United States Department of Labor
Employees' Compensation Appeals Board

R.F., Appellant	)	
and	)	**Docket Nos. 10-1494 & 10-1519**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, AUSTIN STRAUBEL INTERNATIONAL AIRPORT, Green Bay, WI, Employer	)	**Issued: April 1, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 11, 2010 appellant filed a timely appeal from an April 12, 2010 Office of Workers' Compensation Programs' decision affirming the denial of wage-loss compensation. This was assigned docket number 10-1494. On May 17, 2010 appellant timely appealed a March 30, 2010 Office decision affirming the denial of her claim for a recurrence of disability. This was assigned docket number 10-1519. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claims.

ISSUES

The issues on appeal are: (1) whether appellant met her burden of proof to establish entitlement to wage-loss compensation from April 28 through July 18, 2008; and (2) whether she established a recurrence of total disability commencing July 21, 2008 causally related to her April 22, 2008 employment injury.

FACTUAL HISTORY

On April 22, 2008 appellant, then a 42-year-old lead transportation security screener, sustained a back injury when a coworker poked his finger in her back and pushed down on her left shoulder. The record reflects that she had nonwork-related mid- and right-sided thoracic pain from a facet and rib dysfunction on the right side. Appellant had been released to regular work with no restrictions on April 2, 2008. She stopped work on April 22, 2008 and was released to modified duty on April 28, 2008 under the restrictions of Dr. John Talbot Sellers, an osteopath and Board-certified physiatrist. The Office accepted a claim for thoracic sprain that resolved as of July 22, 2008. On July 21, 2008 appellant stopped work and resigned from the employing establishment.

In an April 24, 2008 report, Dr. Sellers noted a history of the April 22, 2008 incident and opined that appellant likely had facet and rib dysfunction on the right side. Appellant would undergo physical therapy and be kept off work until Monday, April 28, 2008. In an April 30, 2008 attending physician's report, Dr. Sellers advised that appellant's mid- and right-sided thoracic pain was caused or aggravated by her work injury. He found that appellant was totally disabled from April 24 to 27, 2008 but could return to modified duties with restrictions on April 28, 2008. Dr. Sellers continued to treat appellant. In his progress reports, he stated there was no change in the medical symptoms and that appellant had been attending physical therapy. Dr. Sellers reiterated that she could continue to work at modified duty with restrictions. Appellant also submitted copies of physical therapy reports.

The record reflects appellant went to an emergency room on June 19, 2008 and was diagnosed with acute exacerbation of chronic back pain by Dr. Robert C. Zimmerman, Board-certified in emergency medicine. She was released that day to the care of her attending physician. A June 19, 2008 x-ray revealed mild spondylosis of the thoracic spine.

On June 25 and July 10, 2008 appellant saw Dr. Richard L. Harrison, a Board-certified neurosurgeon, who did not address whether she was disabled.

In a May 4, 2009 report, Dr. Kimball S. Fulks, a neurosurgeon and Office referral physician, reviewed appellant's history and treatment. He opined that the April 2008 work incident caused a temporary aggravation of her preexisting thoracic degenerative disc disease and a thoracic strain. Dr. Fulks found that the work-related conditions resolved within 60 to 90 days.

On June 24, 2009 appellant filed a Form CA-7 for wage-loss compensation for intermittent dates from April 24 through July 21, 2008. This included dates within the continuation of pay period April 22 to June 5, 2008[1] and disability on June 20, July 2, 16, 17 and 18, 2008.

In an August 10, 2009 letter, the employing establishment advised that the continuation of pay period ran from April 22 through June 5, 2008 and appellant received continuation of pay

[1] The dates for compensation within the continuation of pay period were: April 24 and 28, May 2, 3, 12 and 13 and June 1, 2008.

through April 27, 2008. However, no medical documentation supported that the intermittent time she took off from work April 28 through July 18, 2008 was due to the April 22, 2008 injury. The employing establishment accommodated appellant's work restrictions until she resigned on July 21, 2008. It also noted that she was not eligible for leave buyback as she was no longer an employee.

In an August 12, 2009 letter, the Office advised appellant that the employing establishment would be responsible for the dates claimed for continuation of pay. She could file a formal leave buyback for the dates she used sick and annual leave. It noted that the medical evidence did not establish disability for work during the claimed period. Appellant was accorded 30 days to submit additional medical evidence of disability. She did not respond.

On August 14, 2009 the Office received appellant's June 26, 2009 claim for a recurrence of disability commencing July 21, 2008. Appellant alleged that she was forced to resign due to the effects of her accepted work injury. She had back surgery and was restricted from lifting, bending, twisting, reaching or carrying objects. The employing establishment advised that appellant was accommodated with limited-duty work as a result of her April 22, 2008 injury under her doctor's instructions. In an August 20, 2009 letter, the Office advised her of the evidence necessary to establish a recurrence claim.

By decision dated September 21, 2009, the Office denied appellant's claim for wage loss from April 24 to July 21, 2008. It found that the medical evidence of record failed to establish her disability.

By decision dated September 22, 2009, the Office denied appellant's recurrence claim. It found that the medical evidence did not establish that she became disabled from work effective July 21, 2008 as a result of the accepted work injury.

In letters of September 25, 2009, appellant requested a telephone hearing from the Office's September 21 and 22, 2009 decisions. She submitted medical reports from 2009 regarding her back pain. In a January 2, 2009 report, Dr. Harrison stated that appellant had a thoracic strain prior to the April 22, 2008 work incident. The April 22, 2008 work injury caused a permanent aggravation of her preexisting condition as she had not improved in spite of multiple interventions including medications, therapies and injections.

In an October 21, 2009 report, Dr. Marco Araujo, a Board-certified anesthesiologist and pain specialist, stated that appellant had been under his care since November 10, 2008. He advised that she had primarily right-sided interscapular and subscapular pain with bilateral T9 and T10 thoracic radiculopathy. Dr. Araujo diagnosed thoracic spine pain, displacement of a cervical disc and bilateral thoracic radiculopathy. He opined that she reached maximum medical improvement regarding her thoracic pain but had cervicalgia due to cervical disc displacement and disc degeneration at C6-C7.

A hearing on the recurrence claim was held on January 10, 2010. Appellant noted that, prior to the work injury, she had no work restrictions. In a February 3, 2010 letter, the employing establishment refuted her statement. It noted that appellant transferred from full time ("80 tour") to part time ("64 tour") on June 25, 2006 and from part time ("64 tour") to part time

("48 tour") on February 3, 2008. The employing establishment submitted evidence concerning appellant's preexisting back problems prior to April 22, 2008. Appellant was disabled from work on intermittent dates prior to April 22, 2008 and placed at modified duty from four to six hours a day. The evidence included work restrictions from Dr. Sellers. Appellant was released to regular work without restrictions on April 2, 2008 as a part-time lead transportation security officer.

A telephonic hearing on appellant's wage-loss claim was held on February 11, 2010. Appellant testified that she was bedridden on the days wage loss was claimed. Her attorney contended that it was impractical for her to obtain medical documentation of disability for each date claimed. Counsel argued medical reports of January 2 and October 21, 2009 were sufficient to document her disability.

By decision dated March 30, 2010, an Office hearing representative affirmed the September 22, 2009 recurrence decision.

By decision dated April 12, 2010, an Office hearing representative affirmed the September 21, 2009 decision as modified to allow continuation of pay on Friday, April 24, 2008. The medical evidence supported disability on April 24, 2008 and through the weekend but appellant was released to work as of April 28, 2008.

LEGAL PRECEDENT -- ISSUE 1

With respect to a claimed period of disability, an employee has the burden of establishing that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[2] The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.[3]

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.[4] The medical evidence required to establish a period of employment-related disability is rationalized medical evidence.[5] Rationalized medical evidence is medical evidence based on a complete factual and medical background of the claimant, of reasonable medical certainty, with an opinion supported by medical rationale.[6] The Board, however, 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

[2] *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] 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).

[4] *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

[5] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[6] *Leslie C. Moore*, 52 ECAB 132 (2000).

claimed.[7] To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.[8]

ANALYSIS -- ISSUE 1

The Office accepted the April 22, 2008 work injury caused a thoracic sprain which resolved as of July 22, 2008. Appellant filed a claim for wage-loss compensation for intermittent disability from April 24 to July 21, 2008. The hearing representative found that the record supported disability on April 24, 2008 and she received continuation of pay from April 24 through 27, 2008. The period of denial is April 28 to July 21, 2008.[9] It is appellant's burden of proof to establish her disability due to the accepted condition.

The Board finds the medical evidence fails to established appellant's disability from April 28 to July 21, 2008. The evidence reveals that Dr. Sellers treated appellant on April 24, 2008 for symptoms arising from the April 22, 2008 work injury. In reports of April 24 and 30, 2008, he advised that appellant was totally disabled from April 24 to 27, 2008 but could return to modified duty with restrictions on April 28, 2008. In subsequent reports, Dr. Sellers noted no change in appellant's medical symptoms and found that she could work at modified duty with restrictions. He did not support any subsequent intermittent dates of total disability or address any days that she was bedridden. The evidence does not suggest that Dr. Sellers was aware that appellant took time off from work due to the work injury. There is no indication that he advised her to stop work as of July 21, 2008. The reports of Dr. Sellers are insufficient to support appellant's claim for compensation for intermittent disability from April 28 to July 21, 2008.

While appellant went to an emergency room on June 19, 2008, Dr. Zimmerman did not reference the employment injury or address the issue of disability on any of the claimed dates. The remaining medical evidence fails to provide any opinion on disability. Appellant's attorney argued that Dr. Harrison's January 2, 2009 report and Dr. Araujo's October 21, 2009 report were sufficient to establish disability for the dates claimed. The Board notes that neither physician provided an opinion on whether appellant was disabled due to the April 22, 2008 injury. 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.[10]

Appellant did not meet her burden of proof to establish employment-related disability for intermittent dates during the period April 28 to July 21, 2008.

---

[7] *Sandra D. Pruitt*, 57 ECAB 126 (2005).

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

[9] The Act provides that wage-loss compensation for disability does not begin until continuation of pay ceases. *See* 5 U.S.C. § 8118(c).

[10] *See Sandra D. Pruitt, supra* note 7.

LEGAL PRECEDENT -- ISSUE 2

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[11] A person who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which she claims compensation is causally related to the accepted injury. This burden of proof requires that an employee furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.[12] Where no such rationale is present, medical evidence is of diminished probative value.[13]

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that she cannot perform such light duty.[14] As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.[15] To establish a change in the nature and extent of the injury-related condition, there must be probative medical evidence of record. The evidence must include a medical opinion, based on a complete and accurate factual and medical history and supported by sound medical reasoning, that the disabling condition is causally related to employment factors.[16]

ANALYSIS -- ISSUE 2

The Office accepted the April 22, 2008 work injury caused a thoracic sprain which resolved as of July 22, 2008. The issue is whether appellant established that she sustained a

[11] *R.S.*, 58 ECAB 362 (2007); 20 C.F.R. § 10.5(x).

[12] *I.J.*, 59 ECAB 408 (2008); *Sandra D. Pruitt, supra* note 7.

[13] *See Cecelia M. Corley*, 56 ECAB 662 (2005); *Ronald C. Hand*, 49 ECAB 113 (1957).

[14] *Richard A. Neidert*, 57 ECAB 474 (2006); *C.S.*, Docket No. 08-2218 (issued August 7, 2009).

[15] *Albert C. Brown*, 52 ECAB 152, 154-55 (2000); *Terry R. Hedman*, 38 ECAB 222, 227 (1986); *K.C.*, Docket No. 08-2222 (issued July 23, 2009); 20 C.F.R. § 10.5(x) provides, recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.

[16] *Mary A. Ceglia*, 55 ECAB 626 (2004); *Maurissa Mack*, 50 ECAB 498 (1999).

recurrence of disability on July 21, 2008 causally related to her April 22, 2008 employment injury.

The evidence of record supports that, following the April 22, 2008 work injury, appellant returned to modified work within restrictions set by her attending physician. She worked in this capacity until she stopped work on July 21, 2008 and resigned. There is no evidence to support there was a change in the nature and extent of appellant's light-duty requirements. The employing establishment advised that it had accommodated appellant with limited-duty work as a result of her April 22, 2008 injury under her doctor's instructions. Thus, appellant has not established a change in the nature and extent of her light-duty job requirements.

There is also no medical evidence of record to support a change in the nature and extent of appellant's injury-related condition which disabled her from performing her light-duty job. Dr. Sellers noted no change in her medical history or review of symptoms and he continued to opine that she could work modified duty with restrictions. He did not address whether appellant had disability due to her employment injury beginning July 21, 2008. None of the other physicians reported that she was totally disabled due to a spontaneous change in her work injury. For example, the reports of Drs. Harrison and Araujo did not address whether appellant's accepted condition caused total disability beginning July 21, 2008.

Accordingly, appellant has not met her burden of proof as she failed to show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.

CONCLUSION

The Board finds that appellant failed to establish entitlement to wage-loss benefits for the period of disability from April 28 to July 21, 2008. The Board also finds she did not establish that she sustained a recurrence of disability on and after July 21, 2008 causally related to her accepted April 22, 2008 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decisions dated April 12 and March 30, 2010 are affirmed.

Issued: April 1, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

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