United States Department of Labor
Employees' Compensation Appeals Board

P.W., Appellant	)	
and	)	**Docket No. 09-2194**
	)	**Issued: September 23, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Chicago, IL, 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 August 31, 2009 appellant filed a timely appeal from the July 24, 2009 merit decision of the Office of Workers' Compensation Programs denying her claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant established that she was disabled eight hours a day on the dates she attended physical therapy from April 21, 2008 to January 26, 2009.

FACTUAL HISTORY

On February 12, 1997 appellant, then a 44-year-old mail processing clerk, filed an occupational disease claim for muscle strain and groin pain from lifting mail trays. The Office accepted the claim for a groin strain and paid benefits. On February 22, 2000 appellant filed a claim for a herniated lumbar disc that she attributed to her work duties. The Office accepted the condition of lumbar disc displacement. Appellant returned to limited-duty work on April 27, 2005.[1] The Office paid compensation for intermittent periods of disability from

[1] On December 21, 2005 the Office found that appellant's actual earnings as a rehabilitation mail processor fairly and reasonably represented her wage-earning capacity and reduced her compensation to zero.

September 27, 2005 to November 11, 2007. Appellant returned to limited duty on November 12, 2007 with a scheduled reporting time of 10:00 p.m.[2]

After appellant returned to limited-duty work, she attended physical therapy under the direction of her attending physician two days a week. The record reflects that the Office paid 410 hours of wage loss for physical therapy appointments from April 28, 2008 to January 26, 2009.[3] Appellant filed claims for compensation on the days she attended physical therapy appointments for the period April 21, 2008 through January 26, 2009. On September 22, October 10 and 28, 2008 time analysis forms, she claimed eight hours leave without pay (LWOP) for the dates of September 8, 12, 15, 19, 22, 26 and 29, 2008 and October 3, 6, 9, 10, 13, 17, 20, 24 and 27, 2008 to attend physical therapy. Appellant contended that she was entitled to eight hours of wage loss on the days she attended physical therapy. She also attributed her disability to sitting in the wrong chair and strain to her lower back. Physical therapy notes and notes from Witold Mierzwa, a physical therapist, establish she was seen on the claimed dates.

In an April 12, 2008 report, Dr. Samuel J. Chmell, a Board-certified orthopedic surgeon, stated that appellant had increased neck pain and left-sided low back pain and was unable to work the previous night. He diagnosed cervical disc derangement, bilateral shoulder derangement and lumbar disc herniation. Dr. Chmell advised that appellant could return to work on April 15, 2008. In a May 3, 2008 report, he stated that appellant was attending therapy three days a week and that she "does have to miss work when she is attending therapy." Appellant reported improving symptoms. Dr. Chmell advised that appellant could continue working with restrictions "but miss work for therapy." In a June 14, 2008 treatment note, he recommended an ergonomic chair and continued physical therapy. In a June 14, 2008 attending physician's report, Dr. Chmell noted that, since April 21, 2008, appellant missed work two to three times a week to attend physical therapy. An August 23, 2008 treatment note advised that appellant continued working with restrictions and stated that she "may have periods of incapacity." Dr. Chmell recommended that she should continue with physical therapy.

In a September 20, 2008 report, Dr. Chmell reiterated that appellant attend physical therapy for her shoulder, neck and low back conditions. He stated that she continued to have low back pain and tightness and worked with restrictions. Dr. Chmell diagnosed lumbar disc derangement, cervical disc derangement and bilateral shoulder derangement. He recommended physical therapy twice a week and work within restrictions. Dr. Chmell stated that appellant needed an ergonomic custom chair for low back support and noted that she might have periods of incapacity. On September 22, 2008 he explained why appellant needed physical therapy. Dr. Chmell noted recommending for several years that she have an ergonomic chair.

In an October 25, 2008 progress note, Dr. Chmell stated appellant was recently exposed to cold blowing air at work and her right shoulder and arm became painful. Appellant telephoned his office and it was determined that she was fully incapacitated for duty on

[2] The Office issued schedule awards on February 9, 2006, July 20, 2007 and May 28, 2008 for three percent left leg impairment and 11 percent right leg impairment.

[3] The Office paid 126 hours of wage loss from April 28 to June 13, 2008, 112 hours from June 8 to August 8, 2008, 64 hours from August 11 to September 5, 2008, 16 hours of wage loss from September 8 to October 27, 2008, 24 hours from October 31 to November 24, 2008, 16 hours from December 1 to 12, 2008 and 52 hours from December 15, 2008 to January 26, 2009, or four hours for each day claimed.

October 23, 2008 and was put on bed rest. Dr. Chmell noted examination findings and diagnosed lumbar disc derangement, cervical disc derangement and bilateral shoulder derangement. In an October 25, 2008 work statement, he indicated that appellant was totally disabled on October 23, 2008 due to her lumbar disc derangement, cervical disc derangement and bilateral shoulder derangement. Duty status and progress reports from Dr. Chmell for treatment on September 20 and November 15, 2008 were provided.

In an October 27, 2008 letter, Gwendolyn Edwards, an employing establishment human resources management specialist, noted appellant attended physical therapy at 3:00 p.m., and no time was lost from work due to the scheduled therapy appointments. She stated that appellant stopped work after she was notified of the employing establishment's intention to reduce the amount of time lost from work.

On November 17, 2008 Dr. Chmell advised that appellant attended physical therapy twice a week due to her work injuries and this allowed her to keep working. He questioned why appellant was not allowed time off work to attend physical therapy. Dr. Chmell noted an alternative was to take her off work completely so she would not be "hassled" regarding therapy. He requested that she be accommodated with paid time off for treatment of her work injuries.

In a December 3, 2008 report, Dr. Chmell addressed appellant's treatment for her work injuries of April 21, 1999. Appellant had been working with restrictions since that time and had periodic flare-ups of her injuries, particularly in her low back. Dr. Chmell stated that she was in the midst of such a flare-up and attended physical therapy twice a week, which enabled her to continue work but she had difficulty because she was not allowed to take time off twice a week for therapy. He again suggested an alternative would be to take her off work completely so she would not be "hassled" with regard to therapy.

In a December 12, 2008 letter, the Office notified appellant that physical therapy visits were only authorized for a maximum of four hours. It requested that she provide medical evidence that she attended physical therapy on the dates claimed as well as a rationalized report from her treating physician which provided an opinion regarding the relationship of her ability to work and her accepted work-related conditions.

In a December 10, 2008 note, the physical therapist indicated that appellant attended therapy on November 3, 5, 11, 14, and 17, 2008 and was scheduled for November 21, 24 and 28, 2008. Handwritten notations from a Ms. Hickens indicate that appellant used eight hours of sick leave a day on November 11 and 14, 2008 and used four hours of sick leave on November 17, 2008. She noted no verification sheets were submitted that showed arrival and departure times, even though appellant was instructed to provide such information and forms had been mailed to her. In a December 12, 2008 note, Ms. Edwards asserted that appellant lost no time from work due to scheduled therapy appointments. She reiterated that appellant stopped work after she was notified of the employer's intention to reduce the amount of time lost from work.

In a December 17, 2008 letter, Dr. Chmell advised that appellant's condition was not a recurrence as she had back pain since her injury. Over the prior months, her pain became more intense which initially necessitated a period of incapacity and required her to attend physical therapy. Dr. Chmell noted that appellant told him she was not allowed to take time off work to

attend physical therapy. On December 20, 2008 he reiterated that appellant should have a custom-measured support chair.

A physical therapist verified that on October 24, 2008 appellant was seen from 3:00 p.m. to 5:25 p.m.; on October 7, 2008 appellant was seen from 4:00 p.m. to 5:50 p.m.; on October 31, 2008 she was seen from 5:00 p.m. to 6:55 p.m.; on November 5, 2008 she was seen from 5:00 p.m. to 7:18 p.m.; on November 8, 2008 she was seen from 2:30 p.m. to 4:00 p.m.; on November 11, 2008 she was seen from 11:30 a.m. to 1:48 p.m.; on November 16, 2008 she was seen from 3:00 p.m. to 5:10 p.m.; on November 17, 2008 she was seen from 4:00 p.m. to 5:55 p.m. and on November 24, 2008 she was seen from 4:10 p.m. to 6:06 p.m.

In a February 4, 2009 decision, the Office denied appellant's claim of disability beginning April 21, 2008. It found that the medical evidence did not provide a well-rationalized statement with objective medical findings to support that her disability was causally related to her April 21, 1999 work injury. The Office found it unreasonable to need time off for physical therapy appointments when her work hours were from 10:00 p.m. to 6:30 a.m.

On February 9, 2009 appellant requested a telephonic hearing that was held on June 2, 2009. She advised that she worked nights from 10:00 p.m. to 6:30 a.m. and attended physical therapy around 3:00 p.m. for two to three hours. Appellant was taken off work as of April 21, 2008 as her physician did not want her to work after physical therapy because her chair at work caused back problems. When she went to work after physical therapy, her back stiffened while sitting in the chair and she could barely stand. Appellant noted her job was sedentary and that she would get up and move to prevent her back from locking up. She had physical therapy from April 2008 to January 26, 2009. Appellant noted that she maintained a full-time work schedule with intermittent days off since January 26, 2009. Her attorney argued that she had back pain because of her current chair.

In a January 3, 2009 prescription note, Dr. Chmell reiterated that appellant needed a custom ergonomic chair. In a February 14, 2009 progress note, he advised that appellant worked a night shift and had not been provided with the proper seating which resulted in gradually increasing back pain though she was not doing anything strenuous. Dr. Chmell attributed her back pain to an inappropriate chair. On March 9, 2009 he reiterated that appellant needed appropriate support seating for her permanent low back injury. Dr. Chmell predicted that she would have periods of incapacity such as that which began on April 21, 2008 if she did not have prescription supportive back seating. He stated that such periods of incapacity would become more frequent. Dr. Chmell indicated that she had flare-ups of her original injury as no supportive back seating had been provided. In a June 20, 2009 letter, he reiterated that appellant still needed an ergonomic chair and, because she had not received it, she had a flare up of back pain that disabled her from June 15 to 21, 2009.

By decision dated July 24, 2009, an Office hearing representative affirmed the February 4, 2009 decision. The hearing representative noted that, since January 26, 2009, appellant maintained a full work schedule.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[4] has the burden of establishing the essential elements of his or her claim by the weight of the evidence.[5] Under the Act, the term disability is defined as an inability, due to an employment injury, to earn the wages the employee was receiving at the time of injury, *i.e.*, an impairment resulting in loss of wage-earning capacity.[6] 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.[7] Whether a particular injury caused an employee disability for employment is a medical issue which must be resolved by competent medical evidence.[8] The fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[9] 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 an employee to self-certify their disability and entitlement to compensation.[10]

An injured employee is entitled to compensation for lost wages incurred while obtaining authorized medical services.[11] This includes the actual time spent obtaining the medical services and a reasonable time spent traveling to and from the medical provider's location.[12] As a matter of practice, the Office generally limits the amount of compensation to four hours with respect to routine medical appointments.[13] However, longer periods of time may be allowed when required by the nature of the medical procedure and/or the need to travel a substantial distance to obtain the medical care.

ANALYSIS

The Office accepted that appellant sustained a groin strain and lumbar disc displacement in the performance of duty. Appellant returned to limited-duty work on November 12, 2007 and worked a shift that began at 10:00 p.m. She underwent physical therapy at the direction of her attending physician two days a week during the period April 21, 2008 to January 26, 2009. The

[4] 5 U.S.C. §§ 8101-8193.

[5] *Joe D. Cameron*, 41 ECAB 153 (1989).

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

[7] *Sandra D. Pruitt*, 57 ECAB 126 (2005); *Dennis J. Balogh*, 52 ECAB 232 (2001).

[8] *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008); *Gary J. Watling*, 52 ECAB 278 (2001).

[9] *D.I.*, 59 ECAB ___ (Docket No. 07-1534, issued November 6, 2007).

[10] *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

[11] 5 U.S.C. § 8103(a) (2006); *see Gayle L. Jackson*, 57 ECAB 546, 547-48 (2006).

[12] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computing Compensation*, Chapter 2.901.16a (December 1995).

[13] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Administrative Matters*, Chapter 3.900.8 (November 1998).

Office paid appellant four hours of wage-loss compensation for each day claimed or a total of 410 hours of wage loss. Appellant contends that she is entitled to eight hours of wage-loss compensation for the days she attended physical therapy. The employing establishment noted that her tour of duty was 10:00 p.m. to 6:30 a.m. and that she did not take time off from work to attend the physical therapy sessions. Appellant stated that she attended physical therapy in the late afternoons and contended she was often disabled thereafter from going to work.

In support of her claim for intermittent disability beginning April 21, 2008, appellant submitted multiple treatment notes and reports from Dr. Chmell who indicated that she required physical therapy for her shoulder, neck and low back conditions and that she might have periods of incapacity as an ergonomic chair was needed for her back. In reports and treatment notes from April 12 to September 20, 2008, Dr. Chmell generally indicated that appellant might have periods of incapacity and needed to miss work for physical therapy but he did not indicate whether she was totally disabled from her light-duty position on specific dates during the period at issue due to her accepted injuries. While he indicated in his November 17, 2008 report that physical therapy was needed to enable appellant to continue working, Dr. Chmell appeared to be under the erroneous impression appellant was not allowed time off work to attend her physical therapy appointments.[14] As noted, appellant attended physical therapy in the late afternoons and was not scheduled to work until 10:00 p.m. Additionally, Dr. Chmell did not address whether appellant was totally disabled after attending her physical therapy sessions. On December 3, 2008 he indicated that appellant had a flare-up of her work injuries, but did not indicate whether she was disabled as a result of such flare-up or how the flare-up occurred. On March 9, 2009 Dr. Chmell stated that appellant's disability beginning April 21, 2008 occurred because she did not have prescription back seating. However, he failed to provide any medical rationale explaining how and why inappropriate workplace seating caused appellant to be disabled from her light-duty job beginning April 21, 2008 due to her accepted injuries. While Dr. Chmell found appellant totally disabled for work on October 23, 2008 as a result of being exposed to cold blowing air at work, he did not provide any medical rationale explaining why appellant became disabled for the claimed hours or days due to her accepted injuries or was unable to continue work at her light-duty position for the claimed period. His other reports do not indicate that appellant was totally disabled due to her accepted conditions on specific dates from April 21, 2008 to January 26, 2009. As noted, 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. Without any reasoned explanation supporting that appellant was disabled from April 21, 2008 to January 26, 2009, due to her accepted injuries and beyond that which the Office has already compensated her, the evidence from Dr. Chmell is insufficient to meet appellant's burden of proof.[15]

[14] *See Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history have little probative value).

[15] *T.F.*, 58 ECAB ___ (Docket No. 06-1186, issued October 19, 2006 (a medical report is of limited probative value on a given medical question if it is unsupported by medical rationale).

The record also contains reports and notes from a physical therapist. As a physical therapist is not included in the definition of a physician under the Act, these reports are of diminished probative value.[16]

There is insufficient medical evidence to support that beginning April 21, 2008 appellant was totally disabled due to her work injuries, beyond the dates accepted by the Office or that she was totally disabled after her physical therapy sessions. The Office properly denied her claim for eight hours of disability to attend physical therapy.

CONCLUSION

The Board finds that appellant failed to establish that she was disabled for eight hours a day while attending physical therapy.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated July 24, 2009 is affirmed.

Issued: September 23, 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

[16] Under section 8101(2), the definition of a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2). *See also Jerre R. Rinehart*, 45 ECAB 518 (1994).