

**United States Department of Labor
Employees' Compensation Appeals Board**

N.F., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
La Junta, CO, Employer**

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**Docket No. 10-1399
Issued: February 9, 2011**

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
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 27, 2010 appellant filed a timely appeal from the March 17, 2010 merit decision of the Office of Workers' Compensation Programs denying his claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether appellant established total disability for work during the period November 7 to 18, 2009.

FACTUAL HISTORY

On November 3, 2007 appellant, then a 56-year-old letter carrier, filed a traumatic injury claim alleging that while driving curbside that day he felt pain from his left hip, which distracted him and he hit a mailbox and carport. He stopped work on November 3, 2007 and eventually returned to light duty. The record reflects that appellant had been working light duty as a modified letter carrier since June 3, 2008 as a result of a December 17, 2002 injury under file

number xxxxxx683.¹ Following several denials of his claim, he appealed to the Board. On September 8, 2009 the Board issued an order remanding case for reconstruction and proper assemblage of the case record.² It noted that the case record did not contain all of appellant's claims and requested that the Office double the current claim with his other claims. The Office subsequently accepted a lumbar strain and paid compensation benefits.³

On November 12, 2009 appellant filed a wage-loss claim for periods of disability during November 5 to 18, 2009. The employing establishment's leave summary for the claimed period indicates that eight hours leave without pay were used for November 7, 12, 13, 14, 16 and 18, 2009. In support of his claim, appellant submitted: copies of medical records already in the case file; November 4, 2009 laboratory results; November 11, 2009 computerized tomography (CT) results of the chest, abdomen and pelvis and an April 8, 2009 CT pulmonary angiogram.

In a November 30, 2009 letter, the Office advised appellant of the medical evidence needed to establish his claim. This included a detailed and well-reasoned narrative medical opinion from his attending physician which explained why he was unable to work during the period claimed, what his specific abilities and restrictions were and why the restrictions were caused by the accepted work-related medical condition.

In response, appellant submitted copies of medical records already in the case file along with medical evidence from Dr. Marion Lee Schmucker, a Board-certified family practitioner. In a November 4, 2009 prescription note, Dr. Schmucker took appellant off work for two weeks due to abdominal and back pain. In a November 4, 2009 progress note, he noted that appellant was seen for significant complaints of left upper and left lower quadrant abdominal pain, which was also associated with significant left lower and left mid-back pain. Dr. Schmucker noted that appellant was followed for significant chronic traumatic fibromyalgia and a disc problem in his back. He stated that appellant related his current symptoms to his back injury and his chronic back pain. Appellant felt he aggravated things when he had to twist to put a seat belt on while delivering mail and when he got in and out of his truck. In a November 12, 2009 progress note, Dr. Schmucker noted the results of appellant's diagnostic testing. He felt it was reasonable that appellant's left-sided abdominal pain was from spine disease, disc disease and chronic fibromyalgia. Dr. Schmucker explained that it was being aggravated by appellant's recurrent twisting activity and his recurrence caused further injury to the back. He stated that appellant was getting better having been off work and not having to do the activities that seem to be injuring the left-sided abdominal muscular and left back muscular tissues. Dr. Schmucker indicated that appellant felt it was reasonable for him to go back to work, but wanted to avoid

¹ Under claim number xxxxxx683, the Office accepted a December 17, 2002 motor vehicle accident resulted in temporary aggravation of a lumbosacral disc. It also issued a March 22, 2006 wage-earning capacity decision effective January 18, 2006. Under claim number xxxxxx089, the Office accepted a permanent aggravation of quadratus lumborum tendinitis.

² Docket No. 08-2232 (issued September 8, 2009).

³ The Office noted that the approved continuation of pay under the current claim was a temporary interruption of the March 22, 2006 wage-earning capacity decision under claim number xxxxxx683. It also doubled the current claim with file numbers xxxxxx683 and xxxxxx089, *supra* note 1.

twisting to fasten his seat belt when he delivered mail. He stated that appellant would continue off work for two weeks to allow for maximum healing. In a November 17, 2009 progress note, Dr. Schmucker indicated that appellant was having a significant nosebleed.

By decision dated January 8, 2010, the Office denied wage-loss compensation for the period November 7 to 18, 2009.

On February 9, 2010 appellant requested reconsideration. He submitted duplicative copies of evidence already on file. In a January 18, 2010 certification of health care provider for employee's serious health condition Family and Medical Leave Act (FMLA), Dr. Schmucker indicated that appellant was disabled for two weeks beginning November 4, 2009 for chronic lumbosacral disc disease and reinjured his back on November 2, 2009. He stated that appellant underwent treatment on November 4, 12 and 17 and December 11, 2009 and January 18, 2010. Dr. Schmucker stated that appellant had chronic disc disease and back pain which was reinjured in early November.

By decision dated March 17, 2010, the Office affirmed the denial of compensation for the period November 7 to 18, 2009. It noted that appellant had received compensation for 48 hours of wage loss from November 7 to 18, 2009 under claim number xxxxxx683.

LEGAL PRECEDENT

The term disability as used in the Federal Employees' Compensation Act⁴ means the incapacity because of an employment injury to earn the wages that the employee was receiving at the time of injury.⁵ 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.⁶ Whether a particular injury caused an employee disability for employment is a medical issue which must be resolved by competent medical evidence.⁷ 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.⁸

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.⁹

⁴ 5 U.S.C. §§ 8101-8193; 20 C.F.R. § 10.5(f).

⁵ *Paul E. Thams*, 56 ECAB 503 (2005).

⁶ *Sandra D. Pruitt*, 57 ECAB 126 (2005); *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁷ *G.T.*, 59 ECAB 447 (2008); *Gary J. Watling*, 52 ECAB 278 (2001).

⁸ *L.D.*, 61 ECAB ____ (Docket No. 09-1503, issued April 15, 2010); *D.I.*, 59 ECAB 158 (2007).

⁹ *L.D., id.*; *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

ANALYSIS

Appellant claimed that he was totally disabled for work during the two-week period from November 7 to 18, 2009 and thereby entitled to wage-loss compensation. The Office denied the claim by January 8 and March 17, 2010 decisions based on a lack of rationalized medical evidence. It noted that appellant was paid 48 hours of wage-loss compensation from November 7 to 18, 2009 under claim number xxxxx683. To the extent that he is claiming compensation for a period in which he was already paid compensation, appellant is not entitled to be paid twice for the same period of wage loss.¹⁰ For any claimed time in this period for which appellant has not already received compensation, he must provide reasoned medical evidence supporting that his disability is causally related to his employment injury.

In support of his claim, appellant submitted reports from Dr. Schmucker, an attending family practitioner, who took him off work for two weeks commencing November 4, 2009 as a result of abdominal and back pain. In his treatment note of November 12, 2009, Dr. Schmucker indicated that appellant's left-sided abdominal pain was from spine disease, the disc disease and the chronic fibromyalgia. In his January 18, 2010 form for certification of employee's health condition, FMLA, he attributed appellant's disability to chronic lumbosacral disc disease and back reinjured on November 2, 2009. Dr. Schmucker did not specifically attribute appellant's symptoms to the November 3, 2007 accepted lumbosacral spine sprain or provide any medical rationale explaining how or why the November 3, 2007 injury totally disabled appellant for work for that particular period. Without such rationale explaining why appellant's inability to work is attributable to the accepted work injury, Dr. Schmucker's reports are insufficient to meet appellant's burden of proof to establish disability for the dates claimed.¹¹

CONCLUSION

The Board finds that appellant did not establish total disability for work for the period claimed.

¹⁰ See *J.M.*, Docket No. 08-2244 (issued June 10, 2009); *E.B.*, Docket No. 06-1585 (issued February 22, 2007).

¹¹ *Deborah L. Beatty*, 54 ECAB 340 (2003).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated March 17, 2010 is affirmed.

Issued: February 9, 2011
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