

**United States Department of Labor
Employees' Compensation Appeals Board**

C.C., Appellant)

and)

DEPARTMENT OF THE TREASURY,)
Kansas City, MO, Employer)

**Docket No. 08-17
Issued: September 2, 2008**

Appearances:

*Jeffrey P. Zeelander, Esq., for the appellant
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 October 1, 2007 appellant, through her attorney, filed a timely appeal from an August 29, 2007 merit decision of the Office of Workers' Compensation Programs denying her claim for compensation for intermittent periods of disability. 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 sustained intermittent disability from employment between September 23, 2000 and September 30, 2003 causally related to her February 10, 2000 employment injury.

FACTUAL HISTORY

This case has previously been before the Board. By decision dated March 14, 2003, the Board affirmed in part and reversed in part July 10 and March 27, 2001 Office decisions.¹ The

¹ Docket No. 01-1872 (issued March 13, 2003). The Office accepted that on February 11, 2000 appellant, then a 40-year-old clerk, sustained lumbar radiculopathy in the performance of duty.

Board found that the Office properly denied continuation of pay for intermittent dates between February 10 and March 26, 2000. The Board further determined that appellant had not established that she sustained a cervical condition due to her February 10, 2000 employment injury and that the Office properly denied her claim for wage-loss compensation after March 27, 2001. The Board reversed the Office's termination of appellant's authorization for medical benefits on procedural grounds. On September 8, 2006 the Board remanded the case for reconstruction of the record.² On June 25, 2007 the Board set aside a September 21, 2006 decision denying appellant's claim for compensation for intermittent disability between September 23, 2000 and September 30, 2003.³ The Board found that the Office's decision contained inadequate factual and legal findings. The findings of fact and conclusions of law from the prior decisions are hereby incorporated by reference.

The evidence not previously considered by the Board in prior appeals that is relevant to the period in question will be set forth. On April 7, 2005 appellant filed a claim for compensation for intermittent disability from work for the period September 23, 2000 through September 30, 2003. She submitted a return to work slip dated December 21, 2000 from Dr. Linda Singh, a Board-certified internist and her attending physician. Dr. Singh treated appellant for back pain and indicated that she could resume work on December 27, 2000. On April 19, 2001 Dr. Andrew B. Kaufman, a Board-certified neurosurgeon, performed an excision of a herniated nucleus pulposus at L5-S1. In a May 4, 2001 progress report, he noted that the surgery significantly improved appellant's back and leg pain. On July 9, 2001 Dr. Kaufman opined that she could resume work without restrictions on July 16, 2001.

Dr. Singh treated appellant in 2001 through 2003 for various medical problems including fibromyalgia, foot problems, upper respiratory conditions and anxiety. On February 7, 2002 she found that appellant was unable to work because she slipped on ice and injured her back. Dr. Singh opined that she could resume work on February 8, 2002. On April 3, 2002 she asserted that appellant could not work due on April 2 and 3, 2002 due to illness. On July 30, 2002 Dr. Singh found that she was disabled due to acute muscle spasm and could resume work the next day. On May 13, 2003 she indicated that appellant was under her care for a neck strain or fracture.

In a May 19, 2003 disability certificate, Dr. Kaufman opined that appellant could resume work without restrictions on May 20, 2003. In a form report dated October 28, 2003, Dr. Singh diagnosed degenerative disc disease and spinal stenosis. She checked "yes" that the condition was caused or aggravated by employment. Dr. Singh explained that her back injury "likely exacerbated or caused symptoms" of the herniated disc and spinal stenosis. She opined that appellant was disabled from February 10, 2000 to the present.

By decision dated August 29, 2007, the Office denied appellant's claim for wage-loss compensation from September 23, 2000 through September 30, 2003. The Office found that the medical evidence was insufficient to show that she was disabled from work due to her accepted employment injury for any period claimed.

² Order Remanding Case, Docket No. 06-958 (issued September 8, 2006).

³ Docket No. 07-34 (issued June 25, 2007).

LEGAL PRECEDENT

The term disability as used in the Federal Employees' Compensation Act⁴ means the incapacity because of an employment injury to earn the wages that the employee was receiving at the time of injury.⁵ Whether a particular injury caused an employee disability for employment is a medical issue which must be resolved by competent medical evidence.⁶ 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.⁷ 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.⁸

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.⁹ 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.¹⁰ 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.¹¹

ANALYSIS

The Office accepted that appellant sustained lumbar radiculopathy due to a February 10, 2000 employment injury. Appellant filed a claim requesting compensation for intermittent disability from September 23, 2000 to September 30, 2003.

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

⁵ *Paul E. Thams*, 56 ECAB 503 (2005).

⁶ *Id.*

⁷ *Id.*

⁸ *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁹ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁰ *Leslie C. Moore*, 52 ECAB 132 (2000).

¹¹ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

In a report dated January 9, 2001, a physician diagnosed chronic back spasm and thoracic strain.¹² The physician noted her history of jerking her back stepping onto an outlet on February 10, 2000. The physician did not, however, address the cause of her back spasms and strain or find that she was disabled from employment. Consequently, the physician's report is of little probative value.¹³

On December 21, 2000 Dr. Singh evaluated appellant for back pain and found that she could resume work on December 27, 2000. She did not, however, address causation and thus her report is insufficient to show that appellant was disabled from work due to her accepted work injury.¹⁴ In a January 23, 2001 form report, Dr. Singh diagnosed a herniated disc at L4-5. She discussed appellant's history of back surgery for a ruptured disc in October 1999 and found that she was disabled from employment. Dr. Singh checked "no" that the diagnosed condition was not caused or aggravated by employment. As she specifically found that the diagnosed condition of a herniated disc was not due to appellant's employment, her report is not supportive of the claim for disability compensation.

On February 22, 2001 Dr. Singh listed dates and hours that appellant missed from work due to her February 10, 2000 back injury. She diagnosed a C6-7 herniated disc. Dr. Singh, however, did not explain how appellant's February 10, 2000 employment injury caused the listed periods of disability from employment. A physician must provide an opinion on whether the employment incident described caused or contributed to claimant's diagnosed medical condition and support that opinion with medical reasoning to demonstrate that the conclusion reached is sound, logical and rationale.¹⁵

In a report dated April 3, 2001, Dr. Singh discussed in detail appellant's February 2000 work injury. She noted that appellant had undergone an excision of a right L4-5 disc herniation prior to her work injury. Dr. Singh diagnosed a left L5-S1 disc herniation and a cervical disc herniation. She opined that appellant "continues to suffer from the work injury of February 2000." The Board previously found that Dr. Singh's April 3, 2001 report was insufficient to establish an employment-related cervical disc herniation as she failed to provide sufficient rationale for her conclusion.¹⁶ The Office has not accepted that appellant sustained a left L5-S1 disc herniation due to her February 10, 2000 work injury and thus she has the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence.¹⁷ Dr. Singh did not specifically relate the left L5-S1 disc herniation to the employment injury or provide any rationale for her opinion that

¹² The name of the physician is not legible.

¹³ See *Jaja K. Asaramo*, 55 ECAB 200 (2004) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

¹⁴ *Id.*

¹⁵ *John W. Montoya*, 54 ECAB 306 (2003).

¹⁶ Docket No. 01-1872 (issued March 14, 2003).

¹⁷ See *JaJa K. Asaramo*, *supra* note 13.

appellant had continuing problems due to the February 2000 work injury. Medical conclusions unsupported by rationale are of little probative value.¹⁸

Appellant received treatment from Dr. Singh from 2001 to 2003 for multiple medical conditions, including fibromyalgia, foot problems, upper respiratory conditions and anxiety. On February 7, 2002 Dr. Singh found that she was unable to work until the next day due to a slip and fall on ice. On April 3, 2002 she determined that appellant could not work until April 4, 2002 due to illness. On July 30, 2002 Dr. Singh found that she was disabled due to acute muscle spasm and could resume work the next day. On May 13, 2003 she diagnosed a neck strain or fracture. As Dr. Singh did not attribute any condition or period of disability to appellant's employment injury, her reports are insufficient to meet appellant's burden of proof.

In a form report dated October 28, 2003, Dr. Singh diagnosed degenerative disc disease and spinal stenosis and indicated "yes" that the condition was caused or aggravated by employment. She provided as rationale that appellant's back injury "likely exacerbated or caused symptoms" of the herniated disc and spinal stenosis. Dr. Singh found that appellant was disabled from employment from February 10, 2000 to the present. Her finding that the employment injury "likely exacerbated or caused" the diagnosed conditions of a herniated disc and spinal stenosis is speculative in nature. The Board has held that medical opinions which are speculative or equivocal in character have little probative value.¹⁹

On January 12, 2001 Dr. Kaufman discussed appellant's complaints of continuing pain into her right arm and leg since tripping at work in February 2000. He diagnosed a left herniated disc at L5-S1. Dr. Kaufman related that appellant "has several problems that ostensibly do not go together. Appellant's main complaint is of right interscapular pain and right arm pain, which could be reflective of a right cervical radiculopathy." Dr. Kaufman attributed appellant's right leg pain to possible residual scar tissue from the prior surgery. As he did not relate the diagnosed conditions or any specific period of disability to her February 2000 work injury, his opinion is insufficient to meet her burden of proof.

On January 29, 2001 Dr. Kaufman diagnosed a large herniated disc on the right at C6-7. In February 16, March 1 and 28, 2001 form reports, he diagnosed a herniated nucleus pulposus with lumbar and cervical radiculopathy. Dr. Kaufman checked "yes" that the condition was caused or aggravated by employment and found that it was unknown when appellant could resume work. The Board has held, however, that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion has little probative value and is insufficient to establish a claim.²⁰

On March 12, 2001 Dr. Kaufman found that appellant had improved after her back surgery. He related, "in the meantime, she reminds me that she is still having some back pain and at time left leg pain going on ever since an injury at work in February 2000." Dr. Kaufman

¹⁸ *Willa M. Frazier*, 55 ECAB 379 (2004); *Jimmy H. Duckett*, 52 ECAB 332 (2001).

¹⁹ *L.R. (E.R.)*, 58 ECAB ____ (Docket No. 06-1942, issued February 20, 2007); *Kathy A. Kelley*, 55 ECAB 206 (2004).

²⁰ *Deborah L. Beatty*, 54 ECAB 340 (2003).

diagnosed a herniated disc. He did not, however, specifically relate the herniated disc to the February 2000 work injury. On April 19, 2001 Dr. Kaufman performed an excision of a herniated nucleus pulposus at L5-S1. In a May 4, 2001 progress report, he noted that the surgery significantly improved appellant's back and leg pain. Dr. Kaufman opined that she could resume work without restrictions on July 16, 2001. In a May 19, 2003 disability certificate, he found that appellant could resume work without restrictions on May 20, 2003. As Dr. Kaufman did not address the cause of her disability or attribute her need for surgery to the February 2000 work injury, his reports are insufficient to meet appellant's burden of proof.

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.²¹ Appellant has not submitted rationalized medical evidence showing that she sustained intermittent periods of disability due to her February 2000 work injury and thus the Office properly denied her claim for compensation.

CONCLUSION

The Board finds that appellant has not established that she sustained intermittent disability from September 23, 2000 through September 30, 2003 causally related to her February 10, 2000 employment injury.

²¹ *Sandra D. Pruitt*, 57 ECAB 126 (2005).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 29, 2007 is affirmed.

Issued: September 2, 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