United States Department of Labor
Employees' Compensation Appeals Board

L.J., Appellant	)	
and	)	**Docket No. 07-1963**
	)	**Issued: June 23, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Pittsburgh, PA, 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 July 18, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated April 16, 2007, which denied appellant's claim for disability for work from July 12 to October 29, 2004.[1] Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this issue.

ISSUE

The issue is whether appellant was entitled to intermittent wage-loss compensation for the period July 12 to October 29, 2004.

FACTUAL HISTORY

On January 31, 2004 appellant, then a 40-year-old letter carrier, filed an occupational disease claim alleging that he sustained chronic low back pain in the performance of duty. He alleged that his duties as a letter carrier included various functions, including lifting heavy

[1] The record also contains decisions dated September 20 and November 28, 2006 pertaining to different periods of claimed compensation and a January 22, 2007 schedule award decision. Appellant has not appealed these decisions.

parcels without proper safety equipment.[2] Appellant noted that his back condition began in 1985 and that he first thought that it was related to his work on January 1, 1992. He did not stop work.[3]

In a disability certificate dated July 9, 2004, Dr. Karen J. Nichols, Board-certified in internal medicine, opined that appellant was unable to work from July 1 to 8, 2004 because of radiculopathy. She indicated that appellant could return to work on July 12, 2004. In an October 4, 2004 report, Dr. James Shepard, Board-certified in internal medicine, opined that appellant was under his care for lower back pain. He indicated that appellant was totally incapacitated from October 1 through 4, 2004 and could return to work on October 5, 2004 without restrictions. In a disability certificate dated October 7, 2004, Dr. Edward Reis, Board-certified in internal medicine, opined that appellant was unable to work from October 4, 2004 and could return to work on October 12, 2004 due to a recurrence of his back pain. The Office received an October 16, 2004 emergency room note from Dr. Jennifer Tjia, an emergency room physician, who diagnosed chronic low back pain. The Office also received several treatment notes dating from July 8 to November 17, 2004. These notes reported findings but did not address disability.

In a March 17, 2005 report, Dr. Robert Franklin Draper, a Board-certified neurologist and second opinion physician, opined that appellant had low back syndrome comprised of preexisting degenerative disc disease at L4-5 and L5-S1 and a previous history of low back pain after falling off of a hill. He opined that his condition was aggravated by lifting. Dr. Draper opined that appellant could work for 8 hours per day, 40 hours per week, with permanent restrictions. He noted that they included no lifting over 50 pounds.

On April 18, 2005 the Office accepted appellant's claim for temporary aggravation of preexisting degenerative disc disease of the lumbosacral spine.[4] Appellant subsequently stopped work on April 2, 2005 as the employing establishment would no longer accommodate his light-duty restrictions. On December 14, 2005 the Office expanded appellant's claim to include a permanent aggravation of preexisting degenerative disc disease of the lumbosacral spine.

A July 3, 2006 memorandum from the Office of the Inspector General revealed that appellant was employed with a private security company, Ares Group, since the third quarter of 2003.

[2] The record reflects that appellant has an accepted claim for an ankle sprain under File No. 030187295, and left plantar fascial fibramotosis and surgery. File No. 030258232.

[3] The employing establishment indicated that appellant was placed on limited duty. On September 26, 2003 appellant was involved in modified duty for three to four hours per day for six days a week. He subsequently returned to full-time limited duty on October 12, 2004. Appellant alleged a recurrence of total disability on April 2, 2005.

[4] The Office had initially denied the claim on May 21, 2004. Appellant subsequently received a service-related disability for degenerative disc disease from the Department of Veterans Affairs related to his service in the Marine Corps from July 20, 1983 to July 19, 1987.

On September 4, 2006 appellant filed a Form CA-7 claim for intermittent compensation for the period July 10 to October 29, 2004. The employing establishment provided time analysis forms for the claimed period.[5]

In a September 10, 2006 statement, appellant indicated that his job duties did not meet his medical restrictions, as he was "constantly bending and twisting in order to complete [his] assignment." He alleged that his pain had increased tremendously due to the increased amount of time he spent delivering mail and constantly getting in and out of his vehicles.

In a November 28, 2006 telephone call memorandum, the Office advised appellant that it needed medical documentation to support the dates claimed in 2004. The Office also indicated that it had spoken with the office of appellant's physician, which advised that, while "total incapacitation" was written on his disability slips, appellant "was not totally disabled" but that "his employer would only accept that language."[6]

By letters dated January 4 and 22, 2007, the Office advised appellant that, regarding his claim for disability from July 12 to October 29, 2004, the medical evidence was insufficient to establish work-related disability. It also noted that appellant worked as a security guard during the claimed period. The Office noted that the only date for the aforementioned time frame, for which it had evidence to establish work-related treatment, was on August 3, 2004. Appellant was allotted 30 days to submit the requested evidence. Additionally, the Office noted that Dr. Nichols released appellant to work on July 12, 2004 and there was no indication that he was unable to work. In a telephone call memorandum of January 16, 2006, the Office informed appellant that they did not have medical evidence to support his 2004 dates of disability. The Office informed appellant that he had 20 days to submit the evidence.

The Office subsequently received a November 21, 1986 report from Dr. George L. Weber, a specialist in physical medicine and pain, which revealed that appellant was involved in an automobile accident on November 21, 1986. Dr. Weber diagnosed acute strain and sprain of the cervical and thoracic spine, acute bilateral trapezial myofasciitis, and contusions of the anterior chest wall, with post-traumatic cephalgia. The Office also received a November 11, 1987 report from Dr. Alberto C. Flores, a Board-certified surgeon, and a November 13, 2006 report, in which Dr. Curtis Slipman, a Board-certified physiatrist, indicated that appellant was given a transforaminal nerve root block. A July 29, 1987 treatment note from Dr. David Ahrens, a chiropractor, was also received. Additionally, the Office received a September 29, 2005 work capacity evaluation, which indicated that appellant had permanent restrictions.[7]

[5] The record shows that, on July 12, 2005, the Office paid appellant disability compensation for nine days from October 1 to 11, 2004.

[6] A November 17, 2006 Office telephone call memorandum with a person, Ms. Stinney, in the medical records department in Dr. Reis' office indicated that, although Dr. Reis had indicated "totally incapacitated" in treatment notes, this was only because of the employing establishment's requested. She also indicated that Dr. Reis' office wrote the wording requested by the claimant and that it would be up to a referral specialist to determine work capabilities.

[7] The doctor's name is unclear.

In a January 5, 2007 report, Dr. Amish R. Patel, a Board-certified physiatrist, conducted a physical examination and indicated that he needed to rule out disc degeneration at thoracolumbar junction at T12-L1, L1-2, L2-3 and facet joint synovitis.

By decision dated April 16, 2007, the Office denied appellant's claim for 149.67 hours of intermittent disability compensation for the period July 12 to October 29, 2004.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[8] has the burden of proof to establish the essential elements of his claim by the weight of the evidence.[9] For each period of disability claimed, the employee has the burden of establishing that he was disabled for work as a result of the accepted employment injury.[10] Whether a particular injury causes an employee to become disabled for work, and the duration of that disability, are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.[11] 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.[12]

The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.[13] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant,[14] must be one of reasonable medical certainty,[15] 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.[16]

---

[8] 5 U.S.C. §§ 8101-8193.

[9] *See Amelia S. Jefferson*, 57 ECAB 183 (2005); *see also Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

[10] *See Amelia S. Jefferson, supra* note 9. *See also David H. Goss*, 32 ECAB 24 (1980).

[11] *See Edward H. Horton*, 41 ECAB 301 (1989).

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

[13] *See Viola Stanko* (*Charles Stanko)*, 56 ECAB 436 (2005); *see also Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959).

[14] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[15] *Id.*

[16] *See William E. Enright*, 31 ECAB 426, 430 (1980).

Under the Act, the term disability means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.[17] Disability is thus not synonymous with physical impairment, which may or may not result in incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in the Act.[18]

ANALYSIS

In support of his claim for intermittent wage-loss compensation for the period July 12 to October 29, 2004, appellant submitted several reports.

Appellant submitted a disability slip from Dr. Shepard, which placed him off work from October 1 to 4, 2004. He also provided an October 7, 2004 report from Dr. Reis, who opined that appellant could not work from October 4 to 12, 2004. However, the record indicates that the Office paid appellant disability compensation from October 1 to 11, 2004 and employing establishment leave records do not show that appellant used leave without pay on October 12, 2004. Neither physician provided any specific opinion explaining the causal relationship of disability, before October 1, 2004 or after October 11, 2004, to the accepted employment injury. As noted, 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. Thus these reports do not establish compensable disability during the claimed period.

Appellant also submitted an October 16, 2004 emergency room treatment note from Dr. Tjia, who diagnosed chronic low back pain and provided several treatment notes dating from July 8 to November 17, 2004. However, these reports contained no discussion of causal relationship with regard to disability for the claimed period. Medical evidence which does not offer an opinion on causal relationship is of limited probative value.[19]

The reports in the instant case are not sufficient to meet appellant's burden of proof as they do not offer medical rationale explaining the causal relationship as to how or why appellant's accepted employment injury prevented him from performing the duties of his position on the particular dates listed.[20]

Other medical evidence of record does not specifically address whether appellant had employment-related disability during the claimed period. Many of these reports either address appellant's condition prior to or subsequent to the claimed period of disability. Without

[17] 20 C.F.R. § 10.5(f).

[18] *Cheryl L. Decavitch*, 50 ECAB 397, 401 (1999).

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

[20] Medical reports not containing rationale on causal relationship are entitled to little probative value and are generally insufficient to meet appellant's burden of proof. *Lourdes Davila*, 45 ECAB 139 (1993).

reasoned medical evidence supporting that appellant had employment-related disability during the period in question, appellant has not met his burden of proof to establish his claim for intermittent wage-loss compensation during the period July 12 to October 29, 2004.

An award of compensation may not be based on surmise, conjecture or speculation or upon appellant's belief that there is a causal relationship between her condition and her employment.[21] Appellant failed to submit sufficient medical evidence in this case and, therefore, has failed to discharge his burden of proof.

CONCLUSION

The Board finds that appellant was not entitled to intermittent wage-loss compensation for the period July 12 to October 29, 2004.

ORDER

IT IS HEREBY ORDERED THAT the April 16, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 23, 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

[21] *Patricia J. Glenn*, 53 ECAB 159 (2001).