

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

D.C., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Forest Park, IL, Employer)

**Docket No. 09-756
Issued: December 11, 2009**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 26, 2009 appellant filed an appeal from an Office of Workers' Compensation Programs' merit decision dated March 12, 2008, as well as decisions dated April 10 and May 30, 2008, denying further merit review. 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 intermittent dates from May 25 to August 14, 2004 and June 26 to August 11, 2007; and (2) whether the Office properly denied appellant's applications for reconsideration without merit review of the claim.

FACTUAL HISTORY

On May 25, 2004 appellant filed a recurrence of disability claim (Form CA-2a) alleging that on May 22, 2004 she was working in an out of hampers and became disabled.¹ She did not identify a date of the original injury. Appellant filed a claim for compensation (Form CA-7) for the period May 25 to September 21, 2004 and identified February 10, 1995 as the date of the original injury. In a report dated August 4, 2004, Dr. Alan Wilson, an internist, diagnosed sciatica/low back pain, indicating that appellant could work light duty.

In a note dated October 18, 2004, Dr. Wilson listed dates from May 25 to 28, June 4 to 8 and August 13 and 14, 2004 and stated that appellant was incapacitated due to sciatica. On May 31, 2007 appellant filed an occupational disease claim (Form CA-2) alleging that she sustained spinal stenosis/sciatica causally related to her federal employment as a mail handler. She identified lifting, bending, pulling and pushing hampers and reported the date she became aware of the employment-related condition as May 22, 2004.

On July 25, 2007 Dr. Tara Saggar, an internist, stated that appellant was incapacitated from July 19 to 25, 2007, due to severe pain in her low back and right leg.

In a decision dated October 16, 2007, the Office denied the claim for a recurrence of disability filed on May 25, 2004. By decision dated October 29, 2007, it denied the occupational disease claim on the grounds that the medical evidence was insufficient to establish causal relation.

In a note dated May 25, 2004, Dr. Nayana Dave, an internist, indicated that appellant could work light duty as of May 28, 2004.

By decision dated February 15, 2008, an Office hearing representative affirmed the October 29, 2007 decision.

On March 12, 2008 the Office advised appellant that it was combining the recurrence claim (File No. xxxxxx235) and the occupational claim (File No. xxxxxx631). It noted that her claim was accepted for aggravation of spinal stenosis and aggravation of sciatica.

By decision dated March 12, 2008, the Office reviewed evidence under the combined case files and found that wage-loss compensation would be issued for the following: 4 hours on May 25, August 4 and 31, 2004, 17.46 hours on intermittent dates from September 10 to 21, 2004 and 4 hours on June 26, 2007. For the period commencing August 14, 2007, the Office found that appellant had received compensation pursuant to another claim (File No. xxxxxx850). It denied compensation for: more than four hours on May 25, 2004 and June 26, 2007, from May 26 to 28, June 4 to 8 and August 13 and 14, 2004 and from July 19 to 25 and August 4 to 11, 2007.

¹ This claim was developed under the Office File No. xxxxxx235, which was later designated as a master file with a subsidiary File No. xxxxxx631.

Appellant requested reconsideration on April 1, 2008. She resubmitted medical evidence previously of record. In a report dated April 1, 2008, Dr. Victor Romano, an orthopedic surgeon, stated that appellant was improving nicely with her carpal tunnel syndrome and tenosynovitis and could return to work with a five-pound lifting restriction.

By decision dated April 10, 2008, the Office determined that the application for reconsideration was insufficient to warrant merit review.

On April 30, 2008 appellant again requested reconsideration. She stated that the medical evidence was duplicative, because she was trying to make the Office understand that she was entitled to compensation for specific dates. The medical evidence submitted included an April 16, 2008 report from Dr. Gregory Crovetti, an orthopedic surgeon, stating that appellant continued to have low back pain.

By decision dated May 30, 2008, the Office determined that the application for reconsideration was insufficient to warrant further merit review.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act² 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 is causally related to the employment injury.³ 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.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 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 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.⁶ 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

² 5 U.S.C. §§ 8101-8193.

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

⁴ 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).

⁵ *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁶ *Id.*

disability, for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.⁷

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.⁸ 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.⁹ 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.¹⁰

ANALYSIS -- ISSUE 1

On appeal, appellant referred to a November 10, 2008 decision. There is no final decision with appeal rights dated November 10, 2008.¹¹ The final decision of record on the merits of the claim is dated March 12, 2008. It is an adverse decision in that it denied compensation for specific periods: an additional four hours on May 25, 2004 and June 26, 2007, total disability from May 26 to 28, June 4 to 8 and August 13 and 14, 2004 and from July 19 to 25 and August 4 to 11, 2007. It is appellant's burden of proof to establish the claimed periods of disability.

With respect to May 25 to 28, June 4 to 8 and August 13 and 14, 2004, Dr. Wilson briefly stated that appellant was incapacitated due to sciatica. He did not provide any findings on examination, a history or any medical rationale to support a finding of an employment-related disability on the claimed dates. As to July 19 to 25, 2007, Dr. Saggar reported that appellant was incapacitated due to back and leg pain, but again no findings or accompanying medical rationale was provided for the opinion. For the period August 4 to 11, 2007, the record does not contain probative medical evidence establishing disability causally related to the accepted employment injuries.

The Board finds that appellant did not establish an employment-related disability for the periods claimed. Appellant states on appeal that she does not understand why she is paid for some days and not for others and she believes that she should be compensated for all claimed

⁷ *Id.*

⁸ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁹ *Leslie C. Moore*, 52 ECAB 132 (2000).

¹⁰ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹¹ The record contains an informational letter dated November 10, 2008 regarding compensation for wage loss. It is not a final decision with findings and information about appeal rights. *See* 20 C.F.R. § 10.126.

dates after her claim was accepted. The acceptance of her claim, however, does not establish her disability for work.¹² For a specific period of disability claimed, appellant must submit probative medical evidence establishing disability causally related to the accepted employment injury. 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,¹³ 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 set 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]."¹⁴ Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.¹⁵

ANALYSIS -- ISSUE 2

Appellant submitted applications for reconsideration on April 1 and 30, 2008. With her April 1, 2008 application, she stated that the evidence was sufficient to establish that she could not continue in the restricted duty and she could not understand why her claims for compensation were denied. Appellant did not show that the Office erroneously applied or interpreted a specific point of law or advance a new and relevant legal argument. As to the evidence submitted, it was primarily duplicative of previously submitted evidence and does not constitute new evidence. Appellant did submit new evidence with an April 1, 2008 report from Dr. Romano, but he does not discuss an employment-related disability for the specific periods claimed. Dr. Romano's report is therefore not considered relevant and pertinent evidence to the issue presented.

With respect to the April 30, 2008 application for reconsideration, appellant again stated that she was entitled to compensation for the dates claimed. She did not show that the Office erroneously applied or interpreted a specific point of law or advance a new and relevant legal argument. Appellant did submit medical evidence, including an April 16, 2008 report from Dr. Crovetti and a brief April 29, 2008 report from Dr. Romano. The physicians did not discuss disability for work during the claimed periods.

¹² The term "disability" as used under the Act means the incapacity, because of injury in employment, to earn the wages which the employee was receiving at the time of injury. *Donald Johnson*, 44 ECAB 540, 548 (1993); 20 C.F.R. § 10.5(17).

¹³ 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.")

¹⁴ 20 C.F.R. § 10.606(b)(2).

¹⁵ *Id.* at § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

The Board finds that appellant did not meet the requirements of 20 C.F.R. § 10.606(b)(2). Appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a new and relevant legal argument or submit relevant and pertinent evidence not previously considered. Accordingly, the Office properly denied the applications for reconsideration without merit review of the claim.

CONCLUSION

The Board finds that appellant did not establish an employment-related disability for the periods claimed. The applications for reconsideration did not meet the requirements of 20 C.F.R. § 10.606(b)(2) and the Office properly denied merit review.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 30, April 10 and March 12, 2008 are affirmed.

Issued: December 11, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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