United States Department of Labor
Employees' Compensation Appeals Board

G.J., Appellant	)	
and	)	**Docket No. 08-303**
	)	**Issued: June 9, 2008**
DEPARTMENT OF VETERANS AFFAIRS, CARL T. HAYDEN VETERANS MEDICAL CENTER, Phoenix, AZ, 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 7, 2007 appellant filed a timely appeal from a January 16, 2007 merit decision of the Office of Workers' Compensation Programs, a June 5, 2007 hearing representative's decision and a September 26, 2007 merit decision denying her claim for disability compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that she was disabled from September 25 to November 6, 2006 due to her July 9, 2003 employment injury.

FACTUAL HISTORY

On July 9, 2003 appellant, then a 62-year-old practical nurse, filed a claim alleging that she injured her left forearm and buttocks on that date when a large metal door fell on her. The Office accepted her claim for a right buttock contusion, left shoulder contusion, left rotator cuff

strain, cervical strain and displacement of the cervical intervetebral disc at C3-4 and C5-6 without myelopathy. Appellant stopped work on July 9, 2003. The Office paid her compensation for total disability beginning August 24, 2003.

On November 5, 2003 Dr. Michael S. Weng, a Board-certified orthopedic surgeon, performed a repair of a tear of the left superior anterior and posterior labrum and a subacromial decompression. Appellant returned to part-time work on June 8, 2004 and to her full-time regular employment on August 23, 2004.

On September 27, 2006 Dr. Steven C. Boles, an attending osteopath certified by the American Osteopathic Association in family practice, treated appellant for an "[e]xacerbation of neck and shoulder pain." The employing establishment instructed her to leave work because of pain on September 26, 2006. Dr. Boles found that she had 50 percent cervical range of motion with "increased paraspinal muscle tone." He diagnosed a work-related cervical herniated nucleus pulposus and chronic neuropathic and nociceptive pain. Dr. Boles opined that appellant should remain off work for four weeks. He recommended that she reduce taking the medication Skelaxin.

In a November 2, 2006 progress report, Dr. Boles noted that appellant had "a relatively good week…." Appellant experienced left neck and temple shooting pains which were less constant than when she took Skelaxin. Dr. Boles noted that his findings on physical examination were unchanged since the September 27, 2006 examination.

On November 6, 2006 appellant filed a claim for compensation on account of disability (Form CA-7) requesting compensation from September 25 to November 6, 2006. On November 7, 2006 the Office requested that she submit a rationalized medical opinion addressing her inability to work beginning September 25, 2006. In a statement dated November 10, 2006, appellant asserted that her manager requested that she stop work on September 25, 2006 because of the "constant throbbing pain" in her left cervical spine. She had experienced cervical pain since the time of her July 9, 2003 employment injury. Appellant used the medication Skelaxin to control her pain. She stated, "In August, I began to feel increased neck pain and the Skelaxin was not effective as it had been. The cervical pain was no longer a stabbing sensation but a constant throbbing pain that was made worse with each dose of Skelaxin." Appellant's throbbing pain decreased with the reduction and later cessation of Skelaxin but she continued to experience stabbing pain in her neck radiating to the left side.[1]

On January 2, 2007 Dr. Boles indicated that appellant "relates, as we previously discussed, that she was incapacitated from work from September 25 [to] November 6, 2006." Appellant informed Dr. Boles that her supervisor told her to "go home" due to severe pain. Dr. Boles advised that appellant "would be medically dictated [to] not work during this time."

By decision dated January 16, 2007, the Office denied appellant's claim for compensation from September 25 to November 6, 2006. The Office found that the medical

[1] A magnetic resonance imaging (MRI) study of the cervical spine obtained on October 11, 2006 revealed multilevel spondylosis, particularly at C6-7 and T3-4. An x-ray of the cervical spine dated October 27, 2006 showed anterolisthesis of C3 on C4 in flexion and mild to moderate degenerative changes at C3-4 and C5-6.

evidence did not establish that her condition worsened such that she was unable to perform her employment duties.

On January 21, 2007 appellant requested a review of the written record. She wrote a letter to Dr. Boles describing her dizziness, nausea, increased cervical pain and labored breathing when she took Skelaxin. Appellant related, "I had difficulty functioning at work and feared that I would give the wrong medications because I had difficulty concentrating and would become confused. I spoke with the Nurse Manager regarding the safety of the patients and we agreed that I should return home and be examined by my doctor regarding the side effects of Skelaxin." At the time of her examination by Dr. Boles, she refused pain medication. Appellant related that she felt decreased cervical pain, dizziness, nausea and lack of breath when she reduced her use of Skelaxin. She continued to experience cervical spine pain.

By decision dated June 5, 2007, an Office hearing representative affirmed the January 16, 2007 decision. She found that appellant had not supported her period of disability from work with rationalized medical evidence.

On June 17, 2007 appellant requested reconsideration. On June 20, 2007 Dr. Boles reviewed the hearing representative's decision and noted that she had not discussed his September 27, 2006 report. At the time of his September 27, 2006 report he found decreased cervical range of motion and increased paraspinal muscle tone. Dr. Boles stated:

> "[Appellant] was clearly experiencing an exacerbation of pain from her cervical herniated dis[c], industrially related. Additionally, she still had chronic neuropathic and nociceptive pain, also in a period of exacerbation."
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> * * *
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> "Furthermore, I advised [appellant], 'no work status for four weeks.' This would allow for a reasonable time for the expected inflammation associated with a herniated dis[c], and the wind up hyperalgesia associated with the accepted industrial injury, to resolve in a reasonable period of time."

Dr. Boles reiterated that appellant took time off work based on his instructions.

By decision dated September 26, 2007, the Office denied modification of the June 5, 2007 decision.

LEGAL PRECEDENT

The term disability as used in the Federal Employee's Compensation Act[2] means the incapacity because of an employment injury to earn the wages that the employee was receiving at the time of injury.[3] Whether a particular injury caused an employee disability for employment

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[2] 5 U.S.C. §§ 8101-8193; 20 C.F.R. § 10.5(f).

[3] *Paul E. Thams*, 56 ECAB 503 (2005).

is a medical issue which must be resolved by competent medical evidence.[4] 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 the employment held when injured, the employee is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.[5] 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 employee's to self-certify their disability and entitlement to compensation.[6]

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.[7] Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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, must be one of reasonable medical certainty, 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.[8] Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[9]

ANALYSIS

The Office accepted that appellant sustained contusions of the right buttock and left shoulder, left rotator cuff strain, cervical strain and displacement of the cervical intervetebral disc at C3-4 and C5-6 without myelopathy due to a July 9, 2003 employment injury. Appellant stopped work on the date of injury and returned to her full-time regular employment on August 23, 2004.

On November 6, 2006 appellant filed a claim for compensation from September 25 to November 6, 2006. She related that she experienced a constant, throbbing pain in her left cervical spine such that she was unable to work. When appellant took the medication Skelaxin her pain increased. She also asserted that the Skelaxin caused dizziness, nausea and labored breathing. Appellant spoke with a manager who agreed that she should go home pending a physical examination regarding Skelaxin's side effects.

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[4] *Id*.

[5] *Id*.

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

[7] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[8] *Leslie C. Moore*, 52 ECAB 132 (2000).

[9] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

The medical evidence submitted by appellant is insufficient to establish that she was disabled from September 25 to November 6, 2006 due to her accepted employment injury or to taking medication prescribed for her accepted work injury. Appellant has the burden to establish causal relationship between her claimed disability and her employment injury through the submission of rationalized medical evidence.[10] In a report dated September 27, 2006, Dr. Boles found an exacerbation of shoulder and neck pain and noted that the employing establishment sent appellant home the previous day because of her pain. He determined that she had decreased range of motion of the cervical spine and "increased paraspinal muscle tone." Dr. Boles diagnosed a cervical herniated nucleus pulposus and chronic neuropathic and nociceptive pain. He found that she should remain off work for four weeks and recommended a reduction in the medication Skelaxin. Dr. Boles, however, did not specifically relate appellant's disability for work beginning September 25, 2006 to her employment injury. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[11]

In a November 2, 2006 progress report, Dr. Boles noted appellant's complaints of shooting pain in her left neck and temple pain, of lesser duration than when she took Skelaxin. He did not address the issue of whether she was disabled from work and thus his opinion does not support her claim for compensation.

On January 2, 2007 Dr. Boles indicated that appellant told him that she was unable to work from September 25 through November 6, 2006 and that her supervisor instructed her to go home because of her severe pain. He advised that she "would be medically dictated [to] not work during this time." Dr. Boles described appellant's belief that she was unable to work rather than rendering his own finding. A physician's report is of little probative value when it is based on a claimant's belief rather than the doctor's independent judgment.[12] Dr. Boles further did not explain how appellant's July 9, 2003 employment injury caused disability beginning September 25, 2006. A physician's opinion on causal relationship between a claimant's disability and an employment injury is not dispositive simply because it is rendered by a physician. The physician must provide rationale for his opinion or it is of little probative value.[13]

On June 20, 2007 Dr. Boles asserted that the hearing representative had not considered his September 27, 2006 report. He reviewed the report and noted that he had found a loss of cervical range of motion and increased paraspinal muscle tone. Dr. Boles opined that appellant sustained a work-related increase in pain due to a cervical herniated disc and an increase in neuropathic and nociceptive pain. He concluded that she should remain off work for four weeks to resolve the inflammation of the herniated disc and hyperalgesia. Dr. Boles, however, did not provide rationale explaining how appellant's employment injury caused or contributed to her disability. The opinion of a physician supporting causal relationship must be based on a

[10] *Laurie S. Swanson*, 53 ECAB 517 (2002).

[11] *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Willie M. Miller*, 53 ECAB 697 (2002).

[12] *Earl David Seale*, 49 ECAB 152 (1997).

[13] *See Jean Culliton*, 47 ECAB 728 (1996).

complete and accurate medical and factual background, supported with affirmative evidence and explained by medical rationale.[14]

Whether a particular injury causes an employee to be disabled and the duration of that disability are medical issues that must be proved by a preponderance of the reliable, probative and substantial medical evidence.[15] Appellant has not submitted rationalized medical evidence explaining how and why she was disabled beginning September 25, 2006 due to her accepted work injury; thus, the Office properly denied her claim for compensation.

CONCLUSION

The Board finds that appellant has not established that she was disabled from September 25 to November 6, 2006 due to her July 9, 2003 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 26, June 5 and January 16, 2007 are affirmed.

Issued: June 9, 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

[14] *Robert Broome*, 55 ECAB 339 (2004); *Patricia J. Glenn*, 53 ECAB 159 (2001).

[15] *Paul E. Thams*, *supra* note 3; *Tammy L. Medley*, 55 ECAB 182 (2003).