United States Department of Labor
Employees' Compensation Appeals Board

L.M., Appellant	)	
and	)	**Docket No. 08-2220**
	)	**Issued: September 25, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Grand Rapids, MI, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 7, 2008 appellant filed a timely appeal of the June 26, 2008 decision of the Office of Workers' Compensation Programs, which denied modification of its July 17, 2006 decision, which denied appellant's request for disability compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this claim.

ISSUE

The issue is whether appellant has met his burden of proof in establishing that he was disabled from November 7, 2005 and continuing due to his June 10, 2005 employment injuries.

FACTUAL HISTORY

On June 10, 2005 appellant, then a 44-year-old letter carrier, injured his right shoulder and neck when he was involved in a motor vehicle accident at work. He did not stop work and was placed on limited duty. In a June 10, 2005 treatment note, Dr. Pamela Sanchez, a Board-certified family practitioner, diagnosed right rotator cuff strain and cervical strain. In a July 12, 2005 statement, appellant noted that he previously had right rotator cuff surgery for an accepted

injury under claim File No. xxxxxx608.[1] He also indicated that he injured his neck and shoulder while closing a pool cover at home. The Office accepted the claim for right rotator cuff strain and cervical strain.

A September 24, 2005 magnetic resonance imaging (MRI) scan of the cervical spine read by Dr. Alain Perlow, a Board-certified diagnostic radiologist, revealed multilevel foraminal stenosis, left foramen at C3-4, bilaterally at C4-5, the left at C5-6 and the left at C5-7. A September 30, 2005 treatment note from Dr. Mark E. Meyer, a Board-certified neurosurgeon and treating physician, diagnosed foraminal stenosis with disc protrusions at multiple levels. In an October 21, 2005 report, Dr. Jonathan Hopkins, a Board-certified neurosurgeon, diagnosed cervical spondylosis, without cord compression, C5 radiculopathy, shoulder disease, hypertension and gout by history. He noted that appellant should have surgery. In an October 26, 2005 report, Dr. Daniel R. Marsh, a Board-certified physiatrist noted that appellant's electromyogram showed C5 radiculopathy and moderate to severe right median mononeuropathy. A November 10, 2005 left shoulder MRI scan, read by Dr. Elizabeth Gaary, a Board-certified diagnostic radiologist, noted bony spurring at the acromioclavicular (AC) joint, tendinosis of the supraspinatus and infraspinatus tendons and degenerative subchondral cyst of the glenoid.

In a November 7, 2005 disability certificate, Dr. Meyer advised that appellant was disabled until November 29, 2005. In a duty status report also dated November 7, 2005, he diagnosed spondylolisthesis and foraminal stenosis and opined that appellant could not return to work. In a November 7, 2005 treatment note, Dr. Meyer recommended right sided foraminotomies at C4-5 and C5-6. In a November 29, 2005 disability slip, he placed appellant off work until "after surgery and healed." In a November 29, 2005 progress report, Dr. Meyer indicated that the right shoulder MRI scan showed extensive inflammation in the AC joint and tendinitis. He stated that appellant had bilateral carpal tunnel syndrome, bilateral shoulder pathology and cervical stenosis. Dr. Meyer opined that appellant should proceed with a cervical laminectomy, C4 through C6, with bilateral foraminotomies. In a December 1, 2005 duty status report, he diagnosed spondylolisthesis and stenosis. In response to a question regarding appellant's ability to work, Dr. Meyer indicated that appellant was awaiting authorization for surgery.

On December 1, 2005 appellant submitted Form CA-7's requesting wage-loss compensation for total disability for the period November 7 to 26, 2005. The Office continued receiving CA-7 forms for subsequent periods.

On December 6, 2005 the Office advised appellant that it had received his November 29, 2005 disability slip that placed him off work until "after surgery and healed." It explained that

[1] Appellant also has several prior claims. A December 15, 2000 injury was accepted for left elbow contusion and lumbosacral strain. The Office accepted a December 2001 claim for aggravation of preexisting right great toe deformity and authorized toe surgery on September 5, 2003. It accepted right foot metatarsalgia 2nd, 3rd and 4th toes. On June 2002 the Office accepted appellant's claim for right rotator cuff strain. It accepted a March 2004 claim for bilateral carpal tunnel syndrome. Restrictions based on these claims included no pushing over 40 pounds, no pulling over 38 pounds, no lifting over 50 pounds, limited squatting, kneeling and climbing three to four hours per day due to the right foot condition.

spondylolisthesis and foraminal stenosis were typically preexisting degenerative conditions and were not accepted. The Office requested that appellant provide a reasoned opinion from his physician addressing whether his disability from November 7, 2005 was related to right rotator cuff strain and cervical strain.

On December 20, 2005 the Office referred appellant to Dr. Bruce D. Abrams, a Board-certified orthopedic surgeon, for a second opinion. In his January 13, 2006 report, Dr. Abrams described appellant's history of injury and treatment and diagnosed preexisting degenerative arthritis and cervical spondylosis, which were temporarily aggravated by the June 10, 2005 work injury. Dr. Abrams explained that the temporary aggravation caused C5 radiculopathy on the right. He opined that appellant could return to work activity within the previous restrictions, which were related to his right foot injury. Dr. Abrams noted the restrictions included three hours walking, one hour standing, lifting 20 pounds regularly and 30 pounds maximum. He advised that the current back conditions were not employment related. Dr. Abrams explained that there were no objective findings to support continuing residuals of any work-related back or shoulder condition of the cervical spine. He indicated that appellant was unable to work until his preexisting nonwork-related condition of the cervical spine was corrected by surgery. Dr. Abrams opined that appellant could return to the work he was doing prior to his June 10, 2005 employment injury.

In a January 16, 2006, attending physician's report, Dr. Meyer diagnosed cervical spondylostenosis and foraminal stenosis. He advised that appellant did not previously have a history of a preexisting injury and checked a box "yes" in response to whether he believed that appellant's condition was caused or aggravated by an employment activity. Dr. Meyer opined that appellant was currently awaiting authorization for surgery in response to whether appellant could return to work.

On February 13, 2006 the Office requested that Dr. Meyer review Dr. Abrams' report and provide his opinion about appellant's condition. In a February 16, 2006 report, Dr. Meyer opined that appellant's cervical spondylostenosis was caused or aggravated by repetitive bending or twisting of the neck and opined that he felt that "it may be rendered symptomatic by an action such as he describes." He advised that appellant should have surgery, as appellant had not responded to conservative treatment and could not tolerate work.

By letter dated February 22, 2006, the Office requested that Dr. Abrams clarify whether appellant had returned to his baseline in relation to his June 10, 2005 and December 15, 2000 work injuries. It also requested that he clarify whether the aggravation of appellant's preexisting spondylosis, which caused the C5 radiculopathy on the right had ceased or if it was related to preexisting degenerative arthritic condition. The Office also requested that Dr. Abrams provide an opinion regarding the requested surgery and an opinion regarding appellant's ability to return to work and its relation to his accepted injuries.

In a March 8, 2006 report, Dr. Meyer noted that appellant had pain in the neck going down into the right arm and shoulders for slightly more than six months. He opined that "this appears to be aggravated after a motor vehicle collision." Dr. Meyer diagnosed C4-6 cervical spondylosis, stenosis, bilateral upper extremity radiculopathy, hypertension, gastroesophageal

reflux disease and allergic rhinitis. He recommended decompressive laminectomy C4-6 with bilateral foraminotomies.

In a March 14, 2006 supplemental report, Dr. Abrams opined that appellant's cervical spine problems were due to his preexisting degenerative arthritis or cervical spondylosis, which was demonstrated on the x-rays. He recommended discectomy, fusion and foraminotomy. Regarding the work injury, the physician explained that it was a temporary aggravation and should have cleared within a period of six weeks. Dr. Abrams indicated that the underlying pathology and problems with the cervical spine were ongoing and should be corrected; however, they were not directly related to the motor vehicle accident or work-related injury. Regarding appellant's December 2000 lumbosacral strain, Dr. Abrams noted that emergency room documentation and imaging showing lumbar spondylosis was also present. Dr. Abrams advised that his examination of the lumbar spine was normal such that there were no residuals from the prior injury. He opined that he could not state with medical certainty that appellant's pain had reached baseline regarding the temporary aggravation to the cervical spine with the motor vehicle accident. Dr. Abrams opined that appellant's continued discomfort, was related to his underlying and continuing pathology of degenerative arthritis of the cervical spine and his inability to work was due to the cervical spondylosis.

On March 21, 2006 the Office provided Dr. Meyer with Dr. Abrams' supplemental report and requested his opinion. In an April 13, 2006 return to work slip, Dr. Meyer advised that appellant could work with restrictions on lifting more than 20 pounds and bending or twisting from the waist. The Office also received several physical therapy notes.

In a July 17, 2006 decision, the Office denied the claim for compensation as the medical evidence did not show that appellant was disabled for work beginning November 7, 2005 as a result of the accepted work injury of June 10, 2005 or a change in his limited duties. The Office also denied the request for authorization for surgery, which was performed on March 8, 2006.

In July 10 and 31, 2007 letters, appellant requested reconsideration. He submitted a May 23, 2006 report in which Dr. Meyer noted that appellant was postdecompressive cervical laminectomy and foraminotomy for cervical spondylostenosis. Dr. Meyer stated that this caused appellant's neck and bilateral arm symptoms, which had resolved. He opined that appellant's symptoms were "due to the cervical spondylostenosis." On November 27, 2006 Dr. Meyer advised that appellant could return to full duty without restrictions.

By decision dated August 9, 2007, the Office denied appellant's request for reconsideration on the grounds that the request was untimely filed. On October 29, 2007, appellant appealed to the Board. In a May 20, 2008 decision, the Board found that appellant submitted a timely reconsideration request and remanded the case for the Office to issue an appropriate decision.[2]

On May 22, 2008 appellant asked that the Office compensate him for lost wages. He enclosed additional evidence and included copies of previously submitted documentation. The

[2] Docket No. 08-240 (issued May 20, 2008).

additional evidence included a medical article from the Mayo Foundation on spinal stenosis. The Office also received a January 11, 2006 nurse's letter.

In a June 26, 2008 decision, the Office denied modification of its July 17, 2006 decision.

LEGAL PRECEDENT

A claimant seeking benefits under the Federal Employees' Compensation Act[3] ("Act") has the burden of proof to establish the essential elements of her claim by the weight of the evidence,[4] 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.[5]

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.[6] 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.[7]

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.[8] 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.[9] 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.[10]

---

[3] 5 U.S.C. §§ 8101-8193.

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

[5] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] *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).

[7] *Bobby W. Hornbuckle*, 38 ECAB 626 (1987).

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

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

[10] *G.T., supra* note 9; *Fereidoon Kharabi, supra* note 8.

ANALYSIS

The Office accepted appellant's claim for right rotator cuff strain and cervical strain. On December 1, 2005 appellant filed Form CA-7's for wage-loss compensation for disability for the period beginning November 7, 2005. The Office advised appellant of the evidence needed to establish his claim. Appellant, however, did not submit reasoned medical evidence to establish that his present condition was causally related to his accepted injury. He did not submit a medical report in which his treating physician explained why his continuing condition or disability would be related to the accepted injury. The Board also notes that there is no evidence showing a change in the nature and extent of the light-duty job requirements.[11]

In support of his claim for disability beginning November 7, 2005, appellant submitted several reports from his treating physician, Dr. Meyer. The relevant reports include Dr. Meyer's January 16, 2006, attending physician's report, in which he repeated his diagnoses of spondylolisthesis and stenosis and advised that appellant did not previously have a history of a preexisting injury. He checked the box "yes" in response to whether he believed appellant's condition was caused or aggravated by an employment activity. The Board has held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.[12] Dr. Meyer did not offer a rationalized medical opinion as to how appellant's employment caused or aggravated his condition. In his February 16, 2006 report, he attempted to explain that appellant's condition of cervical spondylostenosis was caused or aggravated by repetitive bending or twisting of the neck and opined that he felt that "it may be rendered symptomatic by an action such as he describes." Dr. Meyer recommended surgery as appellant was unable to work. The record reflects, though, that appellant was involved in a motor vehicle accident on June 10, 2005, not a history of repetitive bending or twisting of the neck. Furthermore, appellant indicated that he injured his neck and shoulder while lifting a pool cover at home. Dr. Meyer does not explain how he arrived at his conclusion that appellant is unable to perform any type of work related to a work injury.

To establish causal relationship, a claimant must submit a physician's report in which the physician reviews the employment factors identified by the claimant as causing the claimed condition and, taking these factors into consideration as well as findings upon examination, state whether these employment factors caused or aggravated the diagnosed conditions and present medical rationale in support of his or her opinion.[13] Likewise, in the March 8, 2006 report, Dr. Meyer diagnosed C4-6 cervical spondylosis and stenosis as well as other nonaccepted conditions such as bilateral upper extremity radiculopathy, hypertension, gastroesophageal reflux disease and allergic rhinitis. He opined that appellant's condition appeared to be aggravated after a motor vehicle collision." The Board has held that medical reports that are speculative or

[11] *See Terry R. Hedman*, 38 ECAB 222 (1986); *see also* 20 C.F.R. § 10.5(x) for the definition of a recurrence of disability. The Board finds that there is no credible evidence which substantiates that appellant experienced a change in the nature and extent of the light-duty requirements or was required to perform duties which exceeded his medical restrictions.

[12] *Sedi L. Graham*, 57 ECAB 494 (2006).

[13] *D.D.*, 57 ECAB 734 (2006).

equivocal in character have little probative value.[14] Furthermore, Dr. Meyer did not provide any opinion that appellant was disabled and unable to work as a result of his accepted conditions. In a May 23, 2006 report, Dr. Meyer opined that appellant's symptoms were "due to the cervical spondylostenosis." The Board again notes that this was not an accepted condition and there is no discussion relating this condition to factors of his employment. Furthermore, he did not provide any opinion that appellant was disabled and unable to work during the aforementioned period.

Other medical reports contained in the record did not address the period or disability or offer a specific opinion on causal relationship. Medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof.[15]

Appellant also submitted an internet article from the Mayo Clinic on spinal stenosis. The Board has held that newspaper clippings, medical texts and excepts from publications are of no evidentiary value in establishing a causal relationship between a claimed condition and an employee's federal employment as such materials are of general application and are not determinative of whether the specific condition claimed is related to the particular employment factors alleged by the employee.[16] The Office also received several physical therapy and nurses reports. Lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under the Act.[17] These reports are of no probative value.

The Board also notes that Dr. Abrams, the second opinion physician, in a report dated January 13, 2006, determined that appellant's work stoppage was not work related. Dr. Abrams found that appellant had several preexisting conditions which included cervical spondylosis and preexisting degenerative arthritis throughout the spine. While he noted that these conditions were temporarily aggravated by the June 10, 2005 employment injury, he explained that there were no objective findings to support continuing residuals of any work-related back or shoulder condition of the cervical spine. Dr. Abrams recommended surgery but he explained that it was due to the preexisting nonwork-related degenerative arthritis. He indicated that appellant was unable to work until his preexisting and nonwork-related condition of the cervical spine was corrected. Regarding appellant's work-related back and right shoulder condition, the physician noted that appellant was able to return to the work he was doing prior to the June 10, 2005 work injury. In his March 14, 2006 supplemental report, Dr. Abrams opined that appellant's problems in the cervical spine were due to his preexisting degenerative arthritis or cervical spondylosis. He also explained that the work injury caused a temporary aggravation that should have cleared within six weeks. Dr. Abrams indicated that the underlying pathology and problems with the cervical spine were ongoing and should be corrected; however, they were not work related. He also explained that appellant's continued discomfort, was related to his underlying and continuing pathology of degenerative arthritis of the cervical spine and his inability to work was due to the cervical spondylosis.

[14] *See Vaheh Mokhtarians*, 51 ECAB 190 (1999).

[15] *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

[16] *William C. Bush*, 40 ECAB 1064, 1075 (1989).

[17] *David P. Sawchuk*, 57 ECAB 316 (2006).

In the instant case, none of the medical reports submitted by appellant contained a rationalized opinion stating appellant could no longer perform the duties of his light-duty position and why any such disability or continuing condition beginning November 7, 2005 would be due to the accepted conditions. The Board finds that appellant has failed to submit rationalized medical evidence establishing that his disability from November 7, 2005 to March 3, 2006 and continuing was causally related to his accepted employment injury and thus, he has not met his burden of proof.[18]

On appeal appellant submitted additional evidence[19] and asserted that the Office manipulated Dr. Abrams' report and ignored the favorable information related to his need for surgery and disability. As noted, Dr. Abrams explained that the June 10, 2005 employment incident temporarily aggravated his preexisting spondylosis which caused C5 radiculopathy on the right. But he found that the aggravation had ceased and there was no correlation with regard to the work injury and his work stoppage on November 7, 2005. Appellant also argued that Dr. Abrams report referred to x-rays and explained that there were "no x-rays of the cervical spine in the material that Dr. Abrams reviewed." However, the Board notes that the record contains a September 24, 2005 MRI scan of the cervical spine, read by Dr. Perlow, which revealed the preexisting spondylosis to which Dr. Abrams was referring. To the extent that he referred to the report as an x-ray as opposed to an MRI scan, the Board notes that this is harmless error, as the preexisting conditions were revealed in the diagnostic testing and the record indicates that Dr. Abrams reviewed reports of both x-ray and MRI scan studies for different areas of appellant's spine.

CONCLUSION

The Board finds that appellant failed to establish that he was disabled from November 7, 2005 and continuing due to his June 10, 2005 employment injuries.

[18] The Board also notes that the requested surgery would not authorized as it pertains to conditions which were not accepted by the Office. *See R.C.*, 58 ECAB ___ (Docket No. 06-1676, issued December 26, 2006) (for surgery to be authorized, a claimant must submit evidence to show that the requested procedure is for a condition causally related to the employment injury and that it is medically warranted).

[19] The Board has no jurisdiction to review this new evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).

ORDER

IT IS HEREBY ORDERED THAT the June 26, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 25, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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