

FACTUAL HISTORY

On April 25, 2005 appellant, a 46-year-old senior instrument mechanic, filed an occupational disease claim alleging that she suffered from heat exhaustion and heat sensitivity, as a result of ambient temperatures of 120 degrees and higher. She stated that she was first exposed to the ambient temperatures in the summer of 1990 and continued to be exposed until August 2002. Appellant stopped working on July 1, 2003 and retired on disability on July 31, 2005.

The record contains a position description for senior instrument mechanic. The work environment involves exposure to temperature ranges from 0 to 120 degrees Fahrenheit and ambient temperatures in some areas which may exceed 140 degrees Fahrenheit.

Appellant submitted a June 27, 2003 report from Dr. Bradley Rudge, a treating physician, who diagnosed knee pain and fibromyalgia. Dr. Rudge stated that appellant has difficulty working in a hot environment. Noting that the position of senior instrument mechanic requires working outside in hot conditions and carrying up to 75 pounds, he stated that appellant was not approved for the position. On September 5 and 17, 2003 Dr. Rudge provided work restrictions which precluded appellant from working in ambient temperatures above 90 degrees. Dr. Rudge's notes for the period July 23, 1999 through August 27, 2003 reflected treatment for fibromyalgia and a knee condition and his recommendation that appellant avoid hot areas.

The record contains a June 30, 2003 letter from the employing establishment placing appellant in a "nonwork" status effective July 1, 2003, based upon reports from her treating physician. The letter stated, "Due to concerns about your inability to work safely, management has determined that you are not able to perform the essential functions of your position."

Appellant submitted reports from Dr. Gay Richardson, a Board-certified physiatrist. On June 30, 2003 Dr. Richardson stated that appellant's exposure to heat and repetitive heavy lifting might aggravate her fibromyalgia. On August 11, 2003 she opined that appellant could safely perform the duties of her position, so long as she did not engage in any repetitive heavy lifting and did not experience excessive heat exposure on a constant basis. In a May 25, 2004 report, Dr. Richardson provided restrictions, secondary to appellant's fibromyalgia and myofascial pain syndrome, prohibiting her from remaining in temperatures in excess of 100 degrees for more than 15 minutes. She noted that her reading of appellant's job requirements did not exceed this restriction.

The record contains depositions dated January 28, 2004 from Jeremy M. Kaler, employing establishment maintenance manager, and Ronnie Coleman, maintenance supervisor. Mr. Kaler stated that appellant's inability to work in affected temperatures above 90 degrees was the one and only factor that prevented her from working as a senior instrument mechanic. He indicated that the employing establishment could not "make workplaces" abide by this constraint. Mr. Coleman stated that appellant did not meet the qualifications for the position due to her inability to work in temperatures above 90 degrees.

In a letter dated June 27, 2005, the employing establishment informed appellant that she was being terminated effective August 1, 2005, due to her unavailability to perform the duties of a senior instrument mechanic since July 1, 2003.

In an August 22, 2005 statement, appellant indicated that, after cumulative exposure to heat for over 14 years in her position as senior instrument mechanic, she was unable to tolerate such exposure for more than 15 to 20 minutes without feeling nauseous and faint. She submitted an August 18, 2005 note from Dr. H.W. Ford, a treating physician, who stated that appellant was “easily susceptible to heat by history.”

On April 28, 2006 the Office accepted appellant’s claim for “heat sensitivity.”² Appellant filed an undated claim requesting compensation for the period July 1, 2003 to “the present.” On June 2, 2006 the Office informed appellant that the evidence submitted was insufficient to establish that she was totally disabled as a result of her accepted condition beginning July 1, 2003 and advised her to provide rationalized medical evidence establishing her disability.

On June 19, 2006 the employing establishment controverted appellant’s claim. Jeff Parseley, plant manager, contended that appellant’s alleged disability was related to her fibromyalgia rather than heat sensitivity. He stated, that in July 2003, the employing establishment offered appellant a clerk position which encompassed her restrictions, but that she refused to accept the position. Based on her refusal to accept the offered position, Mr. Parseley argued that her claim for compensation should be denied.

In an undated “Letter of Explanation,” appellant stated that the employing establishment refused to return her to her position as senior instrument mechanic, even though her physician indicated that she was capable of performing the duties of the job. On October 2, 2006 she indicated that the only job offered to her by the employing establishment “would have paid her less than half [her] salary” as a senior instrument mechanic, so she refused the job.

In a letter dated November 20, 2006, the Office requested additional information and evidence, including clarification regarding the cause of her disability. In a December 21, 2006 letter, appellant stated that her position as a senior instrument mechanic would have accommodated Dr. Rudge’s restrictions. However, she contended that she was terminated because the employing establishment did not have an appropriate job for her. Appellant stated that she was offered a \$30,000.00 per year clerk position, which she refused.

In a decision dated May 17, 2007, the Office denied appellant’s claim for wage-loss compensation, finding that the medical evidence did not establish that she was disabled due to her accepted condition of heat sensitivity. It noted that appellant provided no evidence that the employing establishment refused to employ her on July 1, 2003 due to her accepted condition.

² The Office initially denied appellant’s claim on September 13, 2005, on the grounds that it was untimely filed. On April 20, 2006 an Office hearing representative vacated the Office’s decision, finding that the claim was timely filed.

On May 21, 2007 appellant, through her representative, requested an oral hearing. At the September 26, 2007 hearing, she reiterated her argument that the employing establishment terminated her due to her restrictions related to the accepted condition of heat sensitivity and that therefore she should receive compensation benefits beginning July 1, 2003.

By decision dated December 19, 2007, an Office hearing representative affirmed the May 17, 2007 decision, finding that appellant's restrictions, including avoidance of heat exposure, were based on Dr. Richardson's diagnosis of fibromyalgia, which was not an accepted condition and therefore entitlement to compensation was not established. The hearing representative also found that management's decision to place her in a nonwork status as of July 1, 2003 was outside the scope of the Federal Employees' Compensation Act.

LEGAL PRECEDENT

A claimant has the burden of establishing the essential elements of her claim, including that the medical condition for which compensation is claimed is causally related to the claimed employment injury.³ For wage-loss benefits, the claimant must submit medical evidence showing that the condition claimed is disabling.⁴ The evidence submitted must be reliable, probative and substantial.⁵

As used in the Act, the term "disability" means incapacity because of an injury in employment to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity. The general test in determining loss of wage-earning capacity is whether the employment-resulted impairment prevents the employee from engaging in the kind of work she was doing when she was injured.⁶ If an employing establishment's actions prevent an employee from working due to a work-related condition, that employee is disabled within the meaning of the Act.⁷

If an employee can resume regular federal employment, she must do so.⁸ However, if she cannot return to the job held at the time of injury, but has recovered enough to perform some type of work, the employee must seek work.⁹ Where the employer has specific alternative positions available for partially disabled employees, the employer should advise the employee in writing of the specific duties and physical requirements of those positions.¹⁰

³ 20 C.F.R. § 10.115(e) (2007); *see Tammy L. Medley*, 55 ECAB 182, 184 (2003).

⁴ *Id.* at § 10.115(f).

⁵ *Id.* at § 10.115.

⁶ *Frazier V. Nichols*, 37 ECAB 528 (1996).

⁷ *Claude E. Pilgreen*, 33 ECAB 566 (1982).

⁸ 20 C.F.R. § 10.515(a).

⁹ *Id.* at § 10.515(b).

¹⁰ *Id.* at § 10.505(a). A similar written requirement is imposed with respect to offers of suitable work. *See* 20 C.F.R. § 10.507(c) and (d).

ANALYSIS

The Office found that appellant was not entitled to wage-loss compensation for the period claimed because the restrictions imposed by her treating physician were not causally related to her accepted condition, heat sensitivity, but rather were based on her nonwork-related condition of fibromyalgia. It also found that management's decision to place appellant in a nonwork status as of July 1, 2003 was outside the scope of the Act. The Board finds that the evidence of record establishes that appellant was disabled as of July 1, 2003 within the meaning of the Act.

Appellant claimed disability based on the accepted condition of heat sensitivity. On June 27, 2003 her treating physician, Dr. Rudge, diagnosed fibromyalgia and stated that appellant had difficulty working in a hot environment. Noting that the position of senior instrument mechanic required working outside in hot conditions, he stated that appellant was not approved for the position. On September 5 and 17, 2003 Dr. Rudge provided work restrictions, which precluded appellant from working in ambient temperatures above 90 degrees. On June 30, 2003 Dr. Richardson stated that appellant's exposure to heat and repetitive heavy lifting might further aggravate her fibromyalgia. On August 11, 2003 she opined that appellant could safely perform the duties of her position, so long as she did not engage in any repetitive heavy lifting and did not experience excessive heat exposure on a constant basis. The Board finds that the restrictions provided by appellant's physicians related to her accepted condition of heat sensitivity. The fact that exposure to heat might also have exacerbated the separate, nonwork-related condition of fibromyalgia does not negate the causal relationship between the recommended restrictions and the accepted condition. Therefore, the Office's denial of appellant's claim on the basis that the restrictions imposed by her treating physician were not causally related to her accepted condition was improper.

Actions taken by the employing establishment prevented appellant from working due to her accepted condition. Appellant was placed in a "nonwork" status effective July 1, 2003, "due to concerns about [her] inability to work safely." She was terminated effective August 1, 2005, due to her unavailability to perform the duties of a senior instrument mechanic. The record reflects that the employing establishment considered appellant's inability to work in affected temperatures above 90 degrees to be the one and only factor that prevented her from working as a senior instrument mechanic and that the employing establishment was unwilling or unable to accommodate her restrictions. Appellant was involuntarily removed from her job. She attempted, unsuccessfully, to return to her date-of-injury position, but her requests were denied. Thus, through the employing establishment's action, appellant's work-related condition prevented her from performing her regular job, even though she and her physician contended that she was able to work within the employment conditions. These circumstances establish that appellant was "disabled" within the meaning of the Act. Therefore, she is entitled to wage-loss compensation.¹¹

The employing establishment contended that appellant was precluded from receiving wage-loss compensation because she had rejected a bona fide offer of employment which

¹¹ See *Claude E. Pilgreen*, *supra* note 7 (where an employing establishment terminates an employee's employment because of an employment-related medical condition, that employee is disabled within the meaning of the Act and is entitled to compensation for any loss of wage-earning capacity).

encompassed her restrictions. However, the employing establishment failed to properly identify any limited-duty position. Office regulations provide that, where an attending physician notifies the employer that the employee can return to restricted duty, the employer must advise the employee in writing of any available positions which accommodate her restrictions.¹² Office procedure manual states that, to be valid, an offer of light duty must be in writing and provide specific information regarding the demands of the position.¹³ There is no indication that the employing establishment provided appellant with a written limited-duty job offer in accordance with the applicable regulations.¹⁴

CONCLUSION

Appellant established entitlement to wage-loss compensation commencing July 1, 2003 and the Office's May 17 and December 19, 2007 decisions are reversed.

ORDER

IT IS HEREBY ORDERED THAT the December 19 and May 17, 2007 decisions of the Office of Workers' Compensation Programs are reversed.

Issued: September 17, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹² 20 C.F.R. § 10.507(a).

¹³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.4 (December 1993).

¹⁴ 20 C.F.R. § 10.505(a).