

By letter dated June 10, 2005, the Office accepted the claim for aggravation of lumbosacral sprain/strain. On October 20, 2005 appellant filed a claim for compensation (Form CA-7) for the period November 16, 2000 to August 6, 2004. An employing establishment noted that a notice of removal was issued February 17, 2004 for continuous absence from appellant's tour of duty. Effective October 5, 2004 appellant was removed from employment.

On March 31, 2006 the Office issued two compensation payments for the period November 16, 2000 to December 31, 2001, and on April 7, 2006 a payment for the period January 1, 2002 to August 6, 2004.

In a report dated November 1, 2004, Dr. John Hughes, a neurologist, reported appellant had developed cervical pain about four months prior. He diagnosed lumbosacral mechanical pain (discogenic) with left lumbosacral radiculopathy, cervical pain, occipital headaches, left cervical radiculopathy, possible left carpal tunnel syndrome. Dr. Hughes stated appellant would need a cervical MRI scan and "[t]his appears to be accident related as well." He stated that in terms of the lumbar pain, he did not think appellant was employable as a letter carrier.

In a report dated July 12, 2005, Dr. Louis Rose, an orthopedic surgeon, stated that appellant had a low back injury on January 15, 1999, a reinjury on March 18, 2000 and another injury on November 16, 2000. He provided results on examination and diagnosed lumbar radiculopathy with probable herniated nucleus pulposus. Dr. Rose stated that appellant was unable to work secondary to her injuries. By report dated November 2, 2007, he stated that she was under treatment for her low back and had not yet been able to return to work at the employing establishment.

On July 15, 2008 appellant filed a claim for compensation (Form CA-7) for the period commencing August 7, 2004. The Office referred her for a second opinion examination by Dr. Harvey Seigel, an orthopedic surgeon. In a report dated October 10, 2008, Dr. Seigel provided a history, a detailed review of the medical evidence and results on examination. He found no objective evidence for a diagnosis of a condition affecting the lower extremities. Dr. Seigel noted nonphysiological responses to sensory testing, complete lack of atrophy in the lower extremities and the lack of paraspinal muscle spasms. He stated that appellant was a symptom magnifier. Dr. Seigel advised that she reached maximum medical improvement "years ago" and there was no impairment.

In a report dated August 28, 2008, Dr. Olivera Pekovic, a rehabilitation specialist, provided a history of an October 17, 2000 injury at work, and appellant had not worked since. She diagnosed chronic low back, left lumbosacral radiculopathy.

By letter dated January 14, 2009, the Office advised appellant that employees entitled to compensation benefits and Office of Personnel Management benefits must elect one of the plans. Appellant elected benefits under the Act.

In a decision dated August 10, 2009, the Office denied the claim for wage-loss compensation commencing August 7, 2004. It found that the medical evidence was insufficient to establish the claimed period of disability.

Appellant requested a hearing before an Office hearing representative, which was held on November 12, 2009. In a report dated September 22, 2009, Dr. Hughes diagnosed cervical herniated disc with C7 radiculopathy, lumbar herniated disc with left L5 radiculopathy, and left shoulder derangement.

By decision dated February 1, 2010, an Office hearing representative affirmed the August 10, 2009 Office decision. The hearing representative found the medical evidence was insufficient to establish the claim.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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.² 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.³

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.⁴ 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.⁵ 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.⁶

To establish a causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.⁷ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical

¹ 5 U.S.C. §§ 8101-8193.

² *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ 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).

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

⁵ *Id.*

⁶ *Id.*

⁷ *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

evidence.⁸ The opinion of the physician must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship.⁹

ANALYSIS

Appellant filed a claim for wage-loss compensation from August 7, 2004. In this case, however, none of the attending physicians of record provided a rationalized medical opinion on disability causally related to the November 16, 2000 employment injury. In a November 1, 2004 report, Dr. Hughes did not provide a complete history of the employment injury. He noted cervical symptoms, but a cervical condition was not accepted by the Office and he did not provide a rationalized opinion on causal relationship between a diagnosed cervical condition and the November 16, 2000 employment injury.¹⁰ Dr. Rose briefly referred to three injuries in a July 12, 2005 report, without providing a complete history of the November 16, 2000 employment injury. He stated appellant was unable to work “secondary to her injuries” without providing a rationalized medical opinion based on a complete and accurate background.

Appellant submitted continuing treatment reports, but these reports did not discuss an employment-related disability commencing August 7, 2004. The Board notes the accepted condition was an aggravation of lumbosacral sprain/strain. With respect to additional diagnoses of record, including cervical and left shoulder conditions, there must be a rationalized medical opinion on causal relationship with employment.¹¹ In addition, Dr. Seigel found no objective evidence of a continuing employment-related disability. In an October 8, 2008 report, he provided a detailed report that did not support an employment-related disability for the period claimed. The Board finds the medical evidence is not sufficient to establish an employment-related disability commencing August 7, 2004.

On appeal, appellant contends that it is the Office’s burden of proof to terminate compensation, and cited *Regina C. Burke*.¹² In *Burke*, the Office paid compensation through August 31, 1990 and then terminated compensation based only on evidence that the claimant had been dismissed for misconduct. The Board found that Office had the burden to establish that the employment-related disability had ceased. The present case is factually distinguishable as appellant was not in receipt of wage-loss compensation payments. In July 2008, she filed a CA-7 for the period commencing August 7, 2004. The Office did not terminate benefits because appellant was dismissed, but found the medical evidence was insufficient to establish the claimed period of disability. It is appellant’s burden of proof to establish her disability for work for the period claimed. Appellant also argues that the Office should have issued a pretermination notice,

⁸ *Elizabeth Stanislav*, 49 ECAB 540 (1998).

⁹ *Leslie C. Moore*, 52 ECAB 132 (2000).

¹⁰ It is appellant’s burden of proof to establish a specific condition is causally related to the employment injury, and the evidence required is rationalized medical opinion evidence. See, e.g., *Gary M. DeLeo*, 56 ECAB 656, 660 (2005).

¹¹ *Id.*

¹² 43 ECAB 399 (1992).

citing *Donna Schlenkrich*.¹³ In *Schlenkrich*, the claimant was receiving wage-loss compensation on the periodic rolls. It is well established a pretermination notice should be issued.¹⁴ In the present case, appellant had received three payments in early 2006 covering the claimed period November 16, 2000 to August 6, 2004. As noted, she had the burden to establish the claimed period of wage loss and no pretermination notice was required.

CONCLUSION

The Board finds appellant did not meet her burden of proof to establish an employment-related disability commencing August 7, 2004.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 1, 2010 is affirmed.

Issued: December 1, 2010
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

¹³ Docket No. 06-411 (issued April 12, 2006).

¹⁴ Office procedures state that pretermination notice is required where benefits are being paid on the periodic rolls. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.6(a) (March 1997).