United States Department of Labor
Employees' Compensation Appeals Board

V.P., Appellant	)	
and	)	**Docket No. 09-337**
	)	**Issued: August 4, 2009**
DEPARTMENT OF THE ARMY, U.S. ARMY GARRISON, Aberdeen, MD, Employer	)	

Appearances:
Alan J. Shapiro, Esq., 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
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On November 17, 2008 appellant filed a timely appeal from a November 6, 2008 merit decision of the Office of Workers' Compensation Programs' Branch of Hearings and Review that affirmed a May 7, 2008 decision of the Office denying her compensation claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this compensation claim.

ISSUE

The issue is whether appellant met her burden of proof to establish that she was disabled intermittently between March 11 and 28, 2008 causally related to her May 9, 2008 accepted employment-related injury.

FACTUAL HISTORY

On May 16, 2007 appellant, a 39-year-old information technology specialist, filed a traumatic injury claim for left ankle sprain, left leg laceration and pain in her lower left back. She attributed her injury to a May 9, 2007 incident when, while carrying boxes to the mailroom,

she slipped on a cinder-covered outside step, fell down four to five steps, twisting her ankle, cutting her leg and injuring the left side of her back. Appellant submitted medical evidence and by decision dated August 20, 2007 the Office accepted her claim for: lumbar sprain/strain; back contusion; left ankle sprain/strain; and, lower leg abrasion. She underwent medical treatment and received compensation.

Appellant submitted a compensation claim (Form CA-7), dated March 17, 2008, for the period March 11 through 29, 2008. Time analysis form (CA-7a) revealed that, for each day during this period, appellant claimed 3 hours leave without pay (LWOP), and alleged that she worked 5 hours per day, for a total of 42 intermittent hours LWOP for the period March 11 through 28, 2008.

In support of her claim,[1] appellant submitted a February 13, 2008 medical note signed by Dr. John C. Gordon, a Board-certified orthopedic surgeon, who reported that appellant had been doing quite well until she fell on the ice the previous night. In subsequent March 11, 2008 medical notes, Dr. Gordon reported that he saw appellant on March 11, 2008 and that she could return to work for up to five hours per day. He also reported that appellant must attend physical therapy three times per week until further notice.

By letter dated April 1, 2008, the Office requested that Dr. Gordon furnish additional medical evidence supporting his reduction of appellant's work hours and his newly diagnosed partial disability. It noted that it would hold off further action on this issue for 20 days so that the claim could be properly adjudicated.

By medical note dated April 9, 2008, Dr. Gordon reported that appellant had been having problems with her back since her injury. He noted that appellant had been doing generally well until February 12, 2008, when she slipped on some ice and strained her back. Dr. Gordon reported that appellant told him her back pain increased post February 12, 2008 and that she bruised her right arm during the fall. He reported seeing appellant on March 11, 2008 at which time she had a negative leg raising and a lot of tightness, though her range of motion was good. Dr. Gordon reported observing some tenderness across appellant's back. He reported that

[1] The Board notes that appellant submitted a variety of medical reports in support of her claim. Appellant submitted a May 14, 2007 registration form and medical records from Upper Chesapeake Medical Center. In a June 12, 2007 medical note, Dr. Gordon reported that appellant could return to work, light duty only, but restricted her hours to half a day until August 1, 2007. Appellant submitted urgent care medical records, dated February 29, 2008, from Express Care of Bel Air. These medical records were signed by a physician whose signature is illegible.

Appellant submitted a triage report, dated April 7, 2008, signed by an individual whose signature is illegible. She submitted a medical note, dated May 16, 2008, signed by a physician whose signature is illegible who reported that appellant could return to work on May 19, 2008. Appellant also submitted medical records from Franklin Square Hospital Center concerning treatment received and May 16, June 18 and July 7, 2008, first for sciatica then for low back pain. She submitted medical records from Upper Chesapeake Health concerning treatment received on May 21, June 4 and 13 2008. Appellant submitted a June 24, 2008 medical note signed by Dr. Gordon who reported that appellant could work at her office five hours per day and four hours per day from home, with rest periods as needed. In a subsequent medical note dated September 12, 2008, Dr. Gordon reported that appellant could return to regular work, but imposed the same time restrictions he prescribed in his June 24, 2008 medical note until appellant had completed physical therapy. As this medical evidence does not pertain to the period of disability claimed, it is of no probative value.

appellant continued to experience pain and that after several hours it was much worse. At this point, Dr. Gordon reported, he placed her on restricted hours of working as well as on a course of physical therapy.

By decision dated May 7, 2007, the Office denied appellant's compensation claim for the period March 11 through 28, 2008 for the 42 intermittent hours.

Appellant disagreed and requested a review of the written record.

Appellant submitted a personal note dated May 15, 2008. She stated that she slipped and fell on the ice in February, twisting her right arm and shoulder and reinjuring her shoulder from a previous problem not at all related to her Office claim of May 2007. Appellant reported that she did not fall to the ground but caught herself on her car door. She alleged that she told Dr. Gordon that her back problems were not attributable to this February fall, but that he misconstrued what she said.

Appellant submitted a March 11, 2008 medical note in which Dr. Gordon reported treating her for lower back pain. Dr. Gordon noted that since appellant fell, she continued to experience soreness in her back.

By May 7, 2008 medical note, Dr. Gordon reported that his March 11 and April 14, 2008 notes contained errors. He reported that the statements in his April 14, 2008 note concerning the February 2008 incident, when appellant fell on the ice and sprained her shoulder and contused her right arm, were an error in his evaluation because he had been treating appellant for shoulder and arm conditions at the same time. Dr. Gordon asserted that his March 2008 letter should be read to mean that appellant continued to have soreness in her back and that this was the same before and after she fell on the ice in February 2008. He also opined that all of appellant's medical problems are directly related to her injury of May 9, 2007 and were not affected by the fall in February 2008.

In a subsequent medical note dated May 21, 2008, Dr. Gordon reported that someone stole appellant's identity and was using it to write prescriptions for various medications.

By decision dated November 6, 2008, the Office's Branch of Hearings and Review affirmed the Office's May 7, 2008 decision, finding that appellant had not met her burden of submitting medical evidence, based on a complete and accurate factual and medical history, establishing that her alleged disabling condition was causally related to her employment injury.

LEGAL PRECEDENT

For each period of disability claimed, the employee has the burden of proving that he or she was disabled for work as a result of the accepted employment injury.[2] As used in the Federal Employees' Compensation 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.[3] Disability is

[2] *William A. Archer*, 55 ECAB 674 (2004).

[3] *Patricia A. Keller*, 45 ECAB 278 (1993); 20 C.F.R. § 10.5(f).

thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.[4] 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.[5] The Board will not require the Office to pay compensation in the absence of medical evidence directly addressing the particular period of disability for which compensation is sought. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.[6]

With respect to claimed disability for medical treatment, section 8103 of the Act provides for medical expenses, along with transportation and other expenses incidental to securing medical care for injuries.[7] Appellant would be entitled to compensation for any time missed from work due to medical treatment for an employment-related condition.[8] However, the Office's obligation to pay for medical expenses and expenses incidental to obtaining medical care, such as loss of wages, extends only to expenses incurred for treatment of the effects of any employment-related condition. Appellant has the burden of proof which includes the necessity to submit supporting rationalized medical evidence.[9]

ANALYSIS

Appellant has an accepted injury for: lumbar sprain/strain; back contusion; left ankle sprain/strain; and lower leg abrasion. She claims that due to her accepted injury, she was partially disabled from work for the period March 11 through 28, 2008 for 42 intermittent hours. Appellant bears the burden to establish through medical evidence that she was disabled during the claimed time periods and that her disability was causally related to her accepted injury. The Board finds the evidence of record insufficient to accomplish such a task and, therefore, that appellant has not established that she was disabled during the period March 11 through 28, 2008.

The relevant medical evidence of record consists of medical notes signed by Dr. Gordon; but none of these medical notes proffered a probative medical opinion as to whether appellant's disability during the period March 11 through 28, 2008 was due to her accepted conditions. While Dr. Gordon's May 7, 2008 medical note asserted that appellant's lower back condition was directly attributable to the May 9, 2007 accepted injury, he never presented findings upon examination or a review of appellant's medical history and thus his opinion is not sufficiently rationalized such that it has any probative value concerning appellant's alleged disability during the period March 11 through 28, 2008.

[4] *See Fred Foster*, 1 ECAB 21 (1947).

[5] *Fereidoon Kharabi*, 52 ECAB 291 (2001); *see also Edward H. Horton*, 41 ECAB 301 (1989).

[6] *Sandra D. Pruitt*, 57 ECAB 126 (2005); *William A. Archer*, *supra* note 2.

[7] 5 U.S.C. § 8103(a).

[8] *Vincent E. Washington*, 40 ECAB 1242 (1989).

[9] *Dorothy J. Bell*, 47 ECAB 624 (1996); *Zane H. Cassell*, 32 ECAB 1537 (1981).

At best, these notes support the contention that any alleged disability during the claimed period was produced by a February 12, 2008 incident, when she slipped on the ice and strained her back and bruised her right arm. As Dr. Gordon failed to offer any probative medical opinion on whether appellant was disabled on the dates at issue due to her accepted condition, his medical notes are of diminished probative value.[10]

There is no other probative medical evidence of record that addresses her disability on the dates claimed and, therefore, appellant has not established her entitlement to wage-loss benefits for the intermittent periods of disability alleged.

Therefore, the Board finds that appellant has failed to submit sufficient probative rationalized medical evidence to establish that she was disabled during the period claimed as a result of her accepted work-related conditions.

CONCLUSION

The Board finds that appellant has not established entitlement to wage-loss benefits for intermittent periods of disability from March 11 through 28, 2008.

ORDER

IT IS HEREBY ORDERED THAT the November 6, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 4, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

[10] *See Sandra D. Pruitt*, 57 ECAB 126 (2005).