

FACTUAL HISTORY

On January 29, 2009 appellant, then a 60-year-old certified nurse assistant, filed a traumatic injury claim alleging that she experienced severe pain in her right wrist and arm that day when a patient grabbed her arm as she tried to prevent him from falling and pulling out a tube. The Office accepted her claim for contusion of the right wrist and advised that medical evidence establishing employment-related disability was required to support any claims for wage loss.

On February 25, 2009 appellant returned to restricted-duty work. She filed claims for wage-loss compensation for the period March 17 through June 25, 2009.

By letters dated March 27 and May 6, 2009, the Office advised appellant about the deficiencies in her claim. It requested that she provide additional medical evidence to support her disability for the claimed period.

Appellant submitted medical evidence from Dr. David Griffith, an attending chiropractor. In an undated Texas workers' compensation work status report, Dr. Griffith advised that appellant sustained injuries to her elbow, forearm and wrist. He listed her physical restrictions and advised that she was unable to work from March 17 to April 3, 2009. In progress notes dated April 28 through May 22, 2009, Dr. Griffith indicated that appellant underwent physical therapy to treat her right wrist pain. In prescriptions dated June 8 to July 20, 2009, he ordered therapeutic products to treat appellant's synovitis, tenosynovitis and recurrent joint dislocation.

In reports dated April 16 to June 25, 2009, Dr. A.R.S. Prasad, an attending internist, obtained a history of appellant's January 29, 2009 employment injury, medical treatment and social background. He listed essentially normal findings on physical examination and diagnosed right thumb tenosynovitis and internal derangement syndrome and disruption of the triangular fibrocartilage of the right wrist area with tenosynovitis of extensor carpi ulnaris. Dr. Prasad placed appellant off work pending a surgical evaluation regarding her right hand since she was right-handed and was required to perform heavy lifting and move patients. In progress notes dated April 20 through July 23, 2009, he addressed appellant's physical therapy for her right wrist pain. In a June 8, 2009 report, Dr. Prasad addressed her allergic reaction to Vicodin. In reports dated June 25 and July 9 and 23, 2009, he released appellant to return to work with restrictions.¹

In an April 3, 2009 report, Dr. Ronald W. Saunders, a chiropractor, stated that appellant was under his care regarding her work-related right hand, wrist and forearm injuries. He opined that she was off work until April 19, 2009 due to severe pain, swelling and dysfunction.

In a report and progress note dated May 20, 2009, Dr. Mario A. Bustamante, a Board-certified orthopedic surgeon, obtained a history of appellant's January 29, 2009 employment injury, medical treatment and social background. He listed his findings on physical examination and diagnostic testing. Dr. Bustamante diagnosed triangular fibrocartilage and first dorsal compartment sprains and carpometacarpal (CMC) and metacarpophalangeal (MCP) joint arthritis

¹ On June 30, 2009 appellant accepted the employing establishment's job offer for restricted-duty work.

with a sprain of the right thumb. He advised that appellant would be off work until May 31, 2009. Appellant could return to regular-duty work on June 1, 2009. Also on May 20, 2009 Dr. Bustamante prescribed a volar splint. On May 26, 2009 he referred appellant to physical/occupational therapy to treat her right wrist and hand sprains and strains.

On August 3, 2009 the Office received a June 25, 2009 progress note from Rosalinda Garza-Harris, a licensed clinical social worker at the same medical facility as Dr. Prasad, which addressed appellant's physical therapy.

By decision dated August 21, 2009, the Office denied appellant's claim for compensation for the period March 17 through June 25, 2009. It found the evidence to be insufficient to establish that she was totally disabled during the claimed period due to her accepted condition.

LEGAL PRECEDENT

Under the Federal Employees' Compensation 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 the injury, *i.e.*, an impairment resulting in loss of wage-earning capacity.² 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.³ Whether a particular injury causes an employee to become disabled for work and the duration of that disability are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.⁴ 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.⁵ The Board will not require the Office to pay compensation for total 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 her disability and entitlement to compensation.⁶

ANALYSIS

The Office accepted that appellant sustained a contusion of the right wrist in the performance of duty on January 29, 2009. Appellant claimed compensation for disability from March 17 to June 25, 2009, due to the accepted condition. On August 21, 2009 the Office found that she was not disabled for work during the claimed period. Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed disability and the accepted condition.⁷

² See *Prince E. Wallace*, 52 ECAB 357 (2001).

³ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁴ *Gary J. Watling*, 52 ECAB 278 (2001).

⁵ *Manuel Garcia*, 37 ECAB 767 (1986).

⁶ *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁷ *Alfredo Rodriguez*, 47 ECAB 437 (1996).

The Board finds that Dr. Griffith's and Dr. Saunders's reports which found that appellant was disabled from work from March 17 to April 19, 2009 are insufficient to establish her claim. The term physician under section 8101(2) of the Act includes chiropractors 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.⁸ Neither, Dr. Griffith nor Dr. Saunders diagnosed a spinal subluxation based on x-ray. Therefore, their reports are of no probative medical value.⁹

Dr. Prasad stated that appellant could return to work with restrictions as of June 25, 2009. Although he indicated that she was disabled for work, he did not address how her disability was due to the accepted right wrist contusion. Dr. Prasad did not explain the basis for appellant's disability commencing April 16, 2009. As noted, it is her burden to establish her disability by the submission of probative medical evidence. Dr. Prasad's progress notes only generally addressed the physical therapy appellant underwent for the treatment of her right wrist pain. His June 8, 2009 report addressed appellant's reaction to pain medication. This evidence does not address how her disability for the claimed period was caused by her accepted condition. The Board finds that Dr. Prasad did not submit sufficient medical opinion to establish that appellant's total disability for the claimed period was due to her accepted condition.

Dr. Bustamante's May 20, 2009 reports stated that appellant had triangular fibrocartilage and first dorsal compartment sprains and CMC and MCP joint arthritis with a sprain of the right thumb. He stated that she was disabled for work until May 31, 2009 and that she could return to regular-duty work as of June 1, 2009; however, he did not address whether her disability was causally related to the accepted employment injury. On May 20, 2009 Dr. Bustamante prescribed a volar splint. On May 26, 2009 he referred appellant to physical/occupational therapy for her right wrist and hand sprains and strains. This evidence does not address how her disability for the claimed period was caused by her accepted condition. The Board finds that the evidence from Dr. Bustamante is insufficient to establish appellant's claim.

The progress note from Ms. Garza-Harris is of no probative value as a social worker is not included in the definition of "physician" under the Act.¹⁰ The Board finds that this progress note is insufficient to establish appellant's claim.

The Board finds that there is insufficient medical opinion to establish that appellant was totally disabled from March 17 to June 25, 2009 due to residuals of her accepted contusion of the right wrist. Appellant did not meet her burden of proof.

CONCLUSION

The Board finds that appellant has failed to establish that she was totally disabled from March 17 through June 25, 2009 due to her employment injury.

⁸ 5 U.S.C. § 8101(2).

⁹ See *Michelle Salazar*, 54 ECAB 523 (2003).

¹⁰ See 5 U.S.C. § 8101(2); see also *Phillip L. Barnes*, 55 ECAB 426 (2004).

ORDER

IT IS HEREBY ORDERED THAT the August 21, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 2, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board