United States Department of Labor
Employees' Compensation Appeals Board

K.C., Appellant	)	
and	)	**Docket No. 08-1915**
	)	**Issued: March 5, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Louisville, KY, Employer	)	

Appearances:
Dawn R. Elliott, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 30, 2008 appellant filed a timely appeal of a May 14, 2008 decision of the Office of Workers' Compensation Programs, which denied compensation between November 10, 2007 and March 25, 2008. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether appellant has established that he was disabled between November 10, 2007 and March 25, 2008 causally related to his September 14, 2007 employment-related injury.

FACTUAL HISTORY

On October 11, 2007 appellant, then a 34-year-old flat machine operator, filed a traumatic injury claim alleging that on September 14, 2007 he pulled his back and experienced pain down both legs after taking flat tubs off of a belt to load them onto a truck. He stopped work that day and did not return. The employing establishment controverted the claim noting

that appellant had undergone back surgery in April 2007 and had requested light duty on August 10, 2007.

Appellant sought treatment on September 15, 2007 from Judy Gladish, a nurse practitioner, who diagnosed acute myofascial lumbar strain and referred appellant to physical therapy. He also sought treatment from Dr. Paul Goodlett, a Board-certified family medicine specialist. In an October 2, 2007 report, Dr. Goodlett noted that appellant had an onset of back pain two weeks prior. He advised that appellant had lower back pain radiating to the left and right thigh sustained in the context of lifting a heavy object. Dr. Goodlett diagnosed chronic lower back pain. In an undated work restriction form received by the Office on November 1, 2007, he indicated that appellant should be excused from work until November 16, 2007 due to the condition he sustained on September 14, 2007. On November 19, 2007 Dr. Goodlett noted appellant's continued complaint of low back pain. He indicated that appellant's spine was positive for posterior tenderness and lumbar palpation revealed right tenderness, thereby concluding chronic lower back pain. In a November 28, 2007 progress report, Dr. Goodlett reiterated the diagnosis of chronic lower back pain. In an October 2, 2007 radiology report, Dr. Sean Ladson, a Board-certified diagnostic radiologist, noted that appellant was post posterior fusion at the L5-S1 level. He found postoperative changes at the L5-S1 level and no acute osseous abnormality.

In a December 4, 2007 decision, the Office denied appellant's claim on the grounds that the medical evidence did not establish causal relationship.

On December 28, 2007 appellant requested reconsideration and submitted two treatment notes dated December 6, 2007 from Dr. Ghias Arar, a neurologist, who noted that appellant injured his back in April 2007 at which time he was diagnosed with radiculopathy and had undergone surgery. Dr. Arar advised that appellant's back condition was exacerbated at work in September 2007 while lifting a heavy box of magazines. The result was severe lancinating spasms in the low back shooting down to the lower extremities. Dr. Arar concluded from the electromyogram (EMG) results that it was an abnormal study consistent with bilateral advanced L5 radiculopathy. On December 21, 2007 Dr. Dan Hall, a Board-certified diagnostic radiologist, evaluated the computerized tomography (CT) scan results of appellant's lumbar spine. He found they were satisfactory and normal expected postoperative changes of a decompressive laminectomy at the L5-S1 level with no acute changes in lumbar disc spaces.

In a decision dated March 31, 2008, the Office accepted that appellant sustained a temporary aggravation of lumbar radiculopathy at the L5 level. It noted that appellant's aggravation was temporary due to the fact that the medical evidence showed he had a preexisting nonwork-related low back condition. The Office also asked appellant to submit Form CA-7, claim for compensation, if he believed he had any wage loss due to the accepted work injury.

On April 7, 2007 appellant filed a claim for compensation for the period November 10, 2007 to March 25, 2008. In an April 11, 2008 letter, the Office advised him of the factual and medical evidence needed to support his claim. It noted that, while appellant underwent surgery on January 8, 2008, the surgery was not authorized by the Office. The Office also noted that the medical evidence indicated that appellant previously had surgery in 2007 for a low back condition not accepted as work related. In light of the fact that it had only accepted temporary

aggravation of his preexisting injury, it emphasized the need for medical evidence establishing disability for work during the period claimed.

Appellant submitted several medical records from Dr. Mark Myers, an orthopedic surgeon. On January 2, 2008 Dr. Myers indicated that testing indicated that appellant's symptoms were due to failed spinal fusion and postoperative screw migration at L5. He stated his plan for surgical removal and exploration with possible revision fusion if pseudoarthrosis was present. In a January 4, 2008 medical report, Dr. Myers noted that appellant continued smoking after undergoing an L5-S1 instrumented decompression and fusion surgery on May 1, 2007 and his pain subsequently progressed to become severe. He evaluated the CT results and again concluded foraminal encroachment by appellant's screws. As a result, Dr. Myers recommended surgery to remove instrumentation and explore possible revision of the fusion. In a January 8, 2008 operative report, he performed a removal of instrumentation at L5-S1, exploration of fusion and revision L5-S1 fusion. Dr. Myers stated that postoperative neurodiagnostic studies showed abnormalities consistent with radiculitis, and overall the studies suggested pseudoarthrosis due to smoking resulting in screw migration and subsequent symptoms. He further noted that appellant's postoperative diagnosis as back pain and sciatica.

In a decision dated May 14, 2008, the Office denied appellant's claim for compensation between November 10, 2007 and March 25, 2008 finding that the evidence of record failed to support disability from work during this period. It noted that, while appellant may have been disabled from work after the surgery, the medical evidence indicated that the procedure was not related to the accepted aggravation of lumbar radiculopathy and that the surgery was not approved.

LEGAL PRECEDENT

A claimant seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his claim, including that any specific condition or disability for which he claims wage-loss compensation is causally related to the employment injury.[2]

For each period of disability claimed, appellant has the burden of proving by the preponderance of the reliable, probative and substantial evidence that he is disabled for work as a result of his employment injury. 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.[3] 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

[1] 5 U.S.C. §§ 8101-8193.

[2] *Tammy Medley*, 55 ECAB 182 (2003).

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

issue of disability or a basis for payment of compensation.[4] 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.[5]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.[6]

ANALYSIS

The Office accepted that appellant sustained a temporary aggravation of lumbar radiculopathy at the L5 level. Appellant claims that this injury caused his disability for employment from November 10, 2007 through March 25, 2008. However, this contention is not supported by the medical evidence of record.

On December 6, 2007 Dr. Arar treated appellant for back pain exacerbation from the September 14, 2007 work-related injury. However, he did not address any particular period of disability in his treatment notes. Dr. Arar noted that appellant sustained an exacerbation of his preexisting back condition while at work in September 2007. However, he did not address whether the work-related exacerbation caused any disability beginning November 10, 2007 or provide any reasons regarding why any disability would be due to the work-related exacerbation and not appellant's preexisting nonwork-related lower back condition and failed spinal fusion.[7]

Dr. Goodlett's undated work restriction indicated disability from September 14 through November 16, 2007. However, he does not identify the accepted work injury or address the reasons why any period of disability would be due to the accepted employment-related temporary aggravation of L5 radiculopathy. Therefore, this work restriction form is insufficient to establish any compensable disability beginning November 10, 2007. In subsequent reports, Dr. Goodlett generally noted treating appellant for lower back pain without differentiating between whether he was treating appellant's accepted aggravated lumbar radiculopathy or his preexisting back condition. Given appellant's concurrent underlying back condition, such a

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

[5] *G.T., supra* note 4; *Fereidoon Kharabi, supra* note 3.

[6] *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[7] *See Mary Ruddy*, 49 ECAB 545 (1998) (the Board held that a physician's general conclusions regarding causal relationship did not provide the necessary medical rationale to explain why medically the employment factors would have caused the diagnosed condition).

distinction is necessary to support his claim for disability causally related to the accepted temporary aggravation of his low back condition.

The record also contains several reports and treatment notes from Dr. Myers, who performed a revision fusion at L5-S1 after noting that the screws from a May 1, 2007 nonwork-related surgery had migrated. Dr. Myers did not address whether appellant had any disability beginning November 10, 2007 due to the accepted work injury. He also did not indicate that appellant's 2008 surgery was in any manner related to the accepted condition. As a result, the reports from Dr. Myers do not support work-related disability as they instead suggest that January 8, 2008 surgery was necessitated by nonwork factors.[8]

Moreover, other medical reports of record, such as reports of diagnostic testing, also do not specifically address whether appellant had any employment-related disability from November 10, 2007 to March 25, 2008.[9] Treatment notes from Ms. Gladish are not considered medical evidence as nurses are not considered physicians under the Act, and therefore they cannot provide a medical opinion.[10] Consequently, the medical evidence does not establish that appellant was disabled for work between November 10, 2007 and March 25, 2008 as a result of the accepted temporary aggravated radiculopathy injury.

CONCLUSION

The Board finds that appellant has not established that he was disabled between November 10, 2007 and March 25, 2008 causally related to his September 14, 2007 injury.

[8] *See Kennett O. Collins, Jr.*, 55 ECAB 649 (2004) (while the Office is obligated to pay for treatment of employment-related conditions, the employee has the burden of establishing that the expenditure is incurred for treatment of the effects of an employment-related injury or condition).

[9] *See K.W.*, 59 ECAB ___ (Docket No. 07-1669, issued December 13, 2007) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[10] Registered nurses and licensed practical nurses are not "physicians" as defined under the Act. Their opinions are of no probative value. *Roy L. Humphrey*, 57 ECAB 238 (2005); *see* 5 U.S.C. § 8101(2) (defining the term "physician"); *see also Charley V.B. Harley*, 2 ECAB 208 (1949) (the Board held that medical opinion, in general, can only be given by a qualified physician).

ORDER

IT IS HEREBY ORDERED THAT the May 14, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 5, 2009
Washington, DC

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

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

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