United States Department of Labor
Employees' Compensation Appeals Board

S.P., Appellant **and** **U.S. POSTAL SERVICE, POST OFFICE, Destin, FL, Employer**	)	**Docket No. 09-1010** **Issued: March 2, 2010**

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 6, 2009 appellant, through her attorney, filed a for review of a February 5, 2009 decision of the Office of Workers' Compensation Programs that denied her claim of partial disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the appeal.

ISSUE

The issue is whether appellant was partially disabled from March 8 to April 25, 2008 due to her December 3, 2007 injury.

FACTUAL HISTORY

On December 3, 2007 appellant, then a 47-year-old clerk, sustained injury to her neck which she slipped against an over-the-road container. The Office accepted her claim for a

cervical sprain.[1] On December 27, 2007 appellant accepted a full-time modified-duty job offer as a customer service associate. On May 7, 2008 she filed a CA-7 claim for wage-loss compensation. The employing establishment submitted a time analysis form which showed that she worked four hours a day from March 8 to April 25, 2008 and claimed compensation for the hours not worked.

The record reveals that following a course of physical therapy appellant underwent a cervical epidural block by Dr. Ruben B. Timmons, a Board-certified anesthesiologist, on March 25, 2008. On April 8 and 22, 2008 Dr. Timmons performed cervical facet joint injections at C3-4, C4-5, C5-6 and C6-7. He listed a diagnosis of multilevel degenerative disc disease of the cervical spine, an annular tear at C6-7 and disc protrusion at C4-5.[2]

In a May 20, 2008 letter, the Office advised appellant that it approved 67.95 hours of disability from February 14 to April 22, 2008, for physical therapy and the three hospital procedures. It notified her that she had not submitted sufficient medical evidence to document her partial disability for 95.99 hours from March 8 to April 25, 2008. The Office noted that the only evidence indicating a four-hour work restriction was a limited-duty form dated February 26, 2008 from an uncertain medical provider. It noted that the signature differed from that of Dr. Timmons. Appellant was advised to submit additional medical evidence explaining her partial disability for work.

Appellant submitted a March 24, 2008 form of Dr. Frank Francone, a family practitioner, who requested a transcutaneous nerve stimulation (TENS) unit for relief of her pain and spasms. In a June 6, 2008 duty status report, Dr. Timmons noted that appellant was able to work since February 12, 2008. He limited continuous lifting to 10 pounds and intermittent lifting to 70 pounds during eight hours a day; eight hours of standing, simple grasping, fine manipulation, and reaching above the shoulder; four hours of walking and twisting; two hours of bending, pushing/pulling, and exposure to dust with no climbing, driving a vehicle or operating machinery and no exposure to humidity or chemicals and solvents. Appellant also submitted copies of medical reports previously of record.

In a June 27, 2008 decision, the Office denied appellant's claim for 95.99 hours of partial disability from March 8 to April 22, 2008.

On July 25, 2008 appellant, through her attorney, requested a hearing before an Office hearing representative which was held by telephone on November 13, 2008. In a July 8, 2008 treatment note, Dr. Timmons reiterated the primary diagnoses of cervical degenerative disease, annular tear at C6-7 and disc protrusion at C4-5. He recommended an ergonomic chair and noted findings on examination. Dr. Timmons stated that while some of the degenerative disease "may have been preexisting; however[,] the bulges and the annular tear may be directly related to

[1] Diagnostic testing of the cervical spine on December 31, 2007 revealed narrowing of the C5-6 disc space with several millimeters of retrolisthesis at C5-6. Appellant underwent physical therapy.

[2] Appellant submitted a February 26, 2008 limited-duty form which recommended part-time sedentary work for four hours a day until April 12, 2008. The Office noted that the physician's signature on the form is illegible. The Board notes that subsequent forms bear the address of Dr. Timmon's practice in Fort Walton Beach.

the trauma itself." He attributed her symptoms to her neck injury at work and noted that appellant had been given restrictions which allowed her to sit at a counter. On August 15, 2008 Dr. Timmons noted that appellant was seen for ongoing cervical pain. He listed her diagnoses and noted that she could only work part time "because of the intractable nature of the pain and the fact that the injections have been limited as far as any pain relief is concerned." On October 21, 2008 Dr. Timmons stated: "In reference to [appellant's] ability to work four hours a day -- it is simply because of the chronic nature of debilitating nature of her pain." He noted that although a sprain was accepted as her initial condition, it "may have caused the annual tear at C6-7, which may have in fact contributed to the symptomatology secondary to her degenerative dis[c] disease -- prior to sprain was asymptomatic."

In a February 5, 2009 decision, an Office hearing representative affirmed the denial of appellant's claim. She found that the medical evidence from Dr. Timmons was not well rationalized in explaining why appellant became restricted to work for four hours a day from March 8 to April 25, 2008.

LEGAL PRECEDENT

Under the Federal Employees' Compensation Act,[3] the term "disability" is defined as incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.[4] Disability is thus not synonymous with physical impairment which may or may not result in the incapacity to earn the wages. An employee who has a physical impairment causally related to a federal employment injury but who nonetheless has the capacity to earn wages he or she was receiving at the time of injury has no disability as that term is used in the Act.[5] Whether a particular injury causes an employee to be disabled for work and the duration of that disability are medical issues that must be proved by a preponderance of the reliable, probative and substantial medical evidence.[6]

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.[7] It is well established that medical conclusions unsupported by rationale are of diminished probative value.[8]

[3] 5 U.S.C. §§ 8101-8193.

[4] *See Prince E. Wallace*, 52 ECAB 357 (2001).

[5] *Cheryl L. Decavitch*, 50 ECAB 397 (1999); *Maxine J. Sanders*, 46 ECAB 835 (1995).

[6] *Tammy L. Medley*, 55 ECAB 182 (2003).

[7] *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

[8] *Albert C. Brown*, 52 ECAB 152 (2000).

ANALYSIS

The Office accepted that appellant sustained a cervical strain related to her federal employment. Appellant accepted a modified-duty job offer as a full-time customer service associate on December 27, 2007. She claimed compensation from March 8 to April 25, 2008 for four hours a day of disability. The Office approved 67.95 hours of disability from February 14 to April 22, 2008 but denied 95.99 hours as the medical evidence was insufficient to establish partial disability.[9]

The Board finds that the medical evidence of record is insufficient to establish appellant's partial disability for work beyond the hours approved by the Office. The medical evidence consists of treatment notes from Dr. Timmons who noted that appellant underwent an epidural block on March 25, 2008. Dr. Timmons did not specifically address appellant's capacity for work or the reasons why she was unable to continue at full-time modified duty. The February 26, 2008 limited-duty form check marked a box that appellant was restricted to part-time duty. The Board has held that a physician's opinion on causal relationship that consists of checking a box on a form report is of diminished probative value.[10] The form constitutes a medical conclusion not fortified by rationale explaining appellant's medical background or the reasons for her claimed partial disability. The additional form reports from Dr. Timmons for this period are similarly deficient in providing medical rationale addressing appellant's partial capacity for work. On August 18, 2008 Dr. Timmons noted that appellant was seen for ongoing cervical pain. He noted that, because of the intractable nature of her pain, she could only work part time. This medical opinion is not sufficient to establish partial disability for the hours claimed from March 8 to April 25, 2008. Dr. Timmons did not specifically address this period of time and his treatment of appellant. He did not explain how residuals of the accepted injury caused appellant's disability for work under modified restrictions. Dr. Timmons' October 21, 2008 report is similarly deficient. The Office properly denied appellant's claim of wage loss for four hours a day as the medical evidence submitted is not probative.

The March 24, 2008 form report from Dr. Francone recommended a TENS unit for the relief of pain. Dr. Francone did not address the issue of appellant's capacity for employment of explain why she could only work four hours a day. The medical evidence of record is not sufficient to establish appellant's disability for work for the 95.99 hours claimed.

CONCLUSION

The Board finds that appellant did not establish partial disability for work beyond the 67.95 hours accepted by the Office.

[9] The Board notes that appellant's claim for disability commencing April 26, 2008 was accepted by the Office in an August 3, 2009 decision of an Office hearing representative. As this adjudicated a different period of disability, the August 3, 2009 decision is not null and void. *See D.S.*, 58 ECAB 392 (2007); *Lawrence Sherman*, 55 ECAB 192 (2003); *Douglas Billings*, 41 ECAB 880 (1990).

[10] *See Cecelia M. Corley*, 56 ECAB 662 (2005).

ORDER

IT IS HEREBY ORDERED THAT the February 5, 2009 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: March 2, 2010
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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