United States Department of Labor
Employees' Compensation Appeals Board

C.M., Appellant	)	
and	)	**Docket No. 09-2077**
	)	**Issued: April 12, 2010**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Sioux Falls, SD, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 12, 2009 appellant filed a timely appeal from the March 23, 2009 merit decision of the Office of Workers' Compensation Programs denying her claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant established that she was partially disabled commencing January 14, 2009 due to the accepted May 20, 2008 traumatic injury.

FACTUAL HISTORY

On May 20, 2008 appellant, then a 58-year-old food service worker, sustained an injury to her low back while lifting a box. Her claim was accepted for low back strain. Appellant returned to work with no restrictions on July 18, 2008.

Appellant submitted claims for compensation for partial disability for the period commencing January 14, 2009. She alleged that her treating physician had restricted her to working four hours per day.

In a December 8, 2008 disability note, Dr. Jeffrey J. Jenkins, a Board-certified family practitioner, stated that appellant should remain "off work" until she was evaluated by a specialist. In notes dated December 11, 2008, Dr. Judith R. Peterson, a Board-certified physiatrist, diagnosed sciatica and lumbar radiculopathy. She opined that appellant was completely disabled. On January 8, 2009 Dr. Peterson diagnosed lumbosacral radiculopathy and a history of multiple sclerosis. She provided examination findings and opined that appellant remained disabled due to sciatica.

Appellant submitted notes dated January 14 and 16, 2009 from Dr. Daniel Schleuter, a chiropractor, who treated her for low back pain. Dr. Schleuter restricted appellant from working more than four hours per day. Appellant was precluded from lifting more than 20 pounds or from working in a "bent-over" position.

The record contains an August 1, 2008 computerized tomography (CT) scan of the lumbar spine. It noted well-maintained vertebral and disc height alignment, diffuse bulge of L4-5 disc and minimal facet arthropathy at the lower lumbar levels. An August 7, 2008 magnetic resonance imaging (MRI) scan of the lumbar spine revealed moderate degenerative central spinal stenosis at L4-5, but no subluxation. A December 30, 2008 report of an MRI scan of the lumbar spine revealed a small- to moderate-sized left paracentral focal disc protrusion at L4-5 effacing the anterior subarachnoid space.

In a letter dated February 18, 2009, the Office informed appellant that additional medical evidence was required to establish her claim. She was advised to submit a report from her physician addressing why she was unable to work more than four hours a day, and an explanation as to how her alleged disability was causally related to her accepted employment injury.

In a February 12, 2009 duty status report, Dr. Schleuter restricted appellant to working six hours a day, three days a week and four hours a day, two days a week through February 28, 2009. He listed clinical findings of "subluxation and muscle spasm." A February 26, 2009 duty status report provided that appellant could work six and one half hours a day with lifting restrictions beginning March 2 through 31, 2009.

By decision dated March 23, 2009, the Office denied appellant's claim, finding that the medical evidence did not establish that she sustained disability due to her accepted low back strain.

LEGAL PRECEDENT

A claimant seeking benefits under the Federal Employees' Compensation Act[1] has the burden of proof to establish the essential elements of her claim by the weight of the evidence,[2] including that she sustained an injury in the performance of duty and that any specific condition

[1] 5 U.S.C. §§ 8101-8193.

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

or disability for work for which she claims compensation is causally related to that employment injury.[3]

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.[4] 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.[5]

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.[6] 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.[7] 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.[8]

ANALYSIS

The Office accepted appellant's claim for low back strain. Appellant requested compensation for partial disability beginning January 14, 2009 based on her doctor's restrictions. On February 18, 2009 the Office advised appellant of the evidence needed to establish her claim. Appellant, however, did not submit sufficient reasoned medical evidence to establish that her disability for the hours claimed was causally related to her accepted injury. She did not submit a medical report in which a treating physician adequately explained how her disability was related to the accepted lumbar strain.

Dr. Schleuter provided work restrictions which limited the number of hours appellant was to work beginning January 14, 2009. His reports, however, are insufficient to establish that she was disabled during the period in question. A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as

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

[4] *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).

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

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

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

[8] *G.T., supra* note 7; *Fereidoon Kharabi, supra* note 6.

"physician" as defined in 5 U.S.C. § 8101(2).[9] The term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the secretary.[10] The record does not contain evidence of a subluxation diagnosed by x-ray.[11] Therefore, Dr. Schleuter is not a "physician" as defined under the Act. His reports do not constitute probative medical evidence. The Board notes that he provided no rationale for his opinion that appellant was not able to work full duty, or that her alleged disability was caused by the accepted May 20, 2008 injury. Appellant returned to full duty as of July 18, 2008 and Dr. Schleuter did not explain why or how her condition changed such that she became partially disabled as of January 14 2009. Medical evidence, which does not offer an opinion regarding the cause of an employee's condition, is of limited probative value on the issue of causal relationship.[12]

On December 11, 2008 Dr. Peterson diagnosed sciatica and lumbar radiculopathy, and opined that appellant was completely disabled. On January 8, 2009 she diagnosed lumbosacral radiculopathy and a history of multiple sclerosis, and opined that appellant remained disabled due to sciatica. Dr. Peterson did not address how appellant's sciatica was causally related to the accepted injury. In fact, she did not provide any opinion on the cause of appellant's condition. Moreover, Dr. Peterson did not address a specific period of time during which appellant was allegedly disabled.[13] Therefore, her reports are of limited probative value and are insufficient to establish appellant's disability. Similarly, Dr. Jenkins' December 8, 2008 disability note lacks probative value, as it does not contain any opinion as to the cause of appellant's alleged disability.

Other medical evidence of record, including reports of CT scans and MRI scans, which do not address the period of disability or offer a specific opinion on causal relationship are of little probative value and insufficient to meet an employee's burden of proof.[14]

In the instant case, none of the medical reports submitted by appellant contain a sufficiently rationalized opinion to establish that she could no longer perform the regular duties of her position on a full-time basis during the period in question. The Board finds that appellant has failed to submit rationalized medical evidence establishing that her disability for the hours

[9] Section 8101(2) of the Act provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. The term 'physician' includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the secretary." *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

[10] *Id.*

[11] The Board notes that Dr. Schleuter's February 12, 2009 duty status report reflected clinical findings that included "subluxation." The record, however, does not contain an x-ray report substantiating this finding. An August 7, 2008 MRI scan of the lumbar spine revealed moderate degenerative central spinal stenosis at L4-5, but no subluxation.

[12] *A.D.*, 58 ECAB 149 (2006); *Michael E. Smith*, 50 ECAB 313 (1999).

[13] *G.T., supra* note 7; *Fereidoon Kharabi, supra* note 6.

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

claimed beginning January 14, 2009 was causally related to her accepted employment injury. Appellant has not met her burden of proof.

On appeal, appellant contends that the medical evidence establishes that her current disabling condition is causally related to the May 20, 2008 injury. However, as noted, appellant did not meet her burden of proof in regard to the claimed period of disability.[15]

CONCLUSION

The Board finds that appellant failed to establish an employment-related disability commencing January 14, 2009 due to her May 20, 2008 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the March 23, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 12, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[15] The Board notes that appellant submitted additional evidence after the Office rendered its March 23, 2009 decision. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board. 20 C.F.R. § 501.2(c); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952). Appellant may submit this evidence to the Office, together with a formal request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).