



In a report dated December 11, 2006, Dr. Evarista Nnadi, a family practitioner, indicated that appellant reported constant back pain, less in intensity since she started physical therapy. She reported that appellant stated that she was unable to return to work. In a form report (CA-20) dated December 11, 2006, Dr. Nnadi diagnosed marked degenerative disc disease, mild bulging at L2-3 and L3-4, and lumbar sprain. She indicated that the lumbar sprain was employment related, but the degenerative condition was not employment related. The period of total disability was October 16, 2006 to January 15, 2007.

Appellant returned to a light-duty job on January 17, 2007. On July 19, 2007 the employing establishment withdrew the light-duty job and appellant stopped working. In a letter dated July 19, 2007, the employing establishment stated that on January 16, 2007 appellant had requested a light-duty assignment "because of a nonwork-related injury...." The employing establishment stated that the light-duty job had been extended three times, but appellant's physician had indicated on May 8, 2007 that appellant had permanent lifting restrictions. Because Dr. Nnadi had indicated that appellant would never be able to perform the essential duties of her regular position, her employment was being terminated. The employing establishment noted that appellant asserted that she was injured on the job, but the Office had denied the claim.

By decision dated August 14, 2007, an Office hearing representative vacated the December 14, 2006 decision. The hearing representative found the condition of lumbar strain had been established as employment related. According to the hearing representative, Dr. Nnadi reported on December 11, 2006 that appellant was improving and since there were no additional reports, she concluded that "the claimant's condition resolved with no further need for treatment." The Office was directed to accept the claim for "lumbar strain, resolved."

On August 31, 2007 appellant filed a claim for compensation (Form CA-7) for the period July 20 to September 1, 2007. The record indicates that on September 6, 2007, the Office issued a compensation payment for wage loss from December 1 to 11, 2006. On October 12, 2007 the Office issued payments for November 28 to 30, 2006 and December 12, 2006 to January 16, 2007.

By decision dated October 19, 2007, the Office denied appellant's claim for compensation commencing July 20, 2007. It found the medical evidence was insufficient to establish the claimed disability.

Appellant requested an oral hearing before an Office hearing representative. She submitted a January 14, 2008 report from Dr. Nnadi, who indicated she never stated that appellant's lumbar strain had resolved. In a report dated March 12, 2008, Dr. Mark Kabins, an orthopedic surgeon, provided results on examination and diagnosed L4-5 and L5-S1 disc protrusion/herniation and low back pain with radiculopathy. He stated that appellant's "work-related injury has played a significant aggravation and role as [it] relates to her low back pain and lower extremity symptomology...."

In a decision dated May 5, 2008, the Office hearing representative affirmed the October 19, 2007 decision. The hearing representative stated that her review of the medical reports contemporaneous to the injury and work stoppage "do not support that the claimant was

totally or partially disabled as a result of the work injury of October 13, 2006.” The hearing representative further stated that the medical evidence did not establish that appellant was working a light-duty position as a result of the accepted work injury.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> When a claimant is working a light-duty job due to an employment injury, and the light duty is no longer available, the claimant has established a compensable disability.<sup>4</sup>

### **ANALYSIS**

The record indicates that appellant returned to a light-duty job on January 17, 2007 and as of July 19, 2007 the employing establishment indicated that light duty was no longer available. The Office decisions in this case did not adequately address the relevant issues with respect to disability commencing July 20, 2007.

The May 5, 2008 Office decision denying the claim for compensation appears to be based on a finding that, at some point prior to January 17, 2007, appellant’s employment-related condition had resolved and therefore the light-duty job was unrelated to the accepted lumbar strain. The hearing representative’s decision did not acknowledge that the Office accepted lumbar strain and paid compensation through January 16, 2007. It is the Office’s burden of proof to establish that the accepted condition has resolved.<sup>5</sup> In the May 5, 2008 decision, the hearing representative made a general statement regarding disability without discussing all of the relevant evidence. The August 14, 2007 Office decision purports to find the condition “resolved” without adequate explanation. The hearing representative in that decision refers to December 11, 2006 reports from Dr. Nnadi, but these reports do not state that appellant’s lumbar strain had resolved.

The case will be remanded to the Office for proper findings on the relevant issues regarding the claim for compensation. If the Office makes a finding the accepted condition or disability had resolved, it must support the finding with specific medical evidence establishing

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> 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).

<sup>4</sup> *Jackie B. Wilson*, 39 ECAB 915 (1988).

<sup>5</sup> *See Kenneth R. Burrow*, 55 ECAB 157 (2003).

the date when the employment-related condition or disability resolved. After such further development as the Office deems necessary, it should issue an appropriate decision on the claim for compensation commencing July 20, 2007.

**CONCLUSION**

The case will be remanded to the Office for a proper decision on the issues presented.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated May 5, 2008 and October 19, 2007 are set aside. The August 14, 2007 decision is reversed with respect to finding that the accepted condition had resolved. The case is remanded to the Office for further action consistent with this decision of the Board.

Issued: January 8, 2009  
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