United States Department of Labor
Employees' Compensation Appeals Board

M.M., Appellant	)	
and	)	
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, LINCOLN AIRPORT, Lincoln, NE, Employer	)	**Docket No. 07-356** **Issued: March 17, 2008**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 6, 2006 appellant appealed from a September 26, 2006 merit decision of the Office of Workers' Compensation Programs denying total disability after February 6, 2006 and denying his claim for compensation benefits after September 7, 2006. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUES

The issues are: (1) whether appellant has established that he is entitled to compensation for total disability after February 6, 2006 due to his accepted employment-related condition; and (2) whether he is entitled to compensation and medical benefits after September 7, 2006 as the temporary aggravation of the employment-related condition had ceased.

FACTUAL HISTORY

On November 29, 2005 appellant, then a 37-year-old lead screener, filed a traumatic injury claim alleging that, on that date, while lifting bags to put them on the bag belt, he turned wrong and sustained pain in his back and numbness in his legs.[1]

Appellant was treated by Dr. Marlin K. Weiss, a family practitioner, on December 5, 2005. Dr. Weiss listed his initial diagnosis as "low back pain," returned appellant to work on that date with restrictions and referred appellant to Dr. Daniel J. Tormes, a Board-eligible neurosurgeon. In a report dated December 19, 2005, Dr. Tormes noted that appellant reported that he was injured at work on November 27, 2005 and that since that time he has had significant back pain. He indicated that it was in appellant's best interest to try to handle his pain without surgery, noted that he did not see the need for any neurosurgical intervention and referred appellant to a pain management specialist.

In a December 22, 2005 report, Dr. Phillip Essay, a Board-certified anesthesiologist, noted that appellant had previous surgery for a two-level spinal fusion in 1989 with chronic low back pain off and on since. He noted an acute onset of severe back pain related to a November 27, 2005 work injury which occurred while throwing luggage at the airport. Dr. Essay noted: "Most likely his pain is representative of myofascial pain and inflammation, as there is evidence of lumbar paravertebral muscle inflammation on his magnetic resonance imaging (MRI) scan. He noted that there was no reason to ask appellant to be off work for any period of time, although he indicated that a young man with a two-level spinal fusion should be looking for work other than throwing heavy pieces of luggage, as this is not his best interest. However, Dr. Essay did note that there was nothing structurally that prevented appellant from being able to continue with what he was doing, and that he did not feel that he needed a period of time off from work.

In a December 29, 2005 letter, the employing establishment indicated that the duties of a transportation security screener involved repeated lifting/carrying of passenger baggage up to 70 pounds, standing, bending, stooping, twisting while performing wanding and/or at down searches eight hours a day, operation of an x-ray machine eight hours a day and screening and ticket review using electronic and imaging equipment eight hours a day and walking for a period of eight hours a day.

In a duty status report dated January 6, 2006, Dr. Tormes indicated that appellant could work part time four hours a day with standing, walking and twisting limited to two hours and that these restrictions would remain for 30 days.

In an attending physician's report dated January 25, 2006, Dr. Weiss listed his diagnosis as low back pain which he believed was related to appellant's employment. He noted that appellant was totally disabled from November 29 through December 2, 2005 and partially disabled commencing December 3, 2005.

[1] Appellant had previously had a laminectomy right L5-S1 followed by a posterior lateral fusion L5 to the sacrum.

In a February 13, 2006 report, Dr. Weiss indicated that appellant may not return to work until seen for follow-up evaluation.

By decision dated February 14, 2006, the Office denied appellant's claim as he had not met the requirements for establishing that he sustained an injury under the Federal Employees' Compensation Act. The Office noted that, although appellant had established that the claimed lifting occurred, there was no medical evidence that provided a diagnosis other than low back pain, tenderness, myofascial pain or inflammation that could be connected to the lifting.

On February 28, 2006 appellant requested reconsideration.

In a March 6, 2006 attending physician's report, Dr. Weiss diagnosed back pain and muscle spasms, noted that appellant was totally disabled from November 29 through December 2, 2005, partially disabled from December 3, 2005 through February 5, 2006 and totally disabled commencing February 6, 2006.

In a decision dated April 11, 2006, the Office noted that appellant established the occurrence of the alleged incident at the time, place and in the manner alleged. However, the Office determined that the medical evidence was insufficient to establish that the incident resulted in an injury.

On April 15, 2006 appellant requested reconsideration. He submitted an April 12, 2006 attending physician's report from Dr. Weiss, who indicated with a check mark that appellant was totally disabled due to a work injury. In an April 19, 2006 note, Dr. Weiss stated:

> "[Appellant] reports injury from lifting heavy bags at work. He previously had a herniated disc and operation in 1989, therefore does not have a 'normal' back. Medical diagnosis is frequently an art rather than a science: low back pain, muscle spasm, low back strain are all valid diagnoses according to the international ICD-9 coding book, these are more than simply symptoms! Although this patient clearly has had a complicated course and problems, it is clear to me that repetitive lifting of heavy luggage has aggravated his preexisting back problems. If you wish to visit my office, I will be delighted to demonstrate physically how lifting of luggage can put stresses on the back that can aggravate a previous injury. I truly am at a loss with regard to your lack of understanding of this mechanism!"

By decision dated May 26, 2006, the Office denied appellant's request for reconsideration. On May 30, 2006 appellant requested reconsideration.

On August 20, 2006 the Office referred appellant to Dr. Anil Agarwal, a Board-certified orthopedic surgeon, for a second opinion. In a medical report dated September 9, 2006, Dr. Agarwal noted that he examined appellant on September 7, 2006. He found that appellant's work-related injury, a mild acute lumbar strain sustained on November 29, 2005, had healed and that there were no restrictions as a result of this injury. Dr. Agarwal noted that appellant had preexisting conditions of a 1989 lumbar fusion, L4-S1 and preexisting lumbar spondylosis. He stated that the lifting incident of November 29, 2005 caused an exacerbation of his preexisting condition which was temporary and had returned "to its preinjury status within six months from

the date of injury." Dr. Agarwal indicated that appellant could go back to work theoretically but that being a baggage handler was a "wrong choice of job for him" due to his obesity, poor conditioning, 1989 lumbar fusion and degenerative arthritis of the lumbar and thoracic spine. He advised him that he could only perform light-duty work. However, Dr. Agarwal noted the ongoing limitations were due to the natural progression of the underlying disease process.

On September 26, 2006 the Office accepted appellant's claim for sprain of back, lumbar region, not to exceed September 7, 2006. The Office found that the weight of evidence did not support a recurrence of total disability beginning February 6, 2006. Medical benefits were authorized for the period November 29, 2005 through September 7, 2006. The Office awarded compensation benefits payable based on four hours per day from February 6 through September 7, 2006, the date he was examined by Dr. Agarwal.

LEGAL PRECEDENT -- ISSUE 1

A claimant seeking benefits under the Federal Employees' Compensation Act[2] has the burden of proof to establish the essential elements of her claim by the weight of the evidence,[3] including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.[4]

As used in the Act, the term disability means incapacity, because of an employment injury, to earn wages the employee was receiving at the time of injury. 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 his employment, he is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.[5]

When employment factors cause an aggravation of an underlying condition, the employee is entitled to compensation for the periods of disability related to the aggravation.[6] Whether a particular injury causes an employee to become disabled for work and the duration of that disability are medical issues that must be resolved by a preponderance of the reliable, probative and substantial evidence.[7] The medical evidence required is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issues of whether there is a causal relationship between appellant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of appellant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature

[2] 5 U.S.C. §§ 8101-8193.

[3] *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

[4] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] *Bobby W. Thornbuckle*, 38 ECAB 626 (1987).

[6] *See James L Hearn*, 29 ECAB 278 (1978); *see also Raymond W. Behrens*, 50 ECAB 221 (1999).

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

of the relationship between the diagnosed condition and the specific employment factors identified by appellant.[8]

ANALYSIS -- ISSUE 1

In the instant case, the Office accepted appellant's claim for lumbar sprain which resolved as of September 7, 2006. The Office awarded appellant compensation for four hours a day from February 6 through September 7, 2006. The Office found that appellant had no residuals of the injury after September 7, 2006.

Appellant has a preexisting back condition. On December 20, 1989 he underwent a laminectomy right L5-S1 which was followed by posterior lateral fusion L5. In an opinion dated September 7, 2006, Dr. Agarwal, the second opinion physician, found that the lifting incident of November 29, 2005 caused an exacerbation of appellant's preexisting condition, which was temporary and would return to the preinjury status within six months. He opined that appellant could perform light-duty work after February 5, 2006. Dr. Agarwal thoroughly discussed appellant's medical history including various diagnostic tests and work history. He conducted a thorough physical examination and listed objective findings from that examination, including range of motion findings for his spine and upper extremities. Dr. Agarwal diagnosed which of appellant's injuries were related to his November 29, 2005 injury (mild, acute lumbar strain, healed) and which conditions were preexisting, i.e., lumbar fusion, L4-S1, 1989 and lumbar spondylosis. He concluded that the lifting incident of November 29, 2005 caused a temporary exacerbation of his preexisting condition. Dr. Agarwal noted that appellant's underlying preexisting condition was exacerbated and returned to his preinjury status within six months. The Board finds that Dr. Agarwal's opinion is well rationalized and supported by his physical examination and review of objective tests.

The Board notes that the opinion of Dr. Weiss that appellant remained totally disabled as a result of his work injury are not well rationalized. Dr. Weiss submitted a form report and brief note dated April 19, 2006, which was almost five months prior to the opinion of Dr. Agarwal. He did not list any objective findings from physical examination to support total disability. Dr. Weiss merely indicated that disability was due to low back pain and muscle spasms; however, the Board has held that pain alone does not constitute a basis for payment of compensation.[9] He did not adequately explain how the November 29, 2005 injury at work caused or contributed to any aggravation of appellant's preexisting back condition. The Office properly found that the weight of the medical evidence was represented by the well-rationalized opinion of Dr. Agarwal. Appellant has not established that he was totally disabled for work as of February 6, 2006.

[8] *See Victor J. Woodhams*, 41 ECAB 345 (1989).

[9] *Robert Broome*, 55 ECAB 339 (2004), *John L. Clark*, 32 ECAB 1618 (1981).

LEGAL PRECEDENT -- ISSUE 2

When an aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased.[10] The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.[11]

ANALYSIS -- ISSUE 2

The Office paid appellant medical benefits for the period November 29, 2005 through September 7, 2006. The Office found that appellant was not entitled to any compensation benefits following September 7, 2006, as Dr. Agarwal's examination that date found that appellant's accepted lumbar sprain had resolved. The Office properly accorded weight to the well-rationalized opinion of Dr. Agarwal and found that appellant was not entitled to any further compensation benefits after that date. Dr. Agarwal found that the temporary exacerbation of appellant's back condition had ceased. Dr. Weiss' opinion was not well rationalized. Accordingly, the Board finds that the Office properly determined that appellant was not entitled to compensation benefits after September 7, 2006.

CONCLUSION

The Board finds that the Office properly found that appellant was not entitled to total disability after February 6, 2006 due to his accepted employment condition. The Board further finds that the Office properly determined that appellant was not entitled to compensation or medical benefits after September 7, 2006, as the temporary aggravation of the employment-related condition had ceased.

[10] *Mary A. Moultry*, 48 ECAB 566 (1997).

[11] *John F. Glynn*, 53 ECAB 562 (2002); *Pamela Guesford*, 53 ECAB 726 (2002).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 26, 2006 is affirmed.

Issued: March 17, 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