



not entitled to wage-loss compensation from August 21 to November 25, 2006, as she had received compensation pursuant to a schedule award during this period.<sup>2</sup> By decision dated December 16, 2008, the Board reversed an October 18, 2007 Office decision, in part, finding that appellant was entitled to claim wage-loss compensation from April 15 to June 6, 2003.<sup>3</sup> The Board found that appellant had not established an employment-related disability for intermittent dates claimed from June 7, 2003 to November 16, 2004. The history of the case is provided in the Board's prior decisions and is incorporated herein by reference.

In a letter dated March 8, 2009, appellant, through her representative, requested reconsideration of her claim. With respect to factual evidence, appellant submitted a list of "missed" hours in 2003 and 2004 where she used sick leave, annual leave or leave without pay. As to medical evidence, since the October 18, 2007 merit decision, she had submitted new reports from Family Practitioner Dr. Katherine Young dated November 30, 2007, January 4 and March 10, 2008. Appellant submitted additional reports from Dr. Young dated March 12, 2008, February 18 and March 30, 2009. Dr. Young provided results on examination and discussed appellant's current reflex sympathetic dystrophy (RSD) condition. Appellant also submitted reports from Dr. David Krencik, an osteopath, from October 5, 2007 to May 8, 2009. Dr. Krencik also provided results on examination and described appellant's current condition. He diagnosed right lower extremity RSD.

By decision dated June 8, 2009, the Office reviewed the case on its merits. It found that appellant had not established disability for intermittent dates from June 7 to November 16, 2004.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>4</sup> has the burden of establishing the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>5</sup> The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.<sup>6</sup>

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.<sup>7</sup> Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work. When a

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<sup>2</sup> Docket No. 07-2308 (issue May 2, 2008).

<sup>3</sup> Docket No. 08-671 (issued December 16, 2008).

<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>6</sup> 20 C.F.R. § 10.5(f); *see, e.g., Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury but no loss of wage-earning capacity).

<sup>7</sup> *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

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.<sup>8</sup> 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.<sup>9</sup>

### **ANALYSIS**

Appellant filed claims for compensation for intermittent dates from June 7, 2003 to November 16, 2004. As the Board noted in its December 16, 2008 decision, appellant had not submitted sufficient medical evidence for the dates claimed. In an October 27, 2005 report, Dr. Young provided a list of "missed workdays" for 2003 and 2004, briefly stating that the missed days were due to continued problems with foot RSD. She did not provide any additional explanation regarding the specific dates or other medical rationale to support disability for the claimed dates causally related to the accepted employment injuries.

The additional medical evidence from Drs. Young and Krencik do not discuss the claimed period of disability. The physicians submitted reports from 2007 to 2009 provide results on examination and discuss appellant's current condition, without discussing disability during the claimed periods in 2003 and 2004. The medical evidence does not provide supporting evidence on the issue presented. It is appellant's burden of proof to establish disability for the specific intermittent dates claimed, and the Board finds that she did not meet her burden of proof.

### **CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish an employment-related disability for intermittent dates from June 7, 2003 to November 16, 2004.

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 8, 2009 is affirmed.

Issued: April 1, 2010  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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