



On May 19, 2009 the employing establishment found that appellant was absent without permission and suspended her from June 20 through July 3, 2009.

In a note dated October 7, 2009, Dr. Robert L. Howell, a Board-certified plastic surgeon, examined appellant for degenerative arthritis of the right wrist and noted that she had not worked since July 22, 2009. He examined x-rays and diagnosed osteoarthritis of the entire mid-carpal region. Dr. Howell stated that appellant's chronic degenerative arthritis of the right wrist should be addressed under private insurance, as he did not believe that her employment injury caused this condition.

Dr. Plas T. James, a Board-certified orthopedic surgeon, examined appellant on October 13, 2009. He noted that she reported that her back pain returned on August 29, 2009 after she returned to work. Dr. James diagnosed L4-5 and L5-S1 degenerative disc disease and recommended a magnetic resonance imaging (MRI) scan.

Appellant filed a claim for compensation and requested loss of differential, night and Sunday premium pay on September 1 and from September 13 through October 13, 2009. She indicated that she used 8 hours of leave without pay on September 1, 2009 and 7.83 hours of leave without pay on September 4, 2009. Appellant used eight hours of annual leave a day from September 5 through 13, 2009. She used eight hours of leave without pay per day from September 14 through October 13, 2009.

On November 17, 2009 Dr. James reviewed the MRI scan testing and advised that appellant had evidence of L4-5 moderate degenerative disc disease, spinal stenosis and Grade 1 spondylolisthesis. He also found a herniated disc and degenerative disc disease at L5-S1.

In a letter dated November 24, 2009, the Office informed appellant that the medical evidence did not establish her total disability due to the accepted employment injury. It requested additional medical information and allowed 30 days for a response. On December 2, 2009 appellant stated that she was working, but contended that the employing establishment withdrew her positions.

By decision dated December 29, 2009, the Office denied appellant's claim finding that she failed to submit sufficient medical evidence to support her disability for work.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> 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.<sup>2</sup> The term disability is defined as the incapacity because of an employment injury to earn

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *G.T.*, 59 ECAB \_\_\_\_ (Docket No. 07-1345, issued April 11, 2008); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.<sup>3</sup>

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.<sup>4</sup> 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. 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.

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.<sup>5</sup> Rationalized medical evidence is medical evidence, which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>6</sup> Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>7</sup>

### ANALYSIS

The Office accepted appellant's claim for right wrist sprain, contusion of the left knee and lumbar sprain. She filed a claim for intermittent wage-loss compensation from September 1 through October 14, 2009. On October 7, 2009 Dr. Howell, a Board-certified plastic surgeon, diagnosed degenerative arthritis of the right wrist. He determined that appellant's chronic degenerative arthritis of the right wrist was not due to her employment injury of December 7, 2008. Dr. Howell advised that it was a chronic condition. This report does not support appellant's claim for disability due to her accepted employment injury. Dr. Howell negated a causal relationship between appellant's current right wrist condition and her employment. Moreover, he did not address disability for the period claimed. Dr. Howell's

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<sup>3</sup> 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).

<sup>4</sup> *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

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

<sup>6</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>7</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

report does not establish that appellant disability as of September 1, 2009 due to her accepted condition.

Appellant submitted reports from Dr. James, a Board-certified orthopedic surgeon, dated October 13 and November 17, 2009 addressing her current back condition. He diagnosed L4-5 degenerative disc disease, spinal stenosis and Grade 1 spondylolisthesis and a herniated disc and degenerative disc disease at L5-S1. Dr. James did not attribute appellant's lumbar condition to her December 7, 2008 employment injury. While he indicated that appellant experienced back pain after her return to work, he did not address how her work as a clerk caused or contributed to any disability for work as of September 1, 2009. Dr. James did not provide an opinion on the causal relationship between appellant's accepted lumbar sprain and her claim of disability. Without a medical opinion attributing appellant's current back condition and any resulting disability to her accepted conditions, appellant did not submit sufficient medical evidence to support her claim that she became disabled as of September 1, 2009 due to residuals of her accepted injury.

### **CONCLUSION**

The Board finds that appellant did not submit sufficient medical opinion to support that she was disabled as of September 1, 2009 due to the injury of December 7, 2008.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the December 29, 2009 decision of Office of Workers' Compensation Programs is affirmed.

Issued: October 5, 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