

Appellant filed a traumatic injury claim on February 26, 2002 alleging he suffered back and neck injuries in a motor vehicle accident on February 25, 2002.¹ On April 12, 2002 the Office accepted the claim for aggravation of lumbar and cervical strains. Appellant returned to a light-duty position in October 2002. He received compensation for intermittent dates claimed. A May 12, 2006 statement of accepted facts indicated the Office had accepted an aggravation of spinal stenosis at L3-S1. On September 12, 2008 it accepted the claims for permanent aggravation of spinal stenosis.

On January 19, 2009 appellant filed a claim for compensation (Form CA-7) for the period January 3 to 16, 2009. On February 2, 2009 he filed a Form CA-7 for the period January 17 to 30, 2009.

With respect to medical evidence, appellant submitted a November 24, 2008 report from Dr. Daniel Leizman, who provided a history that appellant had sustained work-related injuries on December 7, 2001 and appellant “would like to discuss taking some time off work.” Dr. Leizman provided results on examination and diagnosed neck and lumbar sprains. He stated that appellant “was felt to be disabled from work” from November 24 to December 31, 2008. In a December 31, 2008 report, Dr. Leizman provided results on examination and again diagnosed neck and lumbar sprains. He stated that appellant was felt to be disabled until March 31, 2009.

By report dated January 19, 2009, Dr. Leizman stated that cervical and lumbar pain had improved. He again indicated that appellant was felt to be disabled until March 31, 2009. In a February 2, 2009 report, Dr. Leizman indicated that appellant could work with restrictions as of February 5, 2009.

In a decision dated May 19, 2009, the Office denied the claim for compensation from January 3 to 30, 2009. It found the medical evidence insufficient to establish the claim.

Appellant requested a hearing before an Office hearing representative, which was held on October 13, 2009. At the hearing, he indicated that he had been working full duty, but had sustained a work-related foot injury on November 12, 2008. According to appellant, he had been off work in December 2008 for the foot injury, and then he “was having an increase in spasms, weakness in my legs, in my neck and the spasms were coming daily and I wasn’t able to sleep at night.” He indicated that on or around January 3, 2009 he went to his doctor and a decision was made to take him off work. Appellant stated that he had not received wage-loss compensation from January 3 to 30, 2009 pursuant to the foot injury.

By decision dated December 17, 2009, the hearing representative affirmed the May 19, 2009 Office decision. The Office found the medical evidence not sufficient to establish an employment-related disability during the period claimed.

¹ OWCP File No. xxxxxx666. This claim was administratively combined with the December 7, 2001 claim.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² 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.³ 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.⁴

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.⁵ To meet his burden of proof, appellant must submit medical evidence based on a complete and accurate factual and medical history, with an opinion supported by sound medical reasoning that the disability is causally related to the employment injury.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 he 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

In the present case, appellant has claimed compensation for wage-loss from January 3 to 30, 2009 as a result of his accepted back injuries from the 2001 and 2002 motor vehicle accidents. It is his burden of proof to establish the claimed period of disability. The Board finds that appellant did not meet his burden of proof, as the evidence does not contain a reasoned medical opinion on the issue.

Appellant received treatment on November 24 and December 31, 2008 and January 19, 2009 from Dr. Leizman. While Dr. Leizman briefly stated in these reports that appellant was

² 5 U.S.C. §§ 8101-8193.

³ *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ 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).

⁵ *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁶ *See S.S.*, 59 ECAB 315 (2008).

⁷ *Fereidoon Kharabi*, *supra* note 5.

⁸ *Id.*

“felt to be disabled” from November 24, 2008, he does not provide medical rationale to support his opinion. He did not provide a clear opinion that any disability was causally related to the accepted back injuries, with medical reasoning to support the opinion. Dr. Leizman did not provide a complete history, as the reports refer briefly to a December 7, 2001 injury without additional detail. Moreover, appellant reported that he was off work prior to January 3, 2009 and filed a claim for a foot injury. Dr. Leizman does not discuss the foot injury or otherwise explain his opinion on disability. As noted above, the medical opinion must be based on a complete background and supported by medical explanation. In the absence of such evidence, the Board finds that appellant did not meet his burden of proof. The Board notes that to the extent appellant is claiming his back symptoms were a consequence of a November 2008 foot injury, that issue is not before the Board on the current appeal.⁹

CONCLUSION

The Board finds that appellant did not establish disability from January 3 to 30, 2009 causally related to his accepted back injuries.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers’ Compensation Programs dated December 17, 2009 is affirmed.

Issued: December 1, 2010
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

⁹ Appellant may pursue such a claim under the November 2008 foot injury claim.