

limited-duty work as a part-time flexible modified distribution clerk on January 26, 1997. Appellant's physical restrictions included no lifting over 10 pounds, no climbing, pushing, pulling, lifting, bending, squatting, twisting or kneeling. She underwent an arthroscopic discectomy on January 20, 2000. Appellant returned to work on April 26, 2001 and the Office reduced her compensation benefits based on her actual earnings as a modified clerk on February 8, 2002. Appellant's restrictions included no bending, squatting, kneeling or twisting, no reaching above the shoulder, no outside work in below freezing temperature, intermittent standing, sitting, walking and stair climbing. The Branch of Hearings and Review affirmed this decision on January 14, 2003. In an August 8, 2003 decision, the Board reversed the wage-earning capacity determination. The facts and the circumstances of the case as set out in the Board's prior decision are incorporated herein by reference.¹

Following the Board's August 8, 2003 decision, the Office accepted appellant's claim for major depressive disorder on October 2, 2003. By decision dated October 22, 2003, it reduced her wage-loss benefits to zero based on her actual earnings as a modified clerk, finding that they fairly and reasonably represented her wage-earning capacity. Appellant did not seek review of this decision.

Appellant requested a schedule award on November 3, 2005. By decision dated November 14, 2006, the Office granted a schedule award for three percent permanent impairment of the right lower extremity. The Branch of Hearings and Review affirmed this decision on May 15, 2007. The Office granted appellant a schedule award for an additional 11 percent impairment of her right lower extremity on July 19, 2007.

On May 14, 2008 appellant filed a claim for wage-loss compensation from May 3 to 16, 2008. Dr. Hong Shen, a physician Board-certified in physical medicine and rehabilitation, examined appellant on May 2, 2008. He diagnosed degenerative disc disease and recurrent depression. Dr. Shen reported appellant's statement that she was very depressed due to constant pain and that she became tired and wiped out after eight hours of work. He recommended decreasing appellant's work hours to four hours a day until her medication became effective. Appellant submitted form reports dated May 7, 2008 from Dr. Shen, diagnosing chronic low back pain, lumbosacral joint sprain, degenerative joint disease and depression. His findings included acute exacerbation of sciatica, depression due to pain and limited ability. Dr. Shen indicated with a checkmark "yes" that appellant's condition was aggravated by bending, twisting and lifting eight hours a day. He found that appellant could work four hours a day with intermittent lifting, carrying, sitting, standing, walking, bending, pulling, pushing and twisting. Appellant accepted a modified-duty assignment on May 9, 2008.

On May 27, 2008 the Office requested that appellant submit additional evidence in support of her claim for a recurrence of disability. It allowed 30 days for a response. The Office referred appellant for a second opinion evaluation on June 10, 2008 with Karl V. Metz, MD.²

¹ Docket No.03-1184 (issued August 8, 2003).

² The Office did not receive Dr. Metz's report prior to denying appellant's claim.

By decision dated July 21, 2008, the Office denied appellant's claim for recurrence of disability on May 3, 2008. It found that appellant had not submitted sufficient factual and medical evidence to establish a recurrence of disability.

On appeal, appellant contends that the Office had accepted her recurrence claim based on an August 18, 2008 letter, in which it noted that her claim had been accepted for strain and aggravation of preexisting disc disease, major depressive disorder and fracture of the coccyx.

LEGAL PRECEDENT

A recurrence of disability is the inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment which caused the illness. The term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.³

For each period of disability claimed, a claimant has the burden of proving by a preponderance of the reliable, probative and substantial evidence that she is disabled for work as a result of her employment injury. Whether a particular injury caused an employee to be disabled for employment and the duration of that disability are medical issues which must be provided by preponderance of the reliable probative and substantial medical evidence.⁴

Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work. The Board has stated that, when a physician's statements regarding an employee's ability to work consist only of a repetition of the employee's complaints that he or she hurts too much to work, without objective signs of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.⁵

ANALYSIS

The Office accepted that appellant had sustained a strain and aggravation of preexisting disc disease, major depressive disorder and fracture of the coccyx due to her accepted employment injuries. Appellant worked in a light-duty position eight hours a day until May 2, 2008. Appellant filed a claim for wage-loss compensation for four hours a day beginning May 3, 2008. In support of her claim, she submitted reports from Dr. Shen, an attending physician Board-certified in physical medicine and rehabilitation, who examined appellant on

³ 20 C.F.R. § 10.5(x).

⁴ *Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

⁵ *Id.*

May 2, 2008 and diagnosed degenerative disc disease and recurrent depression. He noted appellant's statement that she was very depressed due to constant pain. He decreased her work hours to four hours a day until her medication became effective. The Board finds that Dr. Shen did not provide any objective findings to support his conclusion that appellant could no longer work eight hours a day in her light-duty position. Rather, his notations regarding appellant's ability to work consist of a repetition of her complaints of pain. He did not address how her accepted conditions had spontaneously changed such that she was partially disabled as of May 2, 2008. As noted, the Board has held that without objective signs of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation. This report is therefore not sufficient to meet appellant's burden of proof.

On May 7, 2008 Dr. Shen diagnosed chronic low back pain with acute exacerbation of sciatica and depression. He indicated with a checkmark "yes" that appellant's condition was aggravated by bending, twisting and lifting eight hours a day. Dr. Shen opined that appellant could work four hours a day with intermittent lifting, carrying, sitting, standing, walking, bending, pulling, pushing and twisting. He did not provide objective findings on examination in support of his opinion; instead, he listed chronic low back pain with acute exacerbation of sciatica, depression due to pain and limited ability. Dr. Shen did not provide any test results, range of motion or description of sensory disturbance. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such a report is insufficient to establish causal relationship.⁶ The Board finds that these reports are not sufficient to meet appellant's burden of proof.

CONCLUSION

The Board finds that appellant had not submitted the necessary medical opinion evidence to establish that she sustained a recurrence of disability on May 3, 2008 causally related to her accepted employment injuries.

⁶ *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

ORDER

IT IS HEREBY ORDERED THAT the July 21, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 23, 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