

lifting heavy trays and packages in the performance of duty. She realized that her condition was caused or aggravated by her employment on November 18, 2006. Appellant stopped work on December 12, 2006. In a statement dated February 2, 2007, the employing establishment controverted the claim.

By report dated January 17, 2007, Dr. Kenneth Accousti, a Board-certified orthopedic surgeon, noted that appellant had diffuse tenderness to light touch. He stated that appellant's "primary problem is probably related to either her cervical spine or something like fibromyalgia." Dr. Accousti indicated that it was unlikely that appellant had a rotator cuff tear. The Office received several diagnostic reports, including January 26, 2007 cervical spine x-rays read by a physician's assistant. A January 30, 2007 cervical spine magnetic resonance imaging (MRI) scan read by Dr. David Glasser, a Board-certified diagnostic radiologist, was normal with the exception of a slight disc bulge at C5-6, with no focal herniation or spinal stenosis.

In a report dated February 14, 2007, Dr. Kenneth Zaslav, a Board-certified orthopedic surgeon, noted that appellant "had pain and numbness in the left arm and some numbness in the right hand after an episode of having to lift much more increased mail than usual during the Christmas rush." He examined appellant and found a full range of motion of the left shoulder and full range of motion of the cervical spine. Dr. Zaslav diagnosed mild cervical radiculopathy at C5-6 and secondary overuse lateral epicondylitis. He placed appellant off work and advised that it would be "for three weeks most likely."

In a February 28, 2007 report, Dr. Rosalia M. Lomeo, Board-certified in internal medicine and rheumatology, agreed that appellant had mild cervical radiculopathy at C5-6 and secondary overuse lateral epicondylitis caused from her repetitive work as a postal worker. In an August 14, 2007 attending physician's report, she noted that appellant's left arm was painful and her right arm was numb. Dr. Lomeo advised that appellant was unable to grip with both hands as it was "very painful." She checked the box "yes" in response to whether she believed the condition was caused or aggravated by an employment activity. Dr. Lomeo also advised that appellant was totally disabled since December 9, 2006.

On August 23, 2007 the Office accepted appellant's claim for mild cervical radiculopathy at C5-6 and bilateral/lateral epicondylitis.¹

On August 23, 2007 appellant filed a Form CA-7 claim for wage-loss compensation for the period December 9, 2006 to August 17, 2007 and on September 7, 2007 filed a claim for the period August 18 to 31, 2007. The employing establishment controverted the claim.

By letter dated September 24, 2007, the Office requested additional medical evidence from appellant. It advised her that the medical evidence should address her disability for work from December 9, 2006 to August 31, 2007. The Office explained that a physician's opinion was crucial to her claim and allotted 30 days within which to submit the requested information.

¹ The Office initially denied appellant's claim on April 19, 2007. However, on August 1, 2007 an Office hearing representative reversed the Office's April 19, 2007 decision, finding that appellant established that she sustained a work-related injury. He noted that appellant could file a Form CA-7 to claim compensation for time lost from work, if any, due to the injury.

On September 24, 2007 appellant further claimed disability for the period September 1 to 14, 2007.

In an August 31, 2007 duty status report, Dr. Lomeo diagnosed mild cervical radiculopathy and lateral epicondylitis. Dr. Lomeo indicated that appellant could not perform any duties.

On October 7, 2007 appellant submitted a further Form CA-7 claims for wage-loss compensation for total disability compensation commencing September 15 to 28, 2007.

In an October 2, 2007 report, Dr. Lomeo noted that appellant's overuse lateral epicondylitis C5-6 cervical radiculopathy, left shoulder and arm pain were caused by repetitive motions of her arm and neck due to her duties as a postal worker. She indicated that appellant was permanently disabled and unable to work since December 9, 2006. In an October 4, 2007 duty status report, Dr. Lomeo diagnosed cervical radiculopathy and lateral epicondylitis and reiterated that appellant was unable to work.

By decision dated October 23, 2007, the Office denied wage-loss compensation from December 9, 2006 to September 28, 2007. It found that the medical evidence did not establish that the accepted medical conditions caused or contributed to her disability for work for the claimed period.

Appellant submitted additional CA-7 claim forms requesting compensation for total disability. She also submitted numerous physical therapy reports and prescriptions from Drs. Zaslav and Lomeo for continuing physical therapy.

On November 15, 2007 appellant's representative requested a hearing, which was held on February 26, 2008. At the hearing, appellant's representative contended that her claim for disability should be compensable as the Office of Personnel management (OPM) found appellant to be disabled.

By decision dated June 27, 2008, an Office hearing representative affirmed the October 23, 2007 decision.

LEGAL PRECEDENT

A claimant seeking benefits under the Federal Employees' Compensation Act² has the burden of proof to establish the essential elements of her claim by the weight of the evidence,³ including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.⁴

² 5 U.S.C. §§ 8101-8193.

³ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

⁴ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

As used in the Act, the term “disability” means incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury.⁵ When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in her employment, she is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.⁶

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.⁷ 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.⁸ 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.⁹

ANALYSIS

The Office accepted appellant’s claim for mild cervical radiculopathy at C5-6 and bilateral lateral epicondylitis. In support of her claim for disability from December 9, 2006 to September 28, 2007, appellant submitted several medical reports.

On January 17, 2007 Dr. Accousti opined that appellant’s “primary problem is probably related to either her cervical spine or something like fibromyalgia.” The Board notes that Dr. Accousti did not express any opinion on whether appellant was disabled for work as of December 9, 2006.

In a report dated February 14, 2007, Dr. Zaslav diagnosed mild cervical radiculopathy at C5-6 and secondary overuse lateral epicondylitis. He placed appellant off work for three weeks, but did not provide any medical rationale explaining why appellant was totally disabled and unable to work due to her accepted conditions.¹⁰ Dr. Zaslav did not explain the reasons why appellant’s accepted mild cervical radiculopathy at C5-6 or bilateral/lateral epicondylitis rendered her totally disabled for work and he did not note any particular findings on examination that supported total disability.

⁵ *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.5(f).

⁶ *Bobby W. Hornbuckle*, 38 ECAB 626 (1987).

⁷ *See Fereidoon Kharabi*, 52 ECAB 291, 293 (2001); *Edward H. Horton*, 41 ECAB 301, 303 (1989).

⁸ *G.T.*, 59 ECAB ____ (Docket No. 07-1345, issued April 11, 2008); *see Huie Lee Goal*, 1 ECAB 180, 182 (1948).

⁹ *G.T., id.*; *Fereidoon Kharabi*, *supra* note 7.

¹⁰ *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

Dr. Lomeo diagnosed mild cervical radiculopathy and lateral epicondylitis. In an August 14, 2007 report, Dr. Lomeo merely stated that appellant was totally disabled commencing December 9, 2006. However, she did not explain the reasons why appellant's accepted conditions caused total disability. Dr. Lomeo's reports are insufficient to establish that appellant was disabled beginning December 9, 2006 as a result of her employment-related conditions.

Dr. Lomeo repeated her diagnoses on August 31, October 2 and 4, 2007 and opined that appellant could not perform any duties. However, she did not explain how any cervical radiculopathy symptoms or epicondylitis impacted appellant's ability to perform her job duties or any modified duties. Dr. Lomeo did not provide any reasoning to support her conclusion that appellant was permanently disabled and unable to work since December 9, 2006 as a result of her accepted conditions. Medical conclusions unsupported by rationale are of diminished probative value.¹¹

Appellant submitted diagnostic reports dated January 26 and 30, 2007, which are insufficient to establish her claim as they do not address the issue of disability or offer an opinion as to whether the claimed disability was causally related to appellant's accepted conditions. The Office also received several physical therapy reports, but lay individuals, such as physical therapists, are not competent to render a medical opinion under the Act.¹²

Appellant's attorney contends that appellant was found to be disabled by OPM and that such finding is sufficient to create a medical conflict under the Act necessitating a referee opinion. The Board has held that the determination of an employee's rights or remedies under other statutory authority does not establish entitlement to benefits under the Act. Under the Act, to establish disability, an employee's injury must be shown to be causally related to an accepted injury or accepted factors of his or her federal employment. For this reason, the determinations of other administrative agencies or courts, while instructive, are not determinative with regard to disability arising under the Act.¹³ The decision by OPM regarding appellant's disability status is not determinative of appellant's claim for disability compensation under the Act or sufficient to create a conflict in medical opinion.¹⁴

¹¹ S.S., 59 ECAB ___ (Docket No. 07-579, issued January 14, 2008); see *Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value).

¹² *David P. Sawchuk*, 57 ECAB 316 (2006). See 5 U.S.C. § 8101(2).

¹³ *J.F.*, 59 ECAB ___ (Docket No. 07-308, issued January 25, 2008). See *Beverly R. Jones*, 55 ECAB 411 n.14 (2004); *Daniel Deparini*, 44 ECAB 657 (1993); *George A. Johnson*, 43 ECAB 712 (1992).

¹⁴ Appellant's attorney cites to *Anneliese Ross*, 42 ECAB 371 (1991), to support that an OPM determination is sufficient to create a conflict in the medical evidence. However, *Ross* addresses, in part, the affect of a federal court's holding regarding whether an injury was sustained in the performance of duty. The Board held that decisions of the federal courts, while instructive, were not binding on the Office or Board. *Ross* does not support that a determination of an administrative body such as OPM may create a medical conflict pursuant to 5 U.S.C. § 8123(a). For there to be a medical conflict under section 8123(a), there must be a disagreement between the physician making the examination for the Office and the physician of the employee. See also 20 C.F.R. § 10.321.

Appellant alleged that she was disabled beginning December 9, 2006 as a result of her accepted employment injury. The medical evidence of record, however, does not establish that her claimed disability was related to her accepted employment injuries. The Board finds that appellant has not submitted sufficient medical evidence to establish her disability commencing December 9, 2006 through September 28, 2007.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she was entitled to wage-loss compensation for the period December 9, 2006 to September 28, 2007.

ORDER

IT IS HEREBY ORDERED THAT the June 27, 2008 decision of the Office of Workers' Compensation Programs' hearing representative is affirmed.

Issued: July 8, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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