. Dr. Jebraili noted that appellant was evaluated by Dr. Aki in the summer 2003, who indicated that appellant had chronic low back pain and was not able to work. He opined that appellant was totally disabled from April 21 to September 14, 2003 due to the lumbar/sacroiliac joint injury and chronic pain and was intermittently disabled from September 16 to November 30, 2003. Dr. Jebraili based his opinion on his clinical examination and his review of the reports of Dr. Attar and his MRI scans. He stated that Dr. Aki had also examined appellant in April and in June and had confirmed that appellant was disabled at least from April through June 2003. Dr. Jebraili noted that the information regarding Dr. Aki's findings and recommendations were relayed to him by appellant.

In a decision dated June 6, 2007, the Office denied modification of the February 13, 2007 decision.

LEGAL PRECEDENT

A claimant has the burden of proving by a preponderance of the evidence that he or she is disabled for work as a result of an accepted employment injury and submit medical evidence for each period of disability claimed.³ Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues.⁴ The issue of whether a particular injury causes disability for work must be resolved by competent medical evidence.⁵

ANALYSIS

The Office accepted appellant's claim for contusion of the right chest wall, contusion of the right elbow and forearm, bilateral sacroiliac joint dysfunction and sprain and strain of the lumbar region. It found that appellant was partially disabled for four hours on July 29, August 6 and 27, September 10, 17 and 24, October 1 and 31 and November 25, 2002, February 10, March 5 and 27, April 21 and 23, May 20 and 27, June 10, July 1 and 3 and September 4, 2003.

³ See *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁴ *Id.*

⁵ See *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

The Board notes that the record supports that appellant was partially disabled due to the accepted injury on these dates and that he was properly granted compensation for wage loss.

The medical evidence submitted in support of his claim for wage-loss compensation intermittent disability from July 21 to September 21, 2002 and April 21 to September 14, 2003 is insufficient to establish that his disability was caused or aggravated by the accepted employment injury.

Appellant submitted an August 6, 2002 treatment note from Dr. Makawi, who treated him for back pain that started in December 2001 after falling at work. Dr. Makawi diagnosed back pain and depressive anxiety. He advised that appellant would be unable to work from August 5 to September 5, 2002. Although Dr. Makawi noted that appellant had symptoms of his back condition, he did address whether appellant had any employment-related disability beginning July 21 to September 21, 2002 and from April 21 to September 14, 2003 causally related to his accepted employment condition. The Board has found that vague medical opinions which do not explain the causal relationship lack probative value.⁶ Additionally, Dr. Makawi attributed appellant's disability to the diagnosed condition of depressive anxiety. However, the Office has not accepted that appellant developed depressive anxiety as a result of his December 19, 2001 work injury.⁷ Therefore, these reports are insufficient to meet appellant's burden of proof.⁸

Appellant submitted May 21 and June 12, 2003 reports from Dr. Jebraili, who treated him for low back pain and bilateral radiculopathy caused by a tripping incident at work on December 19, 2001. Dr. Jebraili diagnosed sacroiliac strain and noted work restrictions. He opined that appellant's diagnosed conditions of sacroiliitis and fibromyalgia were disabling and impacted his productivity. On July 3 and 25 and September 4, 2003 Dr. Jebraili advised that appellant was diagnosed with sacroiliitis strain and could work with restrictions of no prolonged walking or standing. He noted that appellant was still experiencing symptoms of low back pain but did not state that appellant was disabled July 21 to September 21, 2002 and from April 21 to September 14, 2003 due to his December 19, 2001 employment injury. Rather, Dr. Jebraili opined that appellant could return to work subject to restrictions of no prolonged walking or standing.

In a report dated March 28, 2007, Dr. Jebraili treated appellant for lumbar strain, sacroiliac dysfunction and right knee patellofemoral crepitation, as a result of his fall at work on December 19, 2001. In June 2003, it was hard for appellant to work while sitting in a chair or standing for long periods of time. Dr. Jebraili noted that appellant was seen by Dr. Attar on May 19, 2003, who apparently placed appellant off work until June 19, 2003. Appellant was again evaluated by Dr. Aki in the summer 2003 and found chronic low back pain. Dr. Jebraili opined that appellant was totally disabled April 21 to September 14, 2003 as a consequence of

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

⁷ For conditions not accepted by the Office as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not the Office's burden to disprove such relationship. *Alice J. Tysinger*, 51 ECAB 638 (2000).

⁸ The evidence also does not show that there was any wage loss for the period claimed that was incidental to treatment for an accepted injury. See 5 U.S.C. § 8103(a); *Daniel Hollars*, 51ECAB 355 (2000).

his lumbar/sacroiliac joint injury and chronic pain and was intermittently disabled from September 16 to November 30, 2003. He indicated that Dr. Aki had also examined appellant in April and in June and had confirmed that appellant was disabled at least for the period April through June 2003. Dr. Jebraili noted that Dr. Aki's recommendations were relayed to him by appellant. The Board finds that Dr. Jebraili's opinion on appellant's disability is not well rationalized. He noted that appellant had related the recommendations of Dr. Aki. In this regard, Dr. Jebraili appears to be repeating appellant's opinion as to his work capacity without providing his own opinion regarding whether appellant's condition caused disability during the claimed time period. He failed to provide a rationalized opinion on causal relationship between the claimed period of disability and the accepted employment conditions of bilateral sacroiliac joint dysfunction and lumbar strain.⁹ Additionally, he neither described why any condition would be disabling nor did he provide an explanation as to why appellant could not perform the duties of the position due to his accepted conditions.

In an April 21, 2003 note, Dr. Aki diagnosed chronic back pain and advised that appellant was undergoing physical therapy. He was excused from work until May 23, 2003. In a report dated June 16, 2003, he diagnosed chronic low back pain and advised that appellant was unable to work until further notice. Other return to work slips from the Dominion Clinic dated May 19 and July 5, 2003 indicated that appellant was treated for acute back pain, sacroiliac joint dysfunction and lumbar strain and could return to work on June 15, 2003. Although these notes indicated that appellant was disabled from work on certain days, the physician's failed to provide any opinion on causal relationship between the claimed period of disability and the accepted employment injury of December 19, 2001.

The remainder of the medical evidence, including reports from Drs. Segal, Attia, Webster and Lennen failed to provide a specific opinion on causal relationship between the claimed period of disability and the accepted employment injury of December 19, 2001. Consequently, the medical evidence did not establish that the claimed period of disability were due to appellant's employment injury of November 10, 2005.

CONCLUSION

The Board finds that appellant has failed to establish that his condition during the claimed period of disability is causally related to the accepted employment injury of December 19, 2001.

⁹ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 6 and February 13, 2007 are affirmed.

Issued: February 12, 2008
Washington, DC

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

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

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