

and the circumstances of the case up to that point are set forth in the Board's prior decision and incorporated herein by reference.¹

On February 7, 2008 the employing establishment offered appellant a modified limited-duty position as a full-time sales service distribution associate which she accepted on February 19, 2008. In a duty status report dated March 3, 2008, Dr. Richard M. Braun, a Board-certified orthopedic surgeon, noted that she had pain in both hands and at the incision site and reduced her work hours to four hours per day with restrictions. On April 30, 2008 he increased appellant's workday to six hours per day with a lifting restriction of eight pounds. In a duty status report dated May 9, 2008, Dr. Braun determined that appellant was permanent and stationary. He opined that she could perform modified work on May 9, 2008 for six hours per day with a lifting restriction of eight pounds.

In a letter dated May 13, 2008, the Office requested Dr. Braun to clarify appellant's work status and address why she was restricted to working six hours per day. Dr. Braun did not respond.

On June 4, 2008 the Office referred appellant for a second opinion to Dr. Thomas J. Sabourn, a Board-certified orthopedic surgeon, for determination of her work status. In a June 26, 2008 report, Dr. Sabourn diagnosed right shoulder acromioclavicular joint arthritis, impingement syndrome, carpal tunnel syndrome, residual stiffness of right hand fingers after carpal tunnel surgery, lateral epicondylitis of the right elbow, chronic cervical strain and sprain, left shoulder acromioclavicular joint arthritis with rotator cuff tendinitis and pain syndrome. He opined that appellant could not work as a regular distribution clerk due to overuse of her extremities. However, Dr. Sabourn found that she could work eight hours per day with permanent limitations of two hours of reaching, no reaching above the shoulders with the right arm, reach two hours cumulatively over an eight-hour day with the left arm, repetitive motions with the wrists and elbow cumulatively for three hours of an eight-hour workday, push, pull and lift for four hours per day with an eight-pound limitation, five-minute break each hour and repetitive fingering no more than two hours bilaterally. He reviewed the February 7, 2008 job offer and noted that appellant could easily perform the job as a sales service distribution associate if she were to use both hands.

On July 25, 2008 the employing establishment offered appellant a modified limited-duty position as a full-time sales service distribution associate, which she accepted on July 28, 2008. The job duties were identical to those noted in the February 7, 2008 job offer and included sorting undeliverable bulk business mail with the left hand only for three hours per day, working at the carrier call desk with left hand only for two hours per day and sorting station markups with left hand only for three hours per day. The physical requirements of the modified job were sorting mail weighing up to one pound, minimal writing with the left hand, lifting up to five pounds with the left hand and writing and stamping on mail with the left hand only up to one pound.

¹ Docket No. 08-2493, issued August 25, 2009. The Office accepted appellant's claim for right shoulder arthropathy, right carpal tunnel syndrome, reflex sympathetic dystrophy and right lateral epicondylitis. On January 15, 2002 appellant underwent right shoulder surgery and a right carpal tunnel release on May 29, 2007.

Appellant submitted a July 28, 2008 report from Dr. Braun who stated that he was in agreement with Dr. Sabourn concerning appellant's ability to work light-duty work eight hours per day. Dr. Braun noted that appellant could work light duty for eight hours per day with lifting limited to eight pounds intermittently and not on a continuous repetitive basis. He indicated that she did not need surgical treatment and was permanent and stationary. Dr. Braun noted that in order to clarify whether appellant could work an eight-hour workday he would have to review the job description for a sales/service distribution associate. On August 11, 2008 the Office provided him with the job description for a sales/service position, which was modified to accommodate his previous work restrictions of May 9, 2008. On August 30, 2008 Dr. Braun reviewed the job requirements for a sales/service distribution associate and approved the assignment as long as the job conformed to his restrictions set forth in his July 28, 2008 report, with lifting limited to eight pounds on an intermittent basis and a five-minute work break for each hour worked, he approved the assignment. On September 3, 2008 he treated appellant in follow-up and diagnosed carpal tunnel syndrome with residual symptoms, lateral epicondylitis and an old shoulder injury.

Appellant submitted several CA-7 forms, claims for compensation, for 35.44 hours of intermittent disability from June 30 to July 26, 2008. The employer submitted several time analysis forms for June 30 to July 26, 2008.

On September 29, 2008 the Office advised appellant that the medical evidence did not establish her intermittent disability as claimed for the period June 30 to July 26, 2008. It requested that she submit additional evidence to support her claim for wage-loss compensation.

On September 29, 2008 the employing establishment advised appellant that there was no work available within her restrictions and that she would be placed on administrative leave.

Appellant submitted a September 3, 2008 report from Dr. Braun who diagnosed lateral epicondylitis and recommended she return to work in a modified-duty assignment. Dr. Braun noted no change in appellant's physical condition. He opined that the prior work recommendations made were still appropriate based on the employer's availability to provide modified work.

In a November 3, 2008 decision, the Office denied appellant's claim for compensation for intermittent periods of partial disability for 35.44 hours for the period June 30 to July 26, 2008.

LEGAL PRECEDENT

A claimant has the burden of proving by a preponderance of the evidence that he or she is disabled for work as a result of an accepted employment injury and submit medical evidence for each period of disability claimed.² Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues.³ The issue of

² See *Fereidoon Kharabi*, 52 ECAB 291 (2001).

³ *Id.*

whether a particular injury causes disability for work must be resolved by competent medical evidence.⁴

The Board will not require the Office to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify his or her disability and entitlement to compensation. For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.⁵

ANALYSIS

The Office accepted appellant's claim for right shoulder, traumatic arthropathy, right carpal tunnel syndrome, reflex sympathetic dystrophy of the upper right limb and right lateral epicondylitis. Appellant claimed wage-loss compensation for 35.44 hours from June 30 to July 26, 2008.

The medical evidence submitted in support of the wage-loss compensation claim is insufficient to establish that appellant was disabled due to her accepted conditions. On appeal, appellant asserts that Dr. Braun supported the hours of disability claimed.

In a duty status report dated May 9, 2008, Dr. Braun determined that appellant was permanent and stationary. He diagnosed right shoulder tendinitis, lateral epicondylitis in the right elbow, possible ulnar neuritis, right carpal tunnel syndrome requiring surgery, contracture of the right hand with impaired range of motion and repetitive episodes of swelling. Dr. Braun opined that appellant could return to modified work on May 9, 2008 for six hours per day with a lifting restriction of eight pounds. However, this report predates the period at issue in the present appeal. Dr. Braun did not otherwise address why appellant was restricted to working six hours per day instead of eight hours during the period at issue or how these restrictions were attributable to the accepted right upper extremity conditions. The Board has found that medical opinions which do not explain causal relationship are of diminished probative value.⁶ Therefore, the report is insufficient to establish that appellant was partially disabled for two hours per day from June 30 to July 26, 2008.

The Office referred appellant to Dr. Sabourn. In a June 26, 2008 report, Dr. Sabourn noted appellant's history and accepted conditions. He found that she could not return to work as a distribution clerk because she would be required to overuse her upper extremities. However, Dr. Sabourn opined that appellant could work eight hours per day in a light-duty position with permanent restrictions. He reviewed the February 7, 2008 job offer as a sales service distribution associate and advised that she could easily perform the job as offered if she were to use her right and left hand when sorting undeliverable bulk business mail for three hours per day and sorting

⁴ See *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁵ *Sandra D. Pruitt*, 57 ECAB 126 (2005).

⁶ See *A.D.*, 58 ECAB 149 (2006).

mail pieces weighing up to one pound for three hours a day. This report does not establish disability for the period claimed.

On July 28, 2008 Dr. Braun commented on Dr. Sabourn's report and agreed that appellant was able to work light duty eight hours per day with a lifting restriction of eight pounds intermittently. On August 30, 2008, after reviewing the job description for a sales/service distribution associate, Dr. Braun approved the assignment as long as lifting was limited to eight pounds on an intermittent basis and appellant had a five-minute work break for each hour worked. He did not find that appellant was partially disabled due to her accepted conditions during the period in question. Rather, appellant could work full time subject to restrictions, at duty made available since February 7, 2008. In September 3, 2008 report, Dr. Braun diagnosed lateral epicondylitis and recommended appellant return to work in a modified-duty assignment. He noted no change in her physical condition and reiterated his prior work limitations. The Board finds that there is no probative medical evidence supporting intermittent disability for 35.44 hours for the claimed period. Appellant has not met her burden of proof in establishing her claim.

On appeal, appellant asserts that she was never advised by Dr. Braun or Dr. Sabourn that she could work eight hours per day; rather, she believed that she was restricted to work only six hours per day pursuant to Dr. Braun's May 9, 2008 report. The Board finds this argument to be without merit. On February 7, 2008 the employing establishment offered appellant a modified limited-duty position as a full-time sales service distribution associate which she accepted on February 19, 2008. Appellant was on notice that her position was full time. There is insufficient medical evidence to support partial disability beginning June 30, 2008.

CONCLUSION

The Board finds that appellant has failed to establish that her claimed disability for the period June 30 to July 26, 2008 is causally related to the accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 3, 2008 is affirmed.

Issued: February 2, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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