

June 7 to July 21, 2008. The Board also affirmed the Office's November 17, 2008 decision, denying appellant's request for reconsideration.¹

Appellant filed claims for wage-loss compensation for the period July 22 to November 18, 2008.

In a July 22, 2008 medical note from Dr. Paul J. Baughman, a Board-certified osteopath, stated that appellant was sick. A July 31, 2008 medical note from Lauren Kropa, a physician's assistant, stated that appellant was unable to work due to back pain.

In medical reports dated August 6, 2008, Dr. William A. Rolle, Jr., a Board-certified physiatrist, reviewed a history of appellant's June 6, 2008 employment injury and medical treatment. Appellant complained of pain in the thoracic spine. Dr. Rolle listed findings on physical examination and diagnosed thoracic strain. He advised that appellant could perform light-duty work with restrictions. In a September 5, 2008 report, Dr. Rolle reiterated his diagnosis of thoracic strain and addressed appellant's work restrictions. In an October 3, 2008 report, appellant had pain in the thoracic spine, right shoulder and limbs. Dr. Rolle listed findings on physical examination and reviewed a magnetic resonance imaging (MRI) scan of the thoracic spine. He listed pain in the posterior thoracic area on the right side. Dr. Rolle released appellant to return to sedentary-type work on October 6, 2008 for two weeks. In an October 22, 2008 report, he noted appellant's continuing complaint pain in the thoracic spine. Dr. Rolle listed findings on physical examination and diagnosed thoracic neuritis. He placed appellant off work until October 27, 2008. In an October 27, 2008 report, Dr. Rolle advised that appellant was totally disabled for work. In a November 18, 2008 report, he released him to return to light-duty work for a few weeks.

In a September 8, 2008 disability certificate, Dr. Peter J. Tucker, a Board-certified urologist, advised that appellant was totally disabled on that date only.

In an October 14, 2008 slip, Dr. Don Potter, an employing establishment physician, stated that appellant had a thoracic sprain. He placed him off duty.

In reports dated October 27 and November 22, 2008, a physician whose signature is illegible found that appellant was totally disabled for work. In a November 19, 2008 report, a physician's assistant whose signature is illegible indicated that he could return to work on that date with restrictions.

By letters dated October 23 and December 10, 2008, the Office advised appellant about the deficiencies in his claim. It requested that he provide additional medical evidence to support his disability for the claimed period.

In an August 7, 2008 report, Dr. Michael F. Lupinacci, a Board-certified physiatrist, noted appellant's complaint of pain in the thoracic spine and both knees. He listed findings on

¹ The Office accepted that on June 6, 2008 appellant, then a 39-year-old distribution process worker, sustained a sprain of the back and thoracic region while in the performance of duty. Docket No. 09-682 (issued October 7, 2009).

physical examination and diagnosed probable thoracic muscle spasm and bilateral knee pain with probable quadriceps ligament inflammation. Dr. Lupinacci excused appellant for work from August 6 to 8, 2008.

By decision dated August 26, 2009, the Office denied appellant's claim for compensation from July 22 to November 18, 2008. The medical evidence was found to be insufficient to establish that he was totally disabled during the claimed period due to his accepted back strain.

By letter dated September 4, 2009, appellant, through counsel, requested a telephonic hearing with an Office hearing representative.

In a February 1, 2010 decision, an Office hearing representative affirmed the August 26, 2009 decision, finding that appellant was not disabled from July 22 to November 18, 2008 due to his June 6, 2008 employment injury. The hearing representative found that the medical evidence submitted did not establish a causal relationship between the accepted employment injury and the claimed period of total disability.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of proof to establish the essential elements of his claim by the weight of the evidence.³ For each period of disability claimed, the employee has the burden of establishing that he was disabled for work as a result of the accepted employment injury.⁴ 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.⁵

Under the Act the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁶ Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.⁷ An employee who has a physical impairment causally related to his federal employment, but who nonetheless has the capacity to earn the wages he was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.⁸ When, however, the medical evidence establishes that the residuals or sequelae of an

² 5 U.S.C. §§ 8101-8193.

³ See *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

⁴ See *Jefferson*, *supra* note 3; see also *David H. Goss*, 32 ECAB 24 (1980).

⁵ See *Edward H. Horton*, 41 ECAB 301 (1989).

⁶ *S.M.*, 58 ECAB 166 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Conard Hightower*, 54 ECAB 796 (2003); 20 C.F.R. § 10.5(f).

⁷ *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

⁸ *Merle J. Marceau*, 53 ECAB 197 (2001).

employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his employment, he is entitled to compensation for any loss of wages.

A claimant must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factor(s).⁹ The opinion of the physician must be based on a complete factual and medical background, 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.¹⁰

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. To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.¹¹

ANALYSIS

The Office accepted that appellant sustained thoracic region sprain in the performance of duty on June 6, 2008. Appellant claimed wage-loss compensation from July 22 to November 18, 2008, due to the accepted conditions. He has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his claimed disability and the accepted conditions.¹²

Dr. Baughman's July 22, 2008 note listed only that appellant was sick. He did not address whether appellant was disabled for the claimed period was caused by his accepted back sprains.¹³ The Board finds that Dr. Baughman did not submit sufficient medical opinion to establish appellant's total disability for the claimed period.

Dr. Rolle's advised that appellant had thoracic strain, pain and neuritis. He released him to perform light-duty work as of August 6, October 6 and November 18, 2008. Dr. Rolle stated that appellant was totally disabled for work from October 22 through November 18, 2008; but did not address how disability was due to the accepted sprain conditions. He did not address appellant's disability status commencing July 22, 2008. As noted, it is appellant's burden to establish his disability by the submission of probative medical evidence.¹⁴ Dr. Rolle's

⁹ *A.D.*, 58 ECAB 149 (2006).

¹⁰ *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

¹¹ *See William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹² *Alfredo Rodriguez*, 47 ECAB 437 (1996).

¹³ The Board has long held that medical evidence which does not offer an opinion regarding the cause of an employee's condition is of limited probative value. *A.D.*, *supra* note 9; *Michael E. Smith*, 50 ECAB 313 (1999).

¹⁴ *Alfredo Rodriguez*, *supra* note 12.

September 5, 2008 report which addressed appellant's work restrictions failed to address whether his disability for the claimed period was causally related to the accepted employment injuries.¹⁵ The Board finds that the evidence from Dr. Rolle is insufficient to establish appellant's claim.

Dr. Tucker's September 8, 2008 disability certificate listed that appellant as totally disabled on that date only. Dr. Potter's October 14, 2008 note advised that appellant had thoracic sprain and was totally disabled for work. Neither physician however addressed the period commencing July 22, 2008 or how appellant's total disability otherwise related to his accepted June 6, 2008 employment injury. The Board finds that the reports of Dr. Tucker and Dr. Potter are insufficient to establish appellant's claim.

Dr. Lupinacci's August 7, 2008 report found that appellant had "probable" thoracic muscle spasm and bilateral knee pain with "probable" quadriceps ligament inflammation bilaterally. He listed that appellant was unable to work from August 6 to 8, 2008. Dr. Lupinacci's report is of limited probative value as he did not address disability commencing July 22, 2008; further, his diagnoses are couched in speculative terms.¹⁶ He failed to address how appellant's disability for the claimed period was caused by his accepted sprain. The Board finds that Dr. Lupinacci's report is insufficient to establish appellant's claim.

The medical note from Ms. Kropa, a physician's assistant, and the report from a physician's assistant whose signature is illegible are of no probative value as a physician's assistant is not included in the definition of a physician under the Act.¹⁷ The Board finds that this evidence is insufficient to establish appellant's claim as it does not constitute competent medical opinion evidence.

The October 27 and November 22, 2008 reports which contained illegible signatures have no probative value, as it is not certain that the authors are physicians.¹⁸

The Board finds that there is insufficient medical opinion to establish that appellant was disabled from July 22 to November 18, 2008 due to residuals of his accepted sprain of the back and thoracic region. Appellant did not meet his burden of proof.

CONCLUSION

The Board finds that appellant has failed to establish that he was totally disabled from July 22 to November 18, 2008 due to his accepted employment injury of June 6, 2008.

¹⁵ See cases cited, *supra* note 13.

¹⁶ *Kathy Kelley*, 55 ECAB 206 (2004) (the Board has held that opinions such as, the implant may have ruptured and that the condition is probably related, most likely related or could be related are speculative and diminish the probative value of the medical opinion).

¹⁷ See 5 U.S.C. § 8101(2); *George H. Clark*, 56 ECAB 162 (2004).

¹⁸ See *D.D.*, 57 ECAB 734 (2006); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

ORDER

IT IS HEREBY ORDERED THAT the February 1, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 13, 2011
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