



From November 1 to December 3, 2007 appellant was treated by Dr. Sonji Gaskins, a Board-certified internist, for back pain, which occurred after he bumped his back on a metal rack at work. Dr. Gaskins diagnosed contusion of the back. On November 8, 2007 appellant reported pain radiating into his left leg, spasms and difficulty walking. Dr. Gaskins noted positive straight leg raises bilaterally, tenderness over the sacrum and coccyx and diagnosed contusion of the sacrum and low back for which appellant was disabled from work. She advised that appellant was unable to work beginning November 1, 2007 due to the October 31, 2007 injury.

Appellant submitted Forms CA-7 claiming compensation for total disability from December 8 to 21, 2007 and January 6 to 18, 2008. The employer submitted a CA-7a time analysis form for December 8 to 21, 2007.

In a November 1, 2007 disability slip, Dr. Gaskins advised that appellant was unable to work from November 1 to 5, 2007. In a December 3, 2007 disability slip, she advised that he could not work until further notice. In reports dated November 14 to December 30, 2007, appellant was seen in follow-up for low back and left hip pain. Dr. Gaskins diagnosed contusion of the back resolving with worsening hip pain. On February 6, 2008 appellant presented with intermittent low back and sacrum pain. Dr. Gaskins advised that he was unable to work due to uncontrolled back pain. In a February 6, 2008 disability slip, appellant reported being unable to work since November 1, 2007. A December 3, 2007 x-ray of the left hip revealed age-expected degenerative changes. Appellant was treated by Dr. Adam Rutkowski, a chiropractor, from December 28, 2007 to January 14, 2008 for low back pain radiating into the left hip. Dr. Rutkowski noted spasm swelling, decreased strength and restricted range of motion. He treated appellant with manual therapy, adjustment, electronic and microcurrent stimulation. A January 25, 2008 magnetic resonance imaging (MRI) scan of the lumbar spine and an MRI scan of the sacrum/coccyx dated February 18, 2008 revealed no abnormalities.

In a March 13, 2008 decision, the Office denied appellant's claim for wage-loss compensation from December 8, 2007 to January 18, 2008, on the grounds that the medical evidence did not establish that he was totally disabled due to his accepted work injury.<sup>1</sup>

On March 6, 2009 appellant requested reconsideration. In a March 21, 2008 report, Dr. Gaskins noted treating him for the October 31, 2007 work-related injury and diagnosed contusion of the low back.<sup>2</sup> She noted that appellant returned to work on March 17, 2008 but stopped on March 19, 2008 due to worsening pain. Dr. Gaskins opined that his employment activities were aggravating his symptoms and recommended that he stop work until further evaluation by a specialist. In an April 11, 2008 duty status report, she advised that appellant could return to full-time work with restrictions. On June 17, 2008 appellant sought treatment from Dr. Salim M. Hayek, a Board-certified anesthesiologist, for right hip and tailbone pain

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<sup>1</sup> In an April 16, 2008 decision, the Office denied appellant's claim for disability compensation from January 19 to February 29, 2008, finding that the evidence was not sufficient to establish that his total disability was due to his accepted work injury. This period of claimed disability is not before the Board on the present appeal. The Board also notes that appellant claimed a July 10, 2008 injury that was accepted for a low back contusion in claim File No. xxxxxx004. On November 7, 2008 the Office doubled the two claims, File No. xxxxxx004 and File No. xxxxxx094.

<sup>2</sup> The record reveals that Dr. Gaskins also used her married name, Dr. Boyd.

related to a work injury. Dr. Hayek diagnosed possible sacroiliac joint injury. Appellant was also treated by Dr. Todd S. Hochman, a Board-certified internist, from August 29 to December 3, 2008. Dr. Hochman noted a history of injury and diagnosed back contusion. On November 25, 2008 appellant was seen by Dr. Timothy Nice, a Board-certified orthopedic surgeon, diagnosed neuroma-type pain in a left sacroiliac joint fat nodule. On December 10, 2008 appellant was treated by Dr. Jerome B. Yokiell, Board-certified in anesthesia, who diagnosed contusion of the back and recommended left sacroiliac joint injections. In a September 15, 2008 work disability form, Dr. Bruce T. Cohn, a Board-certified orthopedic surgeon, advised that appellant was totally disabled from September 15 to 21, 2008 and could return to work with restrictions on September 22, 2008.

In a decision June 16, 2009 decision, the Office denied modification of the April 16, 2008 decision.

### **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.<sup>3</sup> Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues.<sup>4</sup> The issue of whether a particular injury causes disability for work must be resolved by competent medical evidence.<sup>5</sup> To meet this burden, a claimant must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting a causal relationship between the alleged disabling condition and the accepted injury.<sup>6</sup>

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.<sup>7</sup>

### **ANALYSIS**

The Office accepted appellant's claim for a back contusion. The Board finds that the medical evidence submitted in support of his wage-loss claim is insufficient to establish that he was totally disabled from December 8, 2007 to July 18, 2008 due to the accepted employment injury.

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<sup>3</sup> See *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>4</sup> *Id.*

<sup>5</sup> See *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>6</sup> *C.S.*, 60 ECAB \_\_\_\_ (Docket No. 08-2218, issued August 7, 2009).

<sup>7</sup> *Sandra D. Pruitt*, 57 ECAB 126 (2005).

Dr. Gaskins treated appellant for a contusion of the back related to the October 31, 2007 injury. In a disability slip dated November 1, 2007, she noted that he was unable to work from November 1 to 5, 2007. Similarly, in a December 3, 2007 disability slip, Dr. Gaskins advised only that appellant could not work until further notice. On November 8, 2007 she noted his complaints of pain radiating into his left leg, spasms with difficulty walking and advised that he was disabled. Other notes from Dr. Gaskins' dated November 14 and December 3, 2007 indicate that appellant was totally disabled from work for medical reasons related to his October 31, 2007 accident at work. Although she noted that he had symptoms of his low back condition and was disabled on certain days in 2007 due to his workplace accident, she did not adequately address any employment-related disability from December 8, 2007 to January 18, 2008 causally related to his accepted employment conditions. As noted, appellant's burden of proof includes submitting rationalized medical evidence which supports a causal relationship between the alleged disabling condition and the accepted injury. Dr. Gaskins did not explain the reasons why residuals of the accepted back contusion caused total disability for work from December 8, 2007 to January 18, 2008. These reports are insufficient to discharge appellant's burden of proof.

The reports from Dr. Gaskins dated December 30, 2007 and February 6, 2008, noted appellant's complaint of intermittent low back pain in the sacrum area and advised that he was totally disabled. She noted that he was unable to work from November 1 to the present but the basis for this finding of disability was not well explained. On March 21, 2008 Dr. Gaskins indicated that appellant returned to work on March 17, 2008 but stopped again on March 19, 2008 due to worsening pain. She opined that his employment-related activities were aggravating his symptoms and recommended he refrain from employment until further evaluation by a specialist. As noted this report is not directly relevant to the period of claimed compensation although Dr. Gaskins noted appellant's low back symptoms and advised that he was unable to work beginning November 1, 2007, she did not adequately explain how residuals of the accepted condition caused employment-related disability from December 8, 2007 to January 18, 2008.

Appellant was treated by Dr. Rutkowski, a chiropractor, for low back pain radiating into the left hip. Section 8101(2) of the Federal Employees' Compensation Act provides that chiropractors are considered physicians "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."<sup>8</sup> Section 10.311 of the implementing federal regulations provides:

"(c) A chiropractor may interpret his or her x-rays to the same extent as any other physician. To be given any weight, the medical report must state that x-rays support the finding of spinal subluxation. [The Office] will not necessarily require submittal of the x-ray or a report of the x-ray, but the report must be available for submittal on request."<sup>9</sup>

Where x-rays do not demonstrate a subluxation (a diagnosis of a subluxation based on x-rays has not been made), a chiropractor is not a "physician," and his reports are not probative medical

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<sup>8</sup> 5 U.S.C. § 8101(2).

<sup>9</sup> 20 C.F.R. § 10.311.

evidence under the Act.<sup>10</sup> As Dr. Rutkowski did not diagnose a subluxation as demonstrated by x-ray to exist, he is not a physician as defined. Therefore, his reports are insufficient to establish appellant's claim.

On June 17, 2008 Dr. Hayek treated appellant for right hip and tailbone pain which developed after a work injury. He diagnosed possible sacroiliac joint injury. There was no discussion of the accepted back condition causing disability. Dr. Hochman noted appellant's treatment for a back contusion and advised that appellant was currently working pursuant to restrictions. On November 25, 2008 Dr. Nice diagnosed neuroma-type pain in a left sacroiliac joint fat nodule. Drs. Yokiell and Cohn also noted appellant's treatment for low back pain radiating into his left hip and diagnosed a back contusion. However, none of the physicians explained how appellant became totally disabled during the period claimed as a result of the accepted back contusion. These reports are insufficient to establish total disability from December 8, 2007 to January 18, 2008.

The remainder of the medical evidence includes a December 3, 2007 x-ray of the left hip, a January 25, 2008 MRI scan of the lumbar spine and an MRI scan of the sacrum/coccyx dated February 18, 2008 these diagnostic studies do not provide any opinion on causal relationship or address appeal's disability for work. Consequently, the medical evidence does not establish the claimed period of disability due to appellant's accepted employment injury.

### **CONCLUSION**

The Board finds that appellant failed to establish that his disability from December 8, 2007 to January 18, 2008 is causally related to the accepted employment injury.

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<sup>10</sup> See *Susan M. Herman*, 35 ECAB 669 (1984).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 16, 2009 is affirmed.

Issued: June 2, 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