United States Department of Labor
Employees' Compensation Appeals Board

S.T., Appellant	)	
and	)	**Docket No. 09-419**
	)	**Issued: August 28, 2009**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Duluth, GA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 28, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated October 23, 2008. The record also contains a November 7, 2008 decision, denying her application for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has established an employment-related disability for August 4 and 8, 2008; and (2) whether the Office properly denied appellant's application for reconsideration without merit review of the claim.

FACTUAL HISTORY

On July 6, 2007 appellant, then a 41-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that she sustained injury on July 2, 2007 in the performance of duty when she slipped and her left side struck an ice machine. The reverse of the claim form indicated that her

regular work schedule was two days per week at five hours per day. The Office accepted the claim for contusions to the left arm and shin. According to a February 21, 2008 statement of accepted facts, appellant had a February 26, 2002 employment injury and was currently working four hours per day.

Appellant continued to work four hours per day and she filed claims for compensation (Form CA-7) for intermittent dates. On August 27, 2008 she filed a CA-7 form for August 4 and 8, 2008. The accompanying time analysis CA-7a form indicated that appellant claimed compensation for four hours on August 4, 2008 and four hours on August 11, 2008.

The medical evidence includes a note dated August 11, 2008 from Dr. Ethel Smith, an internist, stating that appellant "reports she has been ill" since August 1, 2008 and she may return to work August 18, 2008. In a note dated August 4, 2008, Dr. Randall Berinhout, a pain management specialist, indicated that she was under his care and could return to work August 8, 2008.

By decision dated October 23, 2008, the Office denied appellant's claim for compensation on August 4 and 11, 2008. Appellant requested reconsideration and submitted additional evidence. In a report dated September 30, 2008, Dr. Ralph D'Auria, an orthopedic surgeon, provided a history of the February 26, 2002 injury and an opinion as to a whole person impairment.

In a decision dated November 7, 2008, the Office found that appellant's application for reconsideration was insufficient to warrant merit review of the claim.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed are causally related to the employment injury.[2] The term disability is defined as the incapacity because of an employment injury 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.[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

[1] 5 U.S.C. §§ 8101-8193.

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

[3] 20 C.F.R. § 10.5(f); *see e.g., Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury but no loss of wage-earning capacity).

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

employee's complaints that she 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]

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.[7] 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.[8]

ANALYSIS -- ISSUE 1

Appellant filed a claim for wage-loss compensation on August 4 and 8, 2008. It is her burden of proof to submit probative medical evidence establishing an employment-related disability on those dates. The evidence submitted prior to the October 23, 2008 Office decision is of little probative value on the issue. Dr. Smith reported that appellant had been "ill" without further explanation. Dr. Berinhout indicated only that appellant was under his care. None of the physicians provided a rationalized medical opinion that she was disabled for the claimed dates due to the accepted employment injuries. The Board finds that she did not meet her burden of proof in this case.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[9] the Office's regulations provide that a claimant may obtain review of the merits of the claim by submitting a written application for reconsideration that sets forth arguments and contains evidence that either: "(1) shows that [the Office] erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by [the Office]; or (3) constitutes relevant and pertinent evidence not previously considered by [the Office]."[10] Section 10.608(b) states that any application for review that does not meet at least one of the

[5] *Id*.

[6] *Id*.

[7] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[8] *Leslie C. Moore*, 52 ECAB 132 (2000).

[9] 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application").

[10] 20 C.F.R. § 10.606(b)(2).

requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.[11]

ANALYSIS -- ISSUE 2

In her application for reconsideration appellant did not show that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office. With respect to additional evidence submitted, she did not submit any new and relevant evidence to the issue presented.[12] Dr. D'Auria did not address the issue of disability on August 4 or 8, 2008.

The Board therefore finds that appellant did not meet any of the standards of 20 C.F.R. § 10.606(b)(2). Accordingly, the Office properly denied the application for reconsideration without review of the merits of the claim.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish disability for work on August 4 or 8, 2008. On application for reconsideration, appellant did not meet the requirements of 20 C.F.R. § 10.606(b)(2) and the Office properly declined to reopen the case for review of the merits of the claim.

[11] *Id*. at § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

[12] The Board notes that evidence submitted on appeal to the Board cannot be considered; the Board's jurisdiction is limited to evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c) (1999).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs' dated November 7 and October 23, 2008 are affirmed.

Issued: August 28, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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