United States Department of Labor
Employees' Compensation Appeals Board

J.S., Appellant	)	
and	)	**Docket No. 09-1366**
	)	**Issued: February 1, 2010**
U.S. POSTAL SERVICE, POST OFFICE, St. Paul, MN, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 5, 2009 appellant filed a timely appeal from the April 3, 2009 merit decision of the Office of Workers' Compensation Programs which denied her claim for disability compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this issue.

ISSUE

The issue is whether appellant is entitled to wage-loss compensation for January 24, 2008.

FACTUAL HISTORY

On December 30, 2001 appellant, then a 38-year-old distribution clerk, filed an occupational disease claim alleging that she sustained a shoulder, arm and neck condition due to constant lifting and repetitive use of her right arm in the performance of duty. The Office accepted the claim for a cervical condition to include right C7 radiculopathy and C6-7 herniated

disc. Appellant underwent a C6-7 discectomy with anterior C6-7 fusion on April 21, 2003.[1] After her surgery, she returned to limited duty and filed claims for intermittent wage loss. In a July 3, 2006 work restriction form, Dr. Kion Hoffman, a family practitioner, noted appellant's work restrictions and that she was attempting to work eight hours daily. Subsequently, he submitted reports addressing appellant's treatment for intermittent periods of disability.

In a report dated January 25, 2008, Dr. Arndt B. Braaten, a Board-certified family practitioner and associate of Dr. Hoffman, noted that appellant had complaints of continuing chronic neck and upper back pain. He advised that she just completed the busy holiday season and experienced an increase of intensity and frequency of back pain. Dr. Braaten diagnosed occipital neuralgia and cervicalgia with myofascial neck pain secondary to cervical radiculopathy and overuse. He administered injections of lidocaine and marcaine. Dr. Braaten advised that appellant could return to work on January 28, 2008. In a January 25, 2008 report, he reiterated that appellant could return to restricted work on January 28, 2008. In a February 1, 2008 report of work ability, Dr. Braaten advised that she was unable to work beginning January 29, 2008 and that she could return to restricted work on February 5, 2008.

The Office also received a February 20, 2008 report from a physician's assistant, who indicated that appellant was seen for cervical radiculopathy and occipital neuralgia. The physician's assistant advised that appellant could return to work with limitations on February 23, 2008.

On June 25, 2008 appellant filed a CA-7 form claiming 80.72 hours of intermittent wage loss from January 12 through March 28, 2008.

In a letter dated July 14, 2008, the Office advised appellant that 56.12 hours of wage loss was payable for certain of the claimed dates. However, it advised that there was insufficient medical evidence to establish disability for work from January 12 and 24 and February 20 through 22, 2008. The Office allotted appellant 30 days within which to submit the requested information.

In a February 1, 2008 treatment record, Dr. Braaten advised that appellant presented with complaints of cervicalgia and occipital neuralgia. He stated that appellant requested multiple trigger point injections and also requested "forms to be filled out for workers' compensation." Dr. Braaten noted completing a "workability" form but did not address particular periods of disability. Appellant also submitted medical evidence that either predated the claimed dates, was previously of record or addressed periods subsequent to the claimed dates. She also submitted a February 20, 2008 report from a physician's assistant.

By decision dated September 11, 2008, the Office denied appellant's claim for intermittent disability from January 12 and 24, 2008. It found that appellant established her claim for the periods February 20 through 22, 2008. However, the Office found that she had not submitted evidence to support disability on January 12 and 24, 2008 as there was no medical

[1] The Office accepted a recurrence on June 9, 2003. It denied appellant's claim for a recurrence on February 28 and May 25, 2005. The Office also accepted that she reinjured her cervical condition on September 8, 2004 under File No. xxxxxx430. The claim was doubled into the present claim.

evidence from her attending physician which supported a work-related condition for which she was either attending a doctor's appointment or was totally temporarily disabled on those dates.

On September 15, 2008 appellant's representative requested a hearing, which was held on January 15, 2009. During the hearing, appellant clarified that she actually worked on January 12, 2008. She indicated that the only date that remained unpaid was January 24, 2008. Appellant explained that she was unable to work on January 24, 2008; however, she could not get a doctor's appointment until January 25, 2008.

In a decision dated April 3, 2009, the Office affirmed the September 11, 2008 decision as modified. The Office hearing representative noted that January 12, 2008 was no longer claimed and that the issue was moot related to that date. Regarding the date of January 24, 2008, the Office hearing representative found that there was no medical evidence to support appellant's inability to work due to her accepted condition on January 24, 2008.

LEGAL PRECEDENT

For each period of disability claimed, the employee has the burden of proving that he or she was disabled for work as a result of the accepted employment injury.[2] As used in the Act, the term "disability" means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.[3] Disability is thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.[4] Whether a particular injury caused an employee disability from employment is a medical issue, which must be resolved by competent medical evidence.[5]

With respect to claimed disability for medical treatment, section 8103 of the Act provides for medical expenses, along with transportation and other expenses incidental to securing medical care, for injuries.[6] Appellant would be entitled to compensation for any time missed from work due to medical treatment for an employment-related condition.[7] However, the Office's obligation to pay for medical expenses and expenses incidental to obtaining medical care, such as loss of wages, extends only to expenses incurred for treatment of the effects of any employment-related condition. Appellant has the burden of proof, which includes the necessity to submit supporting rationalized medical evidence.[8]

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[2] *William A. Archer*, 55 ECAB 674 (2004).

[3] *Patricia A. Keller*, 45 ECAB 278 (1993); *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(17).

[4] *See Fred Foster*, 1 ECAB 21 (1947).

[5] *See Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

[6] 5 U.S.C. § 8103(a).

[7] *Vincent E. Washington*, 40 ECAB 1242 (1989).

[8] *Dorothy J. Bell*, 47 ECAB 624 (1996); *Zane H. Cassell*, 32 ECAB 1537 (1981).

ANALYSIS

The most contemporaneous medical evidence regarding appellant's claim for wage-loss compensation on January 24, 2008 were the January 25, 2008 reports from Dr. Braaten whose narrative treatment report diagnosed occipital neuralgia and cervicalgia with myofascial neck pain secondary to cervical radiculopathy and overuse. Dr. Braaten indicated that appellant could return to work on January 28, 2008. The Board notes that he did not provide any opinion that appellant was disabled or unable to work on January 24, 2008. Dr. Braaten's February 1, 2008 report did not specifically address whether appellant was disabled due to her work injury on January 24, 2008.

The record contains additional medical reports, however, they do not address the period in question. An award of compensation may not be based on surmise, conjecture or speculation or upon appellant's belief that there is a causal relationship between her condition and her employment.[9] Furthermore, the record contains reports from a physician's assistant but these reports cannot be considered as probative medical evidence.[10]

Appellant failed to submit sufficient medical evidence in this case and, therefore, has failed to discharge her burden of proof. He did not submit any reports which offered medical rationale explaining the causal relationship as to how or why appellant's accepted employment injury prevented her from performing the duties of her position on January 24, 2008.[11] As appellant has failed to submit sufficient rationalized medical opinion evidence to establish that she was unable to work on January 24, 2008, due to her employment injury, she has failed to establish that she was disabled and thus, is not entitled to wage-loss compensation for that date.

CONCLUSION

The Board finds that appellant is not entitled to wage-loss compensation for her absence on January 24, 2008.

[9] *Patricia J. Glenn*, 53 ECAB 159 (2001).

[10] *See S.E.*, 60 ECAB ___ (Docket No. 08-2214, issued May 6, 2009) (physicians' assistants are not "physicians" as defined under the Federal Employees' Compensation Act and their opinions are of no probative value). *See also* 5 U.S.C. § 8101(2) (defines the term "physician").

[11] Medical reports not containing rationale on causal relationship are entitled to little probative value and are generally insufficient to meet appellant's burden of proof. *Lourdes Davila*, 45 ECAB 139 (1993).

ORDER

IT IS HEREBY ORDERED THAT the April 3, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 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