

day and returned to light-duty work on December 2, 2006.¹ The Office accepted the claim for a lumbar back strain on April 9, 2007 and appellant received compensation for the period November 25, 2006 to April 19, 2007.

In a February 22, 2007 report, Dr. Stuart W. King, an attending Board-certified physiatrist, reported that appellant sustained an acute employment-related lumbar strain. He opined that she was unable to perform the regular duties of a rural carrier associate as it was not within her physical restrictions. Dr. King advised that appellant had “recovered as much as she can from her back injury” and had returned to a preinjury baseline status.

In a letter dated April 19, 2007, the employing establishment terminated appellant’s employment on the grounds that she was unable to meet her duties as a rural carrier associate.²

On June 11, 2007 Dr. King opined that appellant’s lumbar strain had resolved. He also noted that she had permanent work restrictions as noted in his February 2007 report.

On September 27, 2007 Dr. Michael E. Callahan, a second opinion Board-certified orthopedic surgeon, reviewed the medical evidence, statement of accepted facts and provided findings on physical examination. He concluded that appellant no longer had any residuals or disability due to her accepted November 25, 2006 employment injury. Dr. Callahan diagnosed preexisting thoracolumbar scoliosis with chronic degenerative disc disease and degenerative joint disease which had been temporarily aggravated by the November 25, 2006 employment injury. He noted that appellant continued to have pain following the November 25, 2006 injury, but that this was due to her preexisting conditions and not the employment injury. Dr. Callahan agreed with Dr. Wood’s opinion that appellant had reached maximum medical improvement on February 22, 2007.

By decision dated November 1, 2007, the Office accepted that appellant sustained a temporary aggravation degenerative disc disease and degenerative joint disease which had resolved.

On January 2, 2008 the Office issued a proposed notice of termination of compensation and medical benefits. It proposed terminating benefits because the evidence established no continuing residuals or disability due to her accepted employment injury.

On February 2, 2008³ appellant filed a claim for compensation (Form CA-7) for the period commencing April 20, 2007.⁴

¹ The record indicates appellant’s last workday was March 3, 2007 for 1.75 hours.

² Appellant was terminated during her probationary period.

³ The Office notes the author date as February 7, 2008.

⁴ In an attached time analysis form, the employing establishment informed the Office that appellant’s last day of work was April 27, 2007 and she worked an average of 27.33 hours per week prior to her injury.

In a letter dated February 8, 2008, the Office advised appellant that her CA-7 had been received and to submit medical evidence establishing disability for the period claimed. It also advised appellant that on February 22, 2007 Dr. King, her treating physician, opined that she had returned to her preinjury baseline and Dr. Callahan had concluded her condition had resolved. The Office informed her she had 30 days to submit the requested information.

By decision dated February 8, 2008, the Office finalized the termination of appellant's compensation effective February 6, 2008. It found that the evidence of record was insufficient to establish that she had any continuing residuals or total disability causally related to the November 25, 2006 employment. The Office gave weight to Dr. Callahan's September 27, 2007 second opinion medical report.

By decision dated March 11, 2008, the Office denied her claim for compensation for the period commencing April 20, 2007. It noted that the record contained no medical evidence establishing her disability for the period in question.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act⁵ has the burden of proof to establish the essential elements of her claim by the weight of the evidence.⁶ For each period of disability claimed, the employee has the burden of establishing that she was disabled for work as a result of the accepted employment injury.⁷ 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.⁸

Under the Act the term "disability" means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁹ Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.¹⁰ An employee who has a physical impairment causally related to her federal employment, but who nonetheless has the capacity to earn the wages she was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning

⁵ 5 U.S.C. §§ 8101-8193.

⁶ See *J.P.*, 59 ECAB ____ (Docket No. 07-1159, issued November 15, 2007); *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

⁷ See *Amelia S. Jefferson*, *supra* note 6. See also *David H. Goss*, 32 ECAB 24 (1980).

⁸ See *G.T.*, 59 ECAB ____ (Docket No. 07-1345, issued April 11, 2008); *Edward H. Horton*, 41 ECAB 301 (1989).

⁹ *D.M.*, 59 ECAB ____ (Docket No. 07-1230, issued November 13, 2007); *S.M.*, 58 ECAB ____ (Docket No. 06-536, issued November 24, 2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Conard Hightower*, 54 ECAB 796 (2003); 20 C.F.R. § 10.5(f).

¹⁰ *D.M.*, 59 ECAB ____ (Docket No. 07-1230, issued November 13, 2007); *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

capacity.¹¹ When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in her employment, she is entitled to compensation for any loss of wages.¹²

To meet this burden, a claimant must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factor(s).¹³ The opinion of the physician must be based on a complete factual and medical background, 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.¹⁴

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.¹⁵ To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.¹⁶

ANALYSIS -- ISSUE 1

Appellant filed a claim for wage-loss compensation alleging that she was disabled for work commencing April 20, 2007 to February 2, 2008. However, she submitted no medical evidence demonstrating total or partial disability for this period of time due to her accepted conditions of lumbar strain and resolved temporary aggravation degenerative disc disease and degenerative joint disease.

The evidence relevant to appellant's claim for disability included reports from Dr. King, an attending Board-certified physiatrist, and Dr. Callahan, a second opinion Board-certified orthopedic surgeon. Dr. King opined that appellant had returned to her preinjury baseline in a February 22, 2007 report. In a September 27, 2007 report, Dr. Callahan agreed with Dr. King's opinion. He concluded that appellant no longer had any residuals or disability due to her accepted employment conditions. Appellant has submitted no medical evidence supporting her claim that she was unable to work from April 20, 2007 to February 2, 2008 due to residuals of her accepted condition. She has failed to establish that she was disabled, and thus, is not entitled to wage-loss compensation for the period claimed. Appellant has not established her claim for wage-loss compensation from April 20, 2007 to February 2, 2008.

¹¹ *Roberta L. Kaaumoana*, *supra* 10; *Merle J. Marceau*, 53 ECAB 197 (2001).

¹² *D.M.*, *supra* note 10.

¹³ *A.D.*, 58 ECAB ____ (Docket No. 06-1183, issued November 14, 2006).

¹⁴ *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

¹⁵ *Sandra D. Pruitt*, 57 ECAB 126 (2005).

¹⁶ *See William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

LEGAL PRECEDENT -- ISSUE 2

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.¹⁷ The Office may not terminate compensation without establishing that disability has ceased or that it is no longer related to the employment injury.¹⁸

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 would require further medical treatment.¹⁹

ANALYSIS -- ISSUE 2

The Board finds that the Office met its burden of proof in terminating appellant's compensation benefits effective February 2, 2008. The Board finds that the weight of the medical evidence was represented by the second opinion physician, Dr. Callahan, and appellant's treating physician, Dr. King.

In determining that appellant's work-related medical condition ceased on February 2, 2008 the Office relied upon Dr. King's reports dated February 22 and June 11, 2007 and Dr. Callahan's September 27, 2007 report. Dr. King opined that appellant had returned to her preinjury baseline as of February 22, 2007 and provided permanent work restrictions. On June 11, 2007 he opined that appellant was at maximum medical improvement and reiterated that she had permanent work restrictions.

Dr. Callahan, in a September 22, 2007 report, agreed with Dr. King's June 11, 2007 opinion that appellant had reached maximum medical improvement. He concluded that appellant no longer had any residuals or disability due to her accepted employment injury. Moreover, Dr. Callahan opined that any disability or pain was due to her preexisting degenerative disc and joint disease. Dr. Callahan also opined that the November 26, 2006 employment injury had temporarily aggravated appellant's preexisting degenerative disc and joint conditions and that the condition had resolved.

The report of Dr. Callahan is based on an accurate factual background and provides medical rationale for his conclusions which are consistent with the opinion of appellant's treating physician, Dr. King.²⁰ Moreover, Dr. King also concluded that appellant's employment-related lumbar strain had resolved. There is no medical evidence showing any continuing residuals or

¹⁷ *Elaine Sneed*, 56 ECAB 373 (2005).

¹⁸ *Mary A. Lowe*, 52 ECAB 223 (2001).

¹⁹ *James F. Weikel*, 54 ECAB 690 (2003).

²⁰ *Michael S. Mina*, 57 ECAB 379 (2006) (in assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality; the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion are facts, which determine the weight to be given to each individual report).

disability due to her accepted lumbar strain and resolved temporary aggravation degenerative disc disease and degenerative joint disease. The Office met its burden of proof to terminate appellant's benefits as the weight of the medical evidence indicates that residuals of the employment-related conditions had ceased effective February 2, 2008.

CONCLUSION

The Board finds that Office met its burden of proof in terminating appellant's compensation benefits effective February 6, 2008. The Board also finds that appellant failed to establish entitlement to wage-loss benefits for the period of disability from April 20, 2007 to February 2, 2008.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 11 and February 8, 2008 are affirmed.

Issued: November 10, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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