

fibromyalgia, tendinitis, bursitis and sciatica after 22 years of performing his employment duties, which included repetitive bending, twisting, turning, lifting, pushing and moving.¹ He began experiencing pain in his ankles around May 1, 1995, which spread to most of his joints. Appellant sustained a herniation of three discs and a reflex of his left ankle. He accepted a light-duty position as an equipment operator on February 10, 2004 based on a separate emotional condition claim under Office file number xxxxxx905. The light-duty assignment permitted him to take a break in a friendly environment, as necessary, but did not modify his physical requirements.

In a decision dated June 23, 2004, the Office denied appellant's claim. Appellant requested an oral hearing before an Office hearing representative, which was held on February 23, 2005. He testified that he had always worked as a mail handler, but that the employing establishment unofficially limited some of his duties following a motor vehicle accident in 1997. Appellant described his current duties as including driving a forklift with some lifting, bending, pushing and moving in order to pick up dropped pallets of mail, for approximately two hours of his workday.

On September 22, 2004 appellant was examined by his attending physician, Dr. Christopher B. Ryan, Board-certified physiatrist, who diagnosed degenerative arthritis of the lumbar and cervical spines, attributing appellant's condition to his federal employment.

In a May 25, 2005 decision, an Office hearing representative remanded the case for further development on whether appellant sustained an ankle or back injury causally related to his employment.

On July 6, 2005 the Office referred appellant to a second opinion physician, Dr. John D. Douthit, a Board-certified orthopedic surgeon, who had difficulty administering a full physical examination due to appellant's complaint of pain, but diagnosed complex pain syndrome and degenerative disc disease of the lumbar spine, which were not employment related. Dr. Douthit noted that appellant was currently working on a forklift and, if he dropped a pallet, was required to put it back on the forklift. He placed appellant on a 50-pound lifting restriction due to age-related degenerative disease; however, he encouraged appellant to continue working full time.

On July 22, 2005 appellant retired on disability.

The Office determined a conflict in medical opinion arose between Dr. Douthit, the second opinion physician, and Dr. Ryan. It referred appellant to an impartial medical examiner, Dr. Hendrick J. Arnold, a Board-certified orthopedic surgeon. The Office provided Dr. Arnold with a May 24, 2006 statement of accepted facts, describing appellant's job since August 28, 1999 as a mail handler and equipment operator (forklift operator) with primary duties of operating a riding tow tractor and performing other mail handler duties. The physical requirements for the position included continuous bending, twisting, turning, occasionally

¹ Appellant claimed that he had previously filed this claim form with the employing establishment on October 3, 1997, when the form was lost, misplaced or destroyed and again on March 15, 2004, at which time the employing establishment controverted his claim.

carrying up to 70 pounds, frequent carrying of up to 20 pounds and frequent reaching above shoulders. The description also required conforming to all safety regulations.

In a July 19, 2006 medical report, Dr. Arnold diagnosed a disc herniation at L5-S1 with disc bulging and disc space narrowing at L4-5, finding that the condition was permanently aggravated by appellant's work factors. In a July 17, 2006 work capacity evaluation, he advised that appellant was not capable of performing his usual job due to the L5-S1 herniation. Dr. Arnold opined that appellant was able to work for eight hours a day, but with a permanent 20-pound limit on pushing, pulling and lifting and a prohibition on squatting, kneeling or climbing.

In an August 10, 2006 decision, the Office accepted appellant's claim for displacement of a lumbar intervertebral disc with myelopathy and degeneration at L5-S1 and disc bulging and narrowing at L4-5.

On November 27 and 30, 2006 appellant filed a claim for wage-loss compensation (Form CA-7) commencing July 21, 2005.

In an April 3, 2007 letter, the Office notified appellant that the medical evidence of record did not support his inability to perform modified duty as a forklift operator commencing July 21, 2005. It gave him 30 days to provide additional information.

In a letter dated April 9, 2007, appellant, through his attorney, argued that his modified position solely accommodated his stress claim and did not provide any physical limitations.

In a decision dated May 18, 2007, the Office denied appellant's claim for disability compensation as of July 21, 2005, finding that medical evidence did not support his claimed disability.

On February 25, 2008 appellant, through counsel, requested reconsideration of the Office's May 18, 2007 decision. In a September 17, 2007 medical report, Dr. Ryan opined that appellant was disabled from his date-of-injury job as a mail handler and equipment operator. He stated that he would not release appellant to perform many of the required physical duties, including moving heavy equipment, lifting, bending, reaching, twisting, driving with a seat belt or turning to look over his left shoulder, as they would aggravate his lumbar disc herniation. Dr. Ryan advised that appellant should not lift bags weighing up to 70 pounds, change the batteries in the forklift, reach to throw bags into a five-foot-tall container, bend down and twist to clean mail on the ground, bend down into hampers or twist while driving the forklift. He also maintained that wearing the mandatory seatbelt would place dangerous pressure on appellant's lumbar discs.

In an April 14, 2008 decision, the Office denied modification of the May 18, 2007 decision on the grounds that appellant did not establish that he was disabled from performing his modified duties due to his accepted conditions.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.³

Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.⁴ Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work. When a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that he hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.⁵ 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.⁶

ANALYSIS

The Office accepted that appellant sustained displacement of a lumbar intervertebral disc with myelopathy and degeneration and a disc herniation at L5-S1 with disc bulging and narrowing at L4-5. The issue is whether appellant established that he was totally disabled as of July 21, 2005 due to his accepted injury. The Board finds that appellant has not met his burden of proof in establishing disability.

Appellant submitted a September 17, 2007 medical report from Dr. Ryan, who found that he was disabled from his date-of-injury job as a mail handler and equipment operator. Dr. Ryan stated that the job duties required of the position would aggravate appellant's lumbar herniated disc. Further, he maintained that a seatbelt would place dangerous pressure on appellant's lumbar discs.

The Board finds that the September 17, 2007 medical report is insufficient to establish appellant's claim for disability. Dr. Ryan failed to provide a fully rationalized opinion explaining how appellant's work injury totally disabled him from performing his employment duties. He described the work duties required by appellant's position, but his opinion that appellant was totally disabled from performing those duties was not supported by medical rationale. Moreover, Dr. Ryan failed to address any specific period of disability; merely

² 5 U.S.C. §§ 8101-8193.

³ *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁵ *Id.*

⁶ *Id.*

indicating that appellant was currently disabled from his date-of-injury job. The report was created over two years after the commencement of the claimed period of disability and does not provide an explanation of how appellant was totally disabled beginning July 21, 2005. The Board notes that appellant retired on July 22, 2005.

In a July 17, 2006 work capacity evaluation, Dr. Arnold, the impartial medical examiner, opined that appellant was not capable of performing his usual job duties due to his disc herniation at L5-S1 and recommended work restrictions. The Board finds that Dr. Arnold's report also fails to establish appellant's claim for total disability. The Office referred appellant to Dr. Arnold to resolve a conflict in medical opinion on whether his back condition was employment related. Dr. Arnold did not address appellant's modified duties. Rather, he noted that appellant was receiving minimal conservative treatment at the Veterans Administration, which appeared reasonable. Dr. Arnold noted that appellant did not have evidence of radiculopathy and was functioning well since his retirement. Dr. Arnold did not support appellant's claim of total disability as of July 21, 2005.

On appeal, appellant contends that his job duties were not modified to accommodate his work restrictions. However, the evidence of record does not support his contentions. The Board finds that appellant did not meet his burden of proof that he was totally disabled beginning July 21, 2005.

CONCLUSION

The Board finds that appellant did not establish that he was totally disabled as of July 21, 2005 due to his employment injury.

ORDER

IT IS HEREBY ORDERED THAT the April 14, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 16, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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