

employment-related injury, she returned to light-duty work with restrictions. On January 20, 2005 appellant remained seated in her vehicle for four to five hours while delivering mail because snow had been plowed closely to mailboxes on her route. This task involved twisting, reaching and pulling, which aggravated her back condition.

By letter dated May 19, 2005, the Office advised appellant that she had identified a new work injury as the cause of her back condition. It adjudicated her claim as a new traumatic injury.

Medical records covering the period January 25 through November 7, 2005 from Dr. Kirnjot Singh, an attending Board-certified orthopedic surgeon, Dr. Maria R. Ayala Badar, an internist, and Barbara A. Robe, a physical therapist, addressed appellant's degenerative disc disease, disability and physical restrictions. Diagnostic test results addressed her back condition.

By decision dated February 14, 2006, the Office denied appellant's claim. It found the factual evidence insufficient to establish that the January 20, 2005 incident occurred as alleged. The Office further found the medical evidence insufficient to establish that she sustained an injury causally related to the claimed employment incident.

On February 21, 2006 appellant requested reconsideration. In a February 16, 2006 medical report, Dr. Singh stated that appellant had a disc herniation and degenerative disc disease which were exacerbated by the December 28, 1993 employment-related injury. In a February 20, 2006 report, Dr. Badar stated that appellant's January 20, 2005 employment injury was caused by her letter carrier duties.

By decision dated April 7, 2006, the Office modified the February 14, 2006 decision to find that the January 20, 2005 incident occurred as alleged. However, it found the medical evidence insufficient to establish that appellant sustained an injury causally related to the accepted employment incident.

On May 2, 2006 appellant requested reconsideration. In reports dated April 24 and 27, 2006, Dr. Singh and Dr. Badar opined that the January 2005 employment incident aggravated appellant's preexisting employment-related herniated disc condition.

In a July 19, 2006 decision, the Office set aside the April 7, 2006 decision. It found that the January 20, 2005 employment incident aggravated appellant's preexisting lumbar degenerative disc disease.² By letter dated July 19, 2006, the Office accepted her claim for aggravation of preexisting lumbar degenerative disc disease.

On September 5, 2006 appellant filed a claim for wage-loss compensation for the period May 20 through July 21, 2006. Time analysis forms indicated that she was off work from May 7, 2005 through March 28, 2006. In a September 12, 2006 form report, Dr. Singh stated that appellant suffered from degenerative disc disease, stenosis and chronic back pain. He indicated with an affirmative mark that the diagnosed conditions were caused by the accepted

² The Office also found that appellant was not entitled to continuation of pay or wage-loss compensation for the period January 24 through February 3, 2005 and beginning on April 10, 2006.

January 20, 2005 employment-related injury. Dr. Singh opined that appellant was totally disabled from April to December 31, 2006.

By letter dated October 2, 2006, the Office requested that appellant submit medical evidence establishing that she was totally disabled during the period May 7, 2005 through March 28, 2006.

In an October 2, 2006 report, Dr. Singh stated that he had previously evaluated appellant in April 2006. Appellant experienced excruciating back pain and it was uncomfortable for her to sit. Dr. Singh excused her from work because she could not sit comfortably for a long period of time and she was unable to tolerate any kind of work at the employing establishment. He opined that her work duties caused recurrent exacerbations. Dr. Singh advised that appellant was permanently disabled.

In treatment notes and a report covering the period February 14 through March 7, 2005, Ms. Robe addressed appellant's back problems.

By decision dated January 18, 2007, the Office denied appellant's claim for wage-loss compensation for the period April 1 to December 31, 2006. It found the evidence insufficient to establish that she was totally disabled due to the accepted January 20, 2005 employment-related injury.

On January 29, 2007 appellant, through counsel, requested reconsideration. In a March 31, 2006 report, Dr. Ramesh P. Kanuru, a Board-certified anesthesiologist, noted appellant's complaint of left lower back pain that radiated down to her left leg. He reviewed the history of her medical, family and social background. Dr. Kanuru reported essentially normal findings on physical examination. On sensory examination, he reported decreased sensation over the dorsum of the left foot and lateral aspect of the left lower leg. Dr. Kanuru diagnosed lumbar degenerative disc disease and left lumbar radiculitis. On March 31, 2006 he performed a lumbar discography at L3-4, L4-5 and L5-S1.

In reports dated June 5 and September 11, 2006, Dr. Singh reiterated his prior diagnosis of chronic back pain. A December 4, 2006 report from Steven Bunag, a physician's assistant, noted that appellant suffered from chronic back pain. In an April 2, 2007 report, Dr. Singh stated that appellant was status post posterior spine fusion.

By decision dated April 9, 2007, the Office denied appellant's request for reconsideration on the grounds that the evidence was insufficient to warrant further merit review of her claim.

An April 2, 2007 report of Dr. Adolph R. Yaniz, a Board-certified family practitioner, stated that appellant was status post lumbar fusion.

In a May 9, 2007 report, Dr. Singh reiterated his prior opinion that appellant's degenerative disc disease at L5-S1 was causally related to her January 20, 2005 employment injury.

On May 24, 2007 the Office referred appellant, together with a statement of accepted facts, the case record and a list of questions to be addressed, to Dr. Edward S. Forman, a Board-

certified orthopedic surgeon. It requested an opinion on whether she had any residuals of her January 20, 2005 employment-related aggravation of preexisting degenerative disc disease at L5-S1 and the extent of any such aggravation.

In an April 18, 2007 report, Dr. Singh diagnosed possible spinal stenosis.

On June 7, 2007 appellant requested reconsideration of the Office's January 18, 2007 decision. In a July 11, 2006 report, Dr. Yaniz opined that appellant had bilateral radiculopathy to both lower extremities. In reports dated March 7 and May 1, 2007, Dr. Samir Gupta, a Board-certified psychiatrist, stated that appellant suffered from major depression, chronic back pain and severe psychosocial stressors related to her unemployment and financial difficulties. Appellant had a global assessment function score of 50 to 60. In a February 8, 2007 report, Dr. Singh approved physical therapy for appellant's back pain.

By decision dated July 17, 2007, the Office denied modification of the January 18, 2007 decision. It found the evidence insufficient to establish that appellant was totally disabled from April 1 to December 31, 2006.

In a July 24, 2007 report, Dr. Forman reviewed the history of appellant's January 20, 2005 employment injury and medical treatment and social background. He reported essentially normal findings on physical examination. On x-ray examination, Dr. Forman reported L4-5 fusion mass at the transverse processes. He diagnosed degenerative disc disease of the lumbar spine. Dr. Forman stated that it was difficult to assess whether appellant had residuals of her January 20, 2005 employment injury due to her complaints of continued pain. He recommended an electromyogram (EMG) and functional capacity evaluation (FCE) to assess her functionality.

On September 12, 2007 Loretta Haynes-Hudgins, an occupational therapist and case manager, performed an FCE. She stated that work conditioning or hardening was not recommended based on appellant's current status. Ms. Haynes-Hudgins stated that appellant was significantly limited by high pain levels and poor mobility. She related that appellant could benefit from intervention that would address her high pain levels and mobility and endurance to improve her potential to participate in a work hardening rehabilitation program.

In an October 8, 2007 supplemental report, Dr. Forman reviewed the results of the September 12, 2007 FCE and an EMG performed on September 5, 2007. He opined that, while appellant suffered from chronic low back pain secondary to the aggravation of her preexisting degenerative disc disease at L5-S1, she could return to sedentary work. Dr. Forman noted that she was still objectively symptomatic and provided a treatment plan.

Dr. Julian Ungar-Sargon, a neurologist, performed the September 5, 2007 EMG. He reported chronic changes only in the left lumbar roots at L4-5. Dr. Ungar-Sargon found little evidence of any acute denervation.

In reports dated October 2, 2006 and January 30, 2008, Dr. Singh reiterated his opinion that appellant had chronic back pain. In a July 11, 2007 report, Mr. Bunag stated that appellant sustained degenerative disc disease at L5-S1.

In a February 21, 2008 report, Dr. Gupta related that on August 2, 2007 appellant's diagnosis of a single episode of major depression was changed to depression secondary to a medical condition. He opined that the psychosocial stressors of her back injury contributed to her emotional condition.

By letter dated June 12, 2008, appellant, through counsel, requested reconsideration of the Office's July 17, 2007 decision.

In an August 19, 2008 decision, the Office denied modification of the July 17, 2007 decision. It found the evidence insufficient to establish that appellant was totally disabled during the period April 1 through December 31, 2006 due to her accepted January 20, 2005 employment injury.

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.³ 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.⁴ Whether a particular injury causes an employee to become disabled for work and the duration of that disability are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.⁵ 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.⁶ 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.⁷

ANALYSIS

The Office accepted that appellant sustained an aggravation of preexisting lumbar degenerative disc disease at L5-S1 while in the performance of duty on January 20, 2005. Appellant sought compensation for wage loss, contending that she was totally disabled from April 1 to December 31, 2006. She has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between the claimed disability and the accepted conditions.⁸ The Board finds that appellant did not submit sufficient medical

³ See *Prince E. Wallace*, 52 ECAB 357 (2001).

⁴ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁵ *Gary J. Watling*, 52 ECAB 278 (2001).

⁶ *Manuel Garcia*, 37 ECAB 767 (1986).

⁷ *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁸ *Alfredo Rodriguez*, 47 ECAB 437 (1996).

evidence to establish employment-related disability for the period claimed due to her accepted injury.

Dr. Singh's September 12, 2006 report stated that appellant's degenerative disc disease, stenosis and chronic back pain were caused by the January 20, 2005 employment injury. He advised that she was totally disabled from April to December 31, 2006. However, Dr. Singh failed to adequately explain how appellant's disability was causally related to the accepted employment-related aggravation of preexisting lumbar degenerative disc disease at L5-S1.⁹ On October 2, 2006 he stated that appellant was permanently disabled due to her work duties which caused recurrent exacerbations of her employment-related back condition. Dr. Singh did not address how appellant's disability for the claimed period was due to her accepted employment injury. The Board finds that this report is also insufficient to establish appellant's claim.

Dr. Singh's progress reports reiterated that appellant had chronic back pain. In an April 2, 2007 report, he related that she was status post posterior spine fusion. Dr. Singh's April 18, 2007 report provided a diagnosis of possible spinal stenosis. In a May 9, 2007 report, he stated that appellant's degenerative disc disease at L5-S1 was causally related to the January 20, 2005 employment injury. This evidence did not address appellant's total disability for the claimed period due to her accepted employment injury. The Board finds that Dr. Singh's progress reports are insufficient to establish appellant's claim.

Similarly, Dr. Kanuru's March 31, 2006 report is insufficient to establish appellant's claim. He reported essentially normal findings on physical examination with decreased sensation over the dorsum of the left foot and lateral aspect of the left lower leg on sensory examination. Dr. Kanuru diagnosed lumbar degenerative disc disease and left lumbar radiculitis. He performed a lumbar discography at L3-4, L4-5 and L5-S1 on March 31, 2006. However, Dr. Kanuru did not address whether appellant was totally disabled during the claimed period due to her accepted employment injury. The Board finds that his report is insufficient to establish appellant's claim.

Dr. Yaniz' July 11, 2006 and April 2, 2007 reports, found that appellant was status post lumbar fusion at L4-5 secondary to degenerative lumbar disc disease and that she sustained bilateral radiculopathy of both lower extremities. Dr. Gupta's February 8, 2007 report approved physical therapy for appellant's back pain. In reports dated March 7 and May 1, 2007, he found that she suffered from major depression, chronic back pain and severe psychosocial stressors related to her unemployment and financial difficulties. On February 21, 2008 Dr. Gupta changed his prior diagnosis to depression secondary to her back condition. He opined that the psychosocial stressors of her back injury contributed to her emotional condition. Dr. Forman's October 8, 2007 report stated that appellant's chronic low back pain was due to her accepted January 20, 2005 employment-related injury and that she could return to sedentary work based on the September 5, 2007 EMG and September 12, 2007 FCE. Each of the physicians, however, failed to address whether appellant was totally disabled during the claimed period due to her

⁹ *A.D.*, 58 ECAB ____ (Docket No. 06-1183, issued November 14, 2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

accepted employment injury. The Board finds that their reports are insufficient to establish appellant's claim.

The treatment notes and reports of Ms. Robe, a physical therapist, Mr. Bunag, a physician's assistant, and Ms. Haynes-Hudgins, an occupational therapist, do not constitute probative medical evidence. A physical and occupational therapist¹⁰ or a physician's assistant¹¹ are not physicians as defined under the Act. Therefore, the Board finds that these reports do not constitute competent medical evidence to support appellant's claim.

Appellant has failed to submit rationalized medical evidence establishing that her total disability during the period April 1 to December 31, 2006 resulted from the residuals of her accepted employment-related aggravation of preexisting degenerative disc disease at L5-S1. The Board finds that appellant has not met her burden of proof.

CONCLUSION

The Board finds that appellant has failed to establish that she was totally disabled from April 1 to December 31, 2006 due to her January 20, 2005 accepted employment-related injury.

¹⁰ 5 U.S.C. § 8101(2); *see David P. Sawchuk*, 57 ECAB 316 (2006).

¹¹ *Id.* at § 8102(2); *see Roy L. Humphrey*, 57 ECAB 238, 242 (2005).

ORDER

IT IS HEREBY ORDERED THAT the August 19, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 8, 2009
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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