



Appellant subsequently filed a claim for lost wages for February 15 to 24, April 1 to 7 and 14, May 1, 5, 12 and 27 to June 2, 15 and 21 to July 20, 2006.

In an April 13, 2006 disability certificate, Dr. Nichols diagnosed a lumbar syndrome and chest pain. He indicated that appellant was able to perform restricted work as of April 8, 2006. In a May 5, 2006 disability certificate, Dr. Nichols diagnosed a lumbar syndrome and indicated that appellant was disabled between May 2 and 4, 2006. Appellant could perform restricted work as of May 5, 2006.

In a May 15, 2006 report, Dr. Nichols stated that he examined appellant on January 20 and February 14, 2006 for left shoulder pain sustained on January 6, 2006 “after pulling packages at work.” He stated:

“Findings on physical examination included left suprascapular area tenderness and spasm. [T]he range of motion of his shoulder was full but guarded. Our impression was left shoulder sprain and [appellant] was started on physical therapy and treated with muscle relaxants and anti-inflammatory pills.

“[Appellant] had a return visit February 14, 2006 still having some pain and discomfort but improved and physical therapy was continued.

“When [appellant] was last seen on April 4, 2006 he was complaining of pain in his left chest area and it was unclear whether this pain was indeed related to his shoulder injury or this pain was cardiac since he also has severe dyslipidemia.<sup>1</sup> A stress test was ordered to rule out any cardiac etiology.

“The possibility also exists that this pain was related to [appellant’s] ... left shoulder injury.

“[Appellant] was allowed to return to duty with lifting restrictions regarding his left shoulder. If he continues to have intermittent pain[,] an MRI [magnetic resonance imaging] scan will be necessary.”

On June 12, 2006 the Office advised appellant that Dr. Nichols’ May 15, 2006 report was insufficient to establish that he had a work-related chest condition. It requested a medical report with a history of the condition, current clinical findings and the results of any tests or x-rays, a diagnosis and a rationalized medical opinion on the causal relationship, if any, between the diagnosed condition and appellant’s employment.

In a June 27, 2006 disability certificate, Dr. Nichols diagnosed dyslipidemia and chest pain. He indicated that appellant was disabled between June 18 and July 20, 2006. On June 29, 2006 Dr. Nichols stated that appellant’s left chest pain was musculoskeletal in nature. He opined that the chest pain was related to his January 6, 2006 employment injury.

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<sup>1</sup> Dyslipidemia is an abnormality in, or abnormal amounts of, lipids and lipoproteins in the blood. See DORLAND’S, *Illustrated Medical Dictionary* (30<sup>th</sup> ed. 2003) 575.

On December 12, 2006 the Office advised appellant that he needed to provide additional medical evidence containing medical rationale explaining how his disability on the claimed dates between February 15 and July 20, 2006 was causally related to his accepted left shoulder and upper arm sprains. He submitted a copy of the employing establishment accident report indicating that the January 6, 2006 incident occurred because appellant lacked adequate equipment safety training.

By decision dated May 24, 2007, the Office denied appellant's claim for leave buy back on the grounds that the evidence did not establish that he was disabled on intermittent dates between February 15 and July 20, 2006 due to his January 6, 2006 employment injury.<sup>2</sup>

### **LEGAL PRECEDENT**

Appellant has the burden of proving by the preponderance of the reliable, probative and substantial evidence that he was disabled for work as the result of an employment injury.<sup>3</sup> Monetary compensation benefits are payable to an employee who has sustained wage loss due to disability for employment resulting from the employment injury.<sup>4</sup> Whether a particular employment injury causes disability for employment and the duration of that disability are medical issues which must be proved by a preponderance of reliable, probative and substantial medical evidence.<sup>5</sup>

In situations where compensation is claimed for periods where leave was used, the Office has the authority to determine whether the employee was disabled during the period for which compensation is claimed.<sup>6</sup> The Office determines whether the medical evidence establishes that an employee is disabled by an employment-related condition during the period claimed for leave buy back, after which the employing establishment will determine whether it will allow the employee to buy back the leave used.<sup>7</sup>

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is a causal relationship between his claimed injury and his employment.<sup>8</sup> To establish a causal relationship, appellant must submit a physician's report in

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<sup>2</sup> Appellant submitted additional evidence subsequent to the Office decision of May 24, 2007. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

<sup>3</sup> *David H. Goss*, 32 ECAB 24 (1980).

<sup>4</sup> *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

<sup>5</sup> *Edward H. Horten*, 41 ECAB 301 (1989).

<sup>6</sup> *Laurie S. Swanson*, 53 ECAB 517 (2002); *see also* 20 C.F.R. § 10.425, which provides: "The employee may claim compensation for periods of annual and sick leave which are restorable in accordance with the rules of the employing [establishment]. Forms CA-7 and CA-7b are used for this purpose."

<sup>7</sup> *Laurie S. Swanson*, *supra* note 6.

<sup>8</sup> *Donald W. Long*, 41 ECAB 142 (1989).

which the physician reviews the employment factors identified by appellant as causing his condition and, taking these factors into consideration, as well as findings upon physical examination of appellant and his medical history, state whether the employment factors caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his or her opinion.<sup>9</sup>

### ANALYSIS

Appellant filed a claim for leave buy back for 344 hours of leave on intermittent dates between February 15 and July 20, 2006 due to his accepted left shoulder and upper arm sprains.

Dr. Nichols diagnosed a lumbar syndrome, dyslipidemia and chest pain. He indicated that appellant was disabled between May 2 and 4 and June 18 to July 20, 2006. Dr. Nichols examined appellant on January 20 and February 14, 2006 for a left shoulder sprain sustained on January 6, 2006 after pulling packages at work. Treatment consisted of physical therapy and muscle relaxant and anti-inflammatory medication. When appellant was last seen on April 4, 2006, he was experiencing left chest pain. It was unclear whether the chest pain was related to the accepted shoulder sprain or was due to a cardiac condition since appellant had severe dyslipidemia. A stress test was ordered to rule out any cardiac etiology. Dr. Nichols stated that appellant's left chest pain was musculoskeletal in nature and opined that the chest pain was causally related to appellant's January 6, 2006 employment injury.

The Board finds that the reports of Dr. Nichols are insufficient to establish that appellant's lumbar syndrome, dyslipidemia and chest pain are causally related to his accepted left shoulder and upper arm sprains. His reports do not establish that appellant sustained intermittent disability between February 15 and July 20, 2006 due to his January 6, 2006 employment injury. The diagnoses of lumbar syndrome, dyslipidemia and chest pain have not been accepted by the Office as causally related to appellant's January 6, 2006 injury. Dr. Nichols did not explain how appellant's lumbar syndrome was caused or aggravated by the January 6, 2006 injury, first noting this diagnosis three months following injury. He did not explain how dyslipidemia, a blood disorder, was causally related to the January 6, 2006 employment injury. Dr. Nichols also stated that appellant's chest pain was musculoskeletal in nature and was related to the January 6, 2006 employment injury. However, Dr. Nichols did not provide any medical rationale explaining the basis for his stated conclusion that appellant's chest pain was caused or aggravated by the January 6, 2006 injury. He did not explain how appellant's claimed disability on intermittent dates between February 15 and July 20, 2006 was causally related to his accepted conditions. There is no medical evidence that appellant was treated on any of the claimed dates of disability between February 15 and July 20, 2006 for his accepted left upper extremity sprains. Appellant failed to provide medical evidence establishing that his claimed disability between February 15 and July 20, 2006 was causally related to his January 6, 2006 employment injury. Therefore, the Office properly denied appellant's claim for leave buy back for those dates.

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<sup>9</sup> *Id.*

**CONCLUSION**

The Board finds that appellant failed to establish that he was entitled to leave buy back for 344 hours of leave on intermittent dates between February 15 and July 20, 2006 due to his accepted conditions.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated May 24, 2007 is affirmed.

Issued: February 22, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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