

strain and paid compensation for wage loss. Appellant began working modified duty on November 25, 1998. The Office authorized right shoulder surgery which occurred on July 17 and September 12, 2003. Appellant accepted a modified job offer and returned to work on January 14, 2004.

On June 15, 2007 appellant filed a claim for intermittent wage-loss compensation for the period May 22 to 25, 2007. In support of his claim, he submitted a May 22, 2007 visit information form from Dr. V.M. Guterrez-Contreras which noted that he gave appellant lumbosacral injections and a disability slip indicating that he was totally disabled for the period May 23 to 26, 2007.¹

By letter dated June 21, 2007, the Office informed appellant that his wage-loss claim for the period May 22 to 25, 2007 could not be processed as there was no evidence showing that he was unable to perform his light-duty work or his condition had worsened.

On January 19, 2008 Dr. Kevin F. Hanley, a second opinion Board-certified orthopedic surgeon, opined that appellant's lumbar strain had resolved and that any current disability was related to nonwork-related degenerative spondylolisthesis and spinal stenosis.

On June 17, 2008 appellant filed a claim for intermittent wage-loss compensation for the period May 9 to June 27, 2008. In an attached time analysis form, he noted that he was scheduled for paid vacation leave for the period May 12 to 23, 2008 and that he used leave without pay for May 9, 2008 as he was totally disabled that day.

By letter dated June 27, 2008, the Office informed appellant his wage-loss claim could not be processed as there was no supporting medical evidence for the period claimed on his CA-7 form.

In response to the Office's letter, appellant submitted medical evidence including a May 30, 2008 progress note and treatment/work status reports dated April 28, May 9 and 30, 2008 from Dr. Ted H. Robinson, a treating Board-certified physiatrist and pain medicine physician. In the April 28, 2008 treatment/work status report, Dr. Robinson noted neck and shoulder injuries and indicated that appellant was totally disabled until approximately June 26, 2008. He indicated that he saw appellant in the May 9 and 30, 2008 treatment/work status reports and that he was totally disabled until June 27, 2008. In the May 30, 2008 report, Dr. Robinson reported that a May 9, 2008 electrodiagnostic revealed acute bilateral lumbosacral radiculopathy and a lumbar magnetic resonance imaging (MRI) scan showed L4-5 disc desiccation with spondylolisthesis and severe hypertrophy. He noted that appellant was seen that day for a lumbar epidural and that he was totally disabled for the next six weeks.

By decision dated July 25, 2008, the Office denied appellant's claim for wage-loss compensation for the period May 22 to 25, 2007.

¹ The signature is illegible.

On August 4, 2008 appellant filed a claim for intermittent wage-loss compensation for the period July 13 to 31, 2008. In an attached time analysis form, he noted using 22 hours of leave without pay during this period or two hours per day.

Dr. Robinson, in progress notes dated July 17, 2008, noted that appellant was last seen on July 3, 2008. He indicated that appellant was capable of working four to six hours per day with no lifting more than 30 pounds. In treatment/work status reports dated July 17 and 22, 2008, appellant was seen by Dr. Robinson on those days and released to return to work with restrictions for four to six hours per day.

On August 7, 2008 appellant submitted a July 3, 2008 progress note and treatment/work status report from Dr. Robinson. In the treatment/work status report, Dr. Robinson indicated that appellant was totally disabled until August 8, 2008. In his progress note, he noted that appellant continued to have lumbar spine pain and “major discomfort affecting both lower extremities with prolonged standing as well as with ambulation.” A physical examination revealed pain on lumbosacral range of motion and that appellant continues to have standing and walking symptoms.

By letter dated August 12, 2008, the Office informed appellant that his wage-loss claim for partial disability for the period July 17 to 31, 2008 could not be processed as there was no evidence showing that he was unable to perform his light-duty work or his condition had worsened.

On August 18, 2008 appellant filed a claim for intermittent wage-loss compensation for the period August 1 to 31, 2008. In an attached time analysis form, he detailed the leave without pay for August 1 to 15, 2008.

On August 21, 2008 the Office received Dr. Robinson’s July 24, 2008 progress note. Dr. Robinson noted that appellant was last seen on July 17, 2008 when he returned to modified work. The work restrictions included allowing breaks from standing, walking and sitting. A physical examination revealed pin near the lumbosacral joint.

Appellant subsequently submitted an August 18, 2008 operative report for bilateral L4-5 transforaminal epidural corticosteroid injections and August 18, 2008 treatment/work status report from Dr. Robinson. In the August 18, 2008 treatment/work status report, Dr. Robinson indicated that appellant was totally disabled until August 24, 2008, but capable of working modified duty four to six hours per day effective August 25, 2008.

On August 25, 2008 appellant filed a claim for intermittent wage-loss compensation and submitted a time analysis form for the period August 18 to 22, 2008.

By decision dated September 3, 2008, the Office denied appellant's claim for a recurrence of disability beginning May 9, 2008.²

LEGAL PRECEDENT -- ISSUE 1

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

The Board has long recognized that, under section 8103,⁸ payment of expenses incidental to the securing of medical services encompasses payment for loss of wages incurred while obtaining medical services. An employee is entitled to disability compensation for loss of wages incidental to treatment for an employment injury.⁹

ANALYSIS -- ISSUE 1

The Office accepted appellant's claim for low back and right shoulder strain. On June 15, 2007 appellant filed a claim for intermittent wage-loss compensation for the period

² The Board notes that, following the September 3, 2008 decision, the Office received additional evidence. However, the Board may not consider new evidence on appeal. *See* 20 C.F.R. § 501.2(c); *J.T.*, 59 ECAB ____ (Docket No. 07-1898, issued January 7, 2008); *G.G.*, 58 ECAB ____ (Docket No. 06-1564, issued February 27, 2007). *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

³ *See S.F.*, 59 ECAB ____ (Docket No. 08-426, issued July 16, 2008); *Prince E. Wallace*, 52 ECAB 357 (2001).

⁴ *Sandra D. Pruitt*, 57 ECAB 126 (2005); *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁵ *G.T.*, 59 ECAB ____ (Docket No. 07-1345, issued April 11, 2008); *Gary J. Watling*, 52 ECAB 278 (2001).

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

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

⁸ 5 U.S.C. § 8103.

⁹ *Daniel Hollars*, 51 ECAB 355 (2000), *Antonio Mestres*, 48 ECAB 139 (1996), *Henry Hunt Searles, III*, 46 ECAB 192 (1994), *Myrtle B. Carlson*, 17 ECAB 644 (1966); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computing Compensation*, Chapter 2.901.16(a) (December 1995).

May 22 to 25, 2007. He bears the burden to establish through medical evidence that he was disabled or attending medical appointments during the claimed time periods and that this was causally related to his accepted injury.

The evidence relevant to appellant's wage-loss claim for the period May 22 to 25, 2007 includes a May 22, 2007 visit information form and a May 23, 2007 disability slip which indicated that he was totally disabled for the period May 23 to 26, 2007.

The May 23, 2007 disability slip excusing appellant from work, however, failed to address whether appellant's disability was due to his accepted right low back and right shoulder strain or whether any medical services were rendered on those days. The disability slip merely notes that appellant is ill and unable to work for the period mentioned. As this disability slip fails to offer any opinion on whether appellant was disabled due to his accepted condition this medical excuse note is of diminished probative value.¹⁰

The May 22, 2007 visit information form is also insufficient to support any disability for that day. The form noted that appellant was given a lumbosacral injection by the physician, but contained no diagnosis or explanation as to how the treatment was related to appellant's accepted lower back and right shoulder strains. Nonetheless, as the signature on the visit information form is illegible, rendering it of diminished probative value.¹¹ Moreover, there is no evidence that the injection was authorized by the Office and the form does not contain a physician's opinion as to how the lumbosacral injection was causally related to appellant's accepted condition. 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.¹² Appellant bears the burden to submit probative medical evidence to establish that his disability is causally related to his accepted employment conditions.

There is no other probative medical evidence of record which addresses whether appellant was disabled on the dates claimed or explaining why he lost time from work due to treatment for his accepted conditions. Appellant has failed to submit sufficient rationalized medical opinion evidence to establish that he was unable to work on the days claimed. He has failed to establish that he was disabled or undergoing medical treatment and, thus, is not entitled to wage-loss compensation for the days claimed. The Board finds that appellant has not established his claim for wage-loss compensation during the period May 22 to 26, 2007.

LEGAL PRECEDENT -- ISSUE 2

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position, or the medical evidence establishes that she can perform the light-duty position, the employee has the burden to establish, by the weight of the reliable, probative and substantial evidence, a recurrence of total disability,

¹⁰ See *Sandra D. Pruitt*, 57 ECAB 126 (2005).

¹¹ See *R.M.*, 59 ECAB ____ (Docket No. 08-734, issued September 5, 2008); *Merton J. Sills*, 39 ECAB 572 (1988).

¹² *K.W.*, 59 ECAB ____ (Docket No. 07-1669, issued December 13, 2007); *Michael E. Smith*, 50 ECAB 313 (1999).

and show that he cannot perform such light duty.¹³ As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.¹⁴

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.¹⁵ 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.¹⁶ 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.¹⁷

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.¹⁸ To do so would essentially allow an employee to self-certify his disability and entitlement to compensation.¹⁹

Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work.²⁰ Appellant's burden of proving she was disabled on particular dates requires that she furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with medical reasoning.²¹ Where no such rationale is present, the medical evidence is of diminished probative value.²²

ANALYSIS -- ISSUE 2

As noted above the Office accepted that appellant sustained lower back and right shoulder strains in the performance of duty. Appellant accepted a modified job offer and returned to work on January 14, 2004. The issue is whether he has established that he was disabled beginning May 9, 2008 causally related to his accepted conditions of lower back and right shoulder pain.

¹³ *S.F.*, 59 ECAB ____ (Docket No. 07-2287, issued May 16, 2008).

¹⁴ *J.F.*, 58 ECAB ____ (Docket No. 06-186, issued October 17, 2006); *Terry R. Hedman*, 38 ECAB 222 (1986).

¹⁵ *Supra* note 3.

¹⁶ *Supra* note 4.

¹⁷ *Supra* note 5.

¹⁸ *S.S.*, 59 ECAB ____ (Docket No. 07-579, issued January 14, 2008); *S.M.*, 58 ECAB ____ (Docket No. 06-536, issued November 24, 2006).

¹⁹ *Supra* note 7.

²⁰ *S.F.*, *supra* note 3.

²¹ *Ronald A. Eldridge*, 53 ECAB 218 (2001).

²² *Mary A. Ceglia*, 55 ECAB 626 (2004).

On appeal appellant contends that the medical evidence he submitted from his treating physician and September 17, 2008 report from Dr. Robinson established that his recurrence of disability is due to his accepted low back condition. Initially, the Board notes that its jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision.²³ Since Dr. Robinson's September 17, 2008 report was submitted following the September 3, 2008 decision, the Board cannot consider this evidence. The Board finds the medical evidence of record is insufficient to establish that appellant sustained a recurrence of disability beginning May 9, 2008.

In support of his claim for intermittent disability beginning May 9, 2008, appellant submitted various progress notes, reports and work/status treatment notes from Dr. Robinson who indicated that appellant was totally disabled in work/status treatment notes dated April 28, May 9 and 30 and August 18, 2008 and partially disabled in treatment/work status reports dated July 17 and 22, 2008. Dr. Robinson noted physical findings and treatment given in progress notes dated May 30, July 3, 17 and 24, 2008. He also noted that appellant was either totally or partially disabled in the various progress notes. However, these work/status treatment and progress notes are of limited probative value as Dr. Robinson failed to provide any medical rationale explaining how and why appellant became disabled due to his accepted injury or unable to continue work at his light-duty position beginning May 9, 2008. Without any explanation to support that appellant was disabled on or after May 9, 2008 due to his accepted conditions of lower back and right shoulder pain, these work/status treatment and progress notes are insufficient to meet appellant's burden of proof.²⁴

The Board finds that appellant has failed to establish either a change in the nature and extent of his light-duty job requirements or a change in the nature and extent of his injury-related condition beginning May 9, 2008. As he failed to meet his burden of proof, the Office properly denied his claim for a recurrence of disability.

CONCLUSION

The Board finds that appellant has not established entitlement to wage-loss compensation for the period May 22 to 25, 2007. The Board further finds that he did not meet his burden of proof to establish that he sustained a recurrence of disability commencing on May 9, 2008 causally related to his accepted conditions of lower back and right shoulder pain.

²³ See *J.T.*, 59 ECAB ___ (Docket No. 07-1898, issued January 7, 2008) (the Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision).

²⁴ *T.F.*, 58 ECAB ___ (Docket No. 06-1186, issued October 19, 2006 (a medical report is of limited probative value on a given medical question if it is unsupported by medical rationale)).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 3 and July 25, 2008 are affirmed.

Issued: October 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