

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

B.M., Appellant

and

**U.S. POSTAL SERVICE, MAIN POST OFFICE,
Cypress, TX, Employer**

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**Docket No. 09-32
Issued: July 14, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 3, 2008 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated June 13, 2008 denying her claim for wage-loss compensation for the period December 31, 2005 through January 3, 2006. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether appellant has established that her disability for the period December 31, 2005 through January 3, 2006 was causally related to her accepted December 2, 2004 employment injury.

FACTUAL HISTORY

On August 17, 2006 appellant, then a 63-year-old clerk, filed a traumatic injury claim alleging that she injured her lower back on December 2, 2004 when a chair rolled away while

she was trying to sit down. The Office accepted the claim for lumbar intervertebral disc displacement without myelopathy.¹

The medical evidence submitted by appellant prior to and subsequent to the acceptance of her claim includes progress notes dated March 1 and 7, 2005 and January 19, 2006 and a March 29, 2005 report by Dr. R. David Calvo, a treating physician; magnetic resonance imaging (MRI) scans dated May 7, 2004 and March 2, 2005; and progress notes dated August 3, September 7, November 23, 2005 and for the period January 26, 2006 to February 13, 2007, a March 16, 2005 report and a May 9, 2007 Texas state workers' compensation work status report from Dr. Vivek P. Kushwaha, a treating Board-certified orthopedic surgeon.

On May 7, 2007 the Office received a time analysis form (CA-7a) dated February 26, 2007 for the period January 1, 2005 through December 29, 2006.² Subsequently, it received appellant's claim for compensation (Form CA-7) leave without pay for the period January 1, 2005 through December 29, 2006 and for leave buyback for the period January 1 to December 31, 2005. Appellant noted intermittent use of leave without pay for the period in question. The employing establishment certified that she used 906.93 hours of intermittent leave without pay for the period January 25, 2005 to December 28, 2006.

In a letter dated May 21, 2007, the Office informed appellant that no action would be taken on her claim for wage-loss compensation until she correctly completed and submitted the CA-7 forms. Appellant was informed in order to process her wage-loss claim that she needed to file separate CA-7 forms for leave buyback and leave without pay, a Form CA-7b for her leave buyback and a completed CA-7a listing each date claimed.

In a June 5, 2007 letter, appellant indicated that she was not asking for leave buyback as her claim was for sick and annual leave she had used. She subsequently submitted a May 9, 2007 progress note from Dr. Kushwaha.

In June 12, 2007 time analysis form, appellant detailed the use of leave for the period January 1, 2005 through December 29, 2006. For the period December 31, 2005 to January 6, 2006, she noted using 13.92 hours of annual leave, 4 hours of sick leave and 14.92 hours of leave without pay for rest. Appellant also submitted a claim for compensation (Form CA-7) for the period December 31, 2005 through December 29, 2006, which she checked was for the intermittent use of leave without pay.

On July 20 and 23, 2007 appellant submitted her medical record and Blue Cross medical claim summary sheet listing visits and claims for 2005 and 2006 noting dates of treatment, but did not include the period December 31, 2005 to January 3, 2006.

The Office subsequently received additional medical evidence including Texas state workers' compensation work status reports dated August 8, October 9 and December 11, 2007

¹ Appellant retired from the employing establishment effective January 31, 2007.

² For the period December 31, 2005 to January 27, 2006 appellant noted that she used 110 hours of annual leave, 8 hours of sick leave and 66 hours of leave without pay for doctor visits and rest.

and January 15, 2008 and progress notes for the period October 9, 2007 to January 15, 2008 by Dr. Kushwaha, a July 10, 2007 MRI scan.

On February 12, 2008 appellant submitted CA-7, CA-7a and CA-7b claim forms for the period January 3 to December 28, 2006. She noted using eight hours of sick leave for January 4, 2006. The employing establishment certified that appellant used 998.08 hours of intermittent leave without pay for the period January 25, 2005 to December 28, 2006.

By letter dated February 20, 2008, the Office informed appellant that medical evidence was needed to support her claim for disability.

In response to the Office's February 20, 2008 letter, appellant submitted time analysis forms dated February 15, 2008 for the period January 3 to December 28, 2006; disability notes dated November 23, 2005, January 26, June 13 and August 15, 2006, progress notes dated March 11, 2008 and a March 11, 2008 report from Dr. Kushwaha.

Dr. Kushwaha, in the November 23, 2005 disability statement, stated that appellant was unable to return to work until January 15, 2006.

In the March 11, 2008 report, Dr. Kushwaha noted that he has treated appellant since her back surgery in August 2005. He stated that he advised appellant not to work for the period January 1 to May 16, 2006.

By decision dated June 13, 2008, the Office denied appellant's claim for wage-loss compensation for the period December 31, 2005 through January 3, 2006.³ It noted that appellant had been advised to submit supporting medical evidence, but failed to do so.⁴

LEGAL PRECEDENT

Under the Federal Employees' Compensation Act, the term disability is defined as an inability, due to an employment injury, to earn the wages the employee was receiving at the time of the injury, *i.e.*, an impairment resulting in loss of wage-earning capacity.⁵ For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.⁶ Whether a particular injury causes an employee to become disabled for work and the duration of that disability are medical issues that

³ On November 19, 2008 the Office hearing representative issued a decision pursuant to appellant's hearing request. On March 26, 2009 it denied appellant's claim for compensation for the period December 31, 2005 through January 3, 2006. As appellant requested an appeal before the Board on October 3, 2008, any decision issued by the Office on the same issue that is pending before the Board on appeal, is null and void since the Office and the Board may not have concurrent jurisdiction over the same issue. See *Linda D. Guerrero*, 54 ECAB 556 (2003); *Douglas E. Billings*, 41 ECAB 880 (1990).

⁴ The Board notes that the Office has not issued a decision on appellant's request for wage-loss compensation outside of the period December 31, 2005 to January 3, 2006.

⁵ See *S.F.*, 59 ECAB ____ (Docket No. 08-426, issued July 16, 2008); *Prince E. Wallace*, 52 ECAB 357 (2001).

⁶ *Sandra D. Pruitt*, 57 ECAB 126 (2005); *Dennis J. Balogh*, 52 ECAB 232 (2001).

must be proved by a preponderance of probative and reliable medical opinion evidence.⁷ The fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁸

The Board will not require the Office to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify her disability and entitlement to compensation.⁹

ANALYSIS

The Office accepted appellant's claim for lumbar intervertebral disc displacement without myelopathy. Appellant bears the burden to establish through medical evidence that she was disabled or attending medical appointments during the claimed time period and that this was causally related to her accepted injury. The Board finds that appellant has not established that she was disabled or attending medical appointments during the claimed period of December 31, 2005 to January 3, 2006 as a result of her employment injury.

The only medical evidence of record addressing the December 31, 2005 to January 3, 2006 period of disability is the November 23, 2005 disability note from Dr. Kushwaha, a treating Board-certified orthopedic surgeon, who merely indicated that appellant was totally disabled until January 26, 2006. Dr. Kushwaha did not provide a diagnosis of any condition or an explanation for appellant's disability in the November 23, 2005 note. He did not offer any opinion that appellant's disability was caused by or related to her accepted lumbar intervertebral disc displacement without myelopathy. Dr. Kushwaha's mere statement that appellant was totally disabled, without additional clarification, diagnoses or findings on examination is not sufficient to establish her claim for disability.¹⁰

For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.¹¹ The issue of whether a claimant's disability is related to an accepted condition is a medical question which must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to employment factors and supports that conclusion with sound medical reasoning.¹² The Board finds that there is no such evidence in this case.

⁷ *G.T.*, 59 ECAB ____ (Docket No. 07-1345, issued April 11, 2008); *Gary J. Watling*, 52 ECAB 278 (2001).

⁸ *D.I.*, 59 ECAB ____ (Docket No. 07-1534, issued November 6, 2007); *Manuel Garcia*, 37 ECAB 767 (1986).

⁹ *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹⁰ See *Sandra D. Pruitt*, *supra* note 6.

¹¹ *Amelia S. Jefferson*, *supra* note 9.

¹² *Sandra D. Pruitt*, *supra* note 6.

CONCLUSION

The Board finds appellant has not established that her disability for the period December 31, 2005 through January 3, 2006 was causally related to her accepted December 2, 2004 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 13, 2008 is affirmed

Issued: July 14, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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