United States Department of Labor
Employees' Compensation Appeals Board

M.C., Appellant	)	
and	)	**Docket No. 07-2117**
	)	**Issued: March 5, 2008**
SOCIAL SECURITY ADMINISTRATION, Richmond, CA, Employer	)	

Appearances:
Hank Royal, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 16, 2007 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated February 23, 2007. 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 met her burden of proof to establish that she was totally disabled for the periods July 11 through 29 and August 21 through September 20, 2005 causally related to her accepted employment injuries.

FACTUAL HISTORY

On April 19, 2005 appellant, then a 45-year-old technical systems technician,[1] filed a traumatic injury claim alleging that she injured her left side, back and neck when she slipped on ice near an elevator that day. In an April 21, 2005 report, Dr. G. Queeley, an internist, noted her

[1] The job duties consisted of answering the telephone and entering data into a computer.

complaint that she was unable to work secondary to pain, primarily in the neck, low back and left upper extremity. He diagnosed cervical and lumbosacral strains and advised that she could return to full duty on April 22, 2005. April 26, 2005 x-rays of the cervical and lumbosacral spines demonstrated spondylotic changes with no acute abnormality. Shoulder and elbow x-rays were normal. In a May 10, 2005 report, Dr. Kevin Maher, Board-certified in family medicine, advised that appellant could return to work on May 13, 2005 with restrictions that she not lift above two pounds with no repetitive hand motions. On May 13, 2005 he advised that she could not use a keyboard or mouse. On May 16, 2005 Dr. Maher diagnosed cervical and lumbosacral strains. He submitted additional reports in which he provided the same diagnoses and restrictions.

Following the April 19, 2005 injury, appellant worked a total of 10.25 hours through May 13, 2005, then stopped work and received continuation of pay through June 5, 2005. She did not return to work. On June 9, 2005 the Office accepted that appellant sustained employment-related cervical and lumbar strains. A June 14, 2005 lumbar spine magnetic resonance imaging (MRI) scan demonstrated L3-S1 degenerative spondylosis with bilateral neural foraminal narrowing. A June 15, 2005 left shoulder MRI scan demonstrated an intact rotator cuff with a high intensity signal which could represent tendinosis or a partial tear.

On July 7, 2005 appellant submitted a Form CA-7, claim for compensation, for the period July 11 through 29, 2005. By letter dated July 22, 2005, the Office advised her that she needed to submit medical evidence to support her claim for temporary total disability.

In a July 18, 2006 report, Dr. James D. Fontaine, a Board-certified physiatrist, described the employment injury and appellant's report that she had worked modified duty for several weeks but stopped in May. Appellant complained of tingling in the lateral thighs and calves and left scapular pain and numbness and tingling in the second through fourth digits of her left hand. Dr. Fontaine observed her jump off the examination table and move about the examination room quite briskly. Sensory examination in the C5-8 and L3-S2 dermatomes was normal and motor examination of the shoulders, elbows, wrists, fingers, hips, knees and ankles was 5/5. Cervical flexion, extension and right rotation were full with pain. Left rotation was 80 percent of normal with arm pain. Spurling maneuver was positive on the left with reproduction of left upper extremity paresthesias. Dr. Fontaine noted his review of the lumbar and shoulder MRI scans and noted cervical spine x-ray findings of mild neural foraminal narrowing bilaterally at C5-6 and moderate disc disease at C4-7. He diagnosed left C7 radiculopathy, resolving lumbosacral strain, and mild foraminal stenosis at L5-S1 and ordered a cervical MRI scan. A July 20, 2005 cervical spine MRI scan demonstrated multilevel disc osteophyte complexes most prominent at C4-5 with mild canal stenosis and mild flattening of the ventral cervical spinal cord, a small disc protrusion at C3-4, no evidence of compressive myelomalacia, and multilevel neuroforaminal stenosis most prominent at left C4-5.

In a July 25, 2005 report, Dr. Fontaine noted the cervical MRI scan findings and diagnosed cervical spondylosis with stenosis and left C5-6 radicular pain. He recommended an epidural corticosteroid injection. By report dated July 26, 2005, Dr. Maher advised that appellant could perform modified duty with restrictions of no reaching above the shoulder, gripping or grasping, occasional use of the right hand, no use of the left hand, no repetitive motion and a two-pound lifting restriction.

On July 27, 2005 the employing establishment acknowledged that it could not accommodate appellant's work restrictions. In a July 28, 2005 report, Dr. Maher described appellant's treatment and recommended that her care be transferred to Dr. Fontaine. By letter dated August 9, 2005, the Office again explained that appellant needed to submit medical evidence addressing whether the spondylotic changes found on the cervical spine MRI scan were medically connected to the April 19, 2005 employment injury. On August 12, 2005 Dr. Fontaine performed a C4-5 and C5-6 epidural injection. On August 19, 2005 Dr. Maher advised that the questions raised in the August 9, 2005 letter would best be addressed by Dr. Fontaine.

In August 25, 2005 reports, Dr. Fontaine diagnosed cervical spondylosis with stenosis and left C5-6 radicular pain, advising that it was probable that the pain was related to degenerative changes, mainly at C4-5. He took appellant off work for one month. By letter dated August 29, 2005, the Office requested that Dr. Fontaine address whether appellant's diagnosed cervical condition was caused or aggravated by the April 19, 2005 employment injury and provide an opinion regarding a return to work and what restrictions would be required. On August 30, 2005 appellant filed a claim for compensation for the period August 21 through September 20, 2005.

On September 22, 2005 Dr. Fontaine noted appellant's report that she continued to experience periscapular pain but that her arm pain had resolved since the epidural injection. He diagnosed cervical strain and cervical spondylosis with stenosis. Dr. Fontaine advised appellant that she may have been over-focusing on what were essentially soft tissue symptoms more than five months after a fairly mild fall. He recommended that she return to modified duty and try to resume her normal activities. Dr. Fontaine opined that appellant's cervical degenerative changes were not caused by but were aggravated by the April 19, 2005 employment injury and that she had a separate cervical strain. He advised that she could return to modified duty on September 23, 2005 with five-minute breaks every half hour during periods of repetitive motion of the upper extremities. Appellant returned to work on September 26, 2005. She came under the care of Dr. Mechel M. Henry, Board-certified in physiatry. On October 24, 2005 Dr. Henry diagnosed left cervical radiculopathy, muscle spasms, left carpal tunnel syndrome, anxiety, depression and chronic pain.

By decision dated November 23, 2005, the Office denied appellant's claim for wage-loss compensation for the periods July 11 through 29 and August 21 through September 20, 2005. It found that the medical evidence did not establish that the restrictions provided were caused by the accepted conditions.[2]

On November 21, 2006 appellant requested reconsideration of the November 23, 2005 decision. She submitted evidence previously of record, and a September 29, 2006 report from

[2] Appellant received wage-loss compensation for 22.5 hours from October 19, 2005 to February 7, 2006, and on August 8, 2006 the Office accepted that she sustained a recurrence of disability on February 27, 2006. She received wage-loss compensation for the period February 27 through March 2, 2006 and for the period October 25 through November 6, 2006.

Dr. Maher, who advised that the restrictions he provided on April 19, 21 and 26, 2005 of no repetitive hand work were in relation to her cervical strain.[3]

In a decision dated February 23, 2007, the Office denied modification of the November 23, 2005 decision.

LEGAL PRECEDENT

Under the Federal Employees' Compensation Act[4] the term "disability" is defined as incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.[5] Disability is thus not synonymous with physical impairment which may or may not result in an incapacity to earn the wages. An employee who has a physical impairment causally related to a federal employment injury but who nonetheless has the capacity to earn wages he or she was receiving at the time of injury has no disability as that term is used in the Act,[6] and whether a particular injury causes an employee disability for employment is a medical issue which must be resolved by competent medical evidence.[7] Whether a particular injury causes an employee to be disabled for work and the duration of that disability, are medical issues that must be proved by a preponderance of the reliable, probative and substantial medical evidence.[8]

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 employees to self-certify their disability and entitlement to compensation.[9] Furthermore, it is well established that medical conclusions unsupported by rationale are of diminished probative value.[10]

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[3] Appellant also submitted a December 1, 2005 electromyographic (EMG) study consistent with C6 radiculopathy, and on December 13, 2005 and February 7, and March 7, 2006, she underwent cervical spine epidural injections. Dr. Henry, Dr. Lee Gorton, Dr. David Wren and Dr. Alisha Wren submitted progress reports. An August 2, 2006 MRI scan of the lumbosacral spine demonstrated mild spondyltyic change with no disc herniation. An August 24, 2006 lower extremity EMG was normal. On October 25, 2006 appellant underwent a four-level lumbar discogram and on October 30, 2006 a lumbar epidural patch was placed. On January 2, 2007 she underwent a left sacroiliac joint arthrogram with injection.

[4] 5 U.S.C. §§ 8101-8193.

[5] *See Prince E. Wallace*, 52 ECAB 357 (2001).

[6] *Cheryl L. Decavitch*, 50 ECAB 397 (1999); *Maxine J. Sanders*, 46 ECAB 835 (1995).

[7] *Donald E. Ewals*, 51 ECAB 428 (2000).

[8] *Tammy L. Medley*, 55 ECAB 182 (2003); *see Donald E. Ewals, id.*

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

[10] *Albert D. Brown*, 52 ECAB 152 (2000).

ANALYSIS

The Board finds that appellant did not meet her burden of proof to establish that she was totally disabled for the periods July 11 through 29 and August 21 through September 20, 2005 causally related to her accepted cervical and lumbosacral strains arising from her April 19, 2005 injury. The issue of whether a claimant's disability is related to an accepted condition is a medical question which must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to employment factors and supports that conclusion with sound medical reasoning.[11]

The medical evidence contemporaneous with the periods of claimed disability includes Dr. Maher's reports beginning May 10, 2005. He opined that appellant could return to modified duty but could not use her hands. In a July 28, 2005 report, Dr. Maher transferred her care to Dr. Fontaine. On August 19, 2005 he advised that Dr. Fontaine should respond to the Office's questions regarding the cause of appellant's disability. While Dr. Maher opined on September 29, 2006 that the restrictions provided on April 19, 21 and 26, 2005 were due to appellant's cervical strain, the Board finds his opinion insufficient to establish that appellant was totally disabled from work. He did not explain how or why appellant's cervical strain prevented her from using her hands or support that she was totally disabled due to residuals of her accepted condition. A July 20, 2005 cervical spine MRI scan demonstrated multilevel degenerative changes. Medical conclusions unsupported by rationale are of diminished probative value and are insufficient to establish causal relationship.[12] Dr. Maher's reports are therefore insufficient to establish that appellant was totally disabled from work for the periods July 11 through 29 and August 21 through September 20, 2005.

Similarly, Dr. Fontaine's reports are insufficient. In his July 18 and 25, 2005 reports, he merely diagnosed resolving lumbosacral strain, cervical spondylosis and left C5-6 radicular pain. These reports are of diminished probative value as they provide no opinion regarding the periods of disability at issue. On August 25, 2005 Dr. Fontaine took appellant off work for one month, explaining that she was having pain related to degenerative changes, not due to residuals of the accepted cervical or lumbar strains. A diagnosis of "pain" does not constitute the basis for the payment of compensation.[13] Although Dr. Fontaine advised on September 22, 2005 that the April 19, 2005 employment injury aggravated appellant's underlying condition and that she had a separate cervical strain, he did not provide an opinion addressing her ability to work for the periods in question. He advised that she could return to work with minimal restrictions on September 23, 2005.

The Board finds that, as there is no rationalized medical evidence contemporaneous with the periods of claimed disability, appellant did not meet her burden of proof. Neither Dr. Maher nor Dr. Fontaine provided sufficient rationale to support that appellant was disabled from work

[11] *Sandra D. Pruitt*, 57 ECAB ____ (Docket No. 05-739, issued October 12, 2005).

[12] *Albert D. Brown, supra* note 10.

[13] *Robert Broome*, 55 ECAB 339 (2004).

for the periods July 11 through 29 and August 21 through September 20, 2005 due to residuals of her accepted strains.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she was entitled to wage-loss compensation for the periods July 11 through 29 and August 21 through September 20, 2005 causally related to her accepted employment injuries.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 23, 2007 be affirmed.

Issued: March 5, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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