

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

R.D., Appellant)	
)	
and)	Docket No. 10-1380
)	Issued: March 10, 2011
U.S. POSTAL SERVICE, POST OFFICE,)	
Denver, CO, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 22, 2010 appellant filed a timely appeal of an October 30, 2009 decision of the Office of Workers' Compensation Programs denying compensation for intermittent periods and a nonmerit decision dated December 1, 2009. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUES

The issues are: (1) whether appellant was disabled for the periods March 25 through June 15, 2009 and July 8 through 12, 2009; and (2) whether the Office properly denied appellant's request for reconsideration pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

This case has previously been before the Board. On July 15, 1988 appellant, then a 34-year-old letter sorting machine clerk, filed an occupational disease claim alleging upper extremity, cervical and shoulder pain due to her employment. In a decision dated January 30,

1991, the Board remanded the case for development of the medical evidence.¹ The Office accepted appellant's claim for aggravation of thoracic outlet syndrome on the right side on August 29, 1991. On April 22, 1994 it granted her a schedule award for 20 percent permanent impairment of her right upper extremity. The Office granted appellant a schedule award for a total 75 percent impairment of her right upper extremity on May 13, 1996.

Appellant filed a claim for recurrence of disability on June 24, 1998. The Office denied this claim in October 1998. The Branch of Hearings and Review affirmed this decision on July 1, 1999. The Office denied appellant's requests for reconsideration on October 27, 1999 and July 26, 2000. The Board set aside the July 26, 2000 decision in a decision dated July 16, 2002.²

The Office accepted the additional condition of aggravation of bilateral thoracic outlet syndrome on November 19, 2002. By decision dated December 5, 2003, it granted appellant a schedule award for 70 percent impairment of her left arm.

By decision dated December 9, 2008, the Office hearing representative found that appellant had received an overpayment of compensation in the amount of \$2,340.24, that she was at fault in the creation of the overpayment, found total monthly expenses of \$3,500.00 and concluded that she had \$4,000.00 per month in excess. The hearing representative determined that appellant should repay the overpayment through deductions of \$500.00 every 28 days from her continuing compensation benefits. The Board affirmed this decision on October 9, 2009.³ The facts and circumstance of the case as set out in the Board's prior decisions are adopted herein by reference.

On January 31, 2009 appellant returned to work as a modified mail processing clerk working up to eight hours a day. In a report dated March 5, 2009, Dr. Kristen D. Mason, Board-certified in physical medicine and rehabilitation, diagnosed chronic bilateral thoracic outlet syndrome with myofascial pain and pain disorder. She advised that appellant continue with the same work restrictions. Dr. Mason examined appellant on May 4, 2009 and noted that appellant described increasing neck pain. She found a cervical magnetic resonance imaging (MRI) scan revealed abnormalities at C5-6 and C6-7 and diagnosed possible cervical facet syndrome. Dr. Mason noted that appellant's work restrictions remained the same.

Dr. Nicholas K. Olsen, an osteopath Board-certified in physical medicine and rehabilitation, examined appellant on May 7, 2009 due to pain in the central neck radiating into her upper extremities. He found that appellant had a head forward chin out position and loss of cervical range of motion. Dr. Olsen reviewed appellant's September 16, 2008 MRI scan and found degenerative disc disease at C3-4 and C5-6 and C6-7 with a disc protrusion at C5-6. He diagnosed cervical spondylosis and suggested a bilateral C5-6 and C6-7 facet arthropathy.

¹ Docket No. 90-1870 (issued January 30, 1991).

² Docket No. 01-869 (issued July 16, 2002).

³ Docket No. 09-605 (issued October 9, 2009).

Dr. Mason examined appellant on June 15, 2009 and noted that appellant reported an exacerbation of her neck pain with spasm. She found palpable trigger points in the left trapezius and limitations in range of motion on physical examination. Dr. Mason injected appellant with lidocaine.

On July 6, 2009 appellant filed a claim for compensation requesting wage-loss compensation from March 25 through June 15, 2009. She submitted a claim for compensation on July 22, 2009 for wage-loss compensation from July 8 through 12, 2009.

Dr. Mason examined appellant on July 6, 2009 and found less myofascial findings and better range of motion. She indicated that appellant could continue her current restrictions at work. On July 16, 2009 Dr. Mason found that appellant currently had no neck pain and diagnosed cervical facet syndrome with diagnostic response to facet injections. She noted that appellant could continue her current work restrictions.

In letters dated July 30 and August 7, 2009, the Office requested that appellant provide additional medical evidence in support of her requests for compensation from March 25 through June 15, 2009 and July 8 through 12, 2009, respectively. It allowed 30 days for a response in each instance.

Appellant responded on August 4, 2009 and stated that she worked full time with occasional flare-ups of thoracic outlet syndrome which required pain medication. In a letter dated August 12, 2009, she stated that she used 24 hours of leave due to facet joint injections on July 8, 11 and 12, 2009.

Dr. Mason examined appellant on August 13, 2009 and stated that appellant's pain relief from the facet injections had worn off, but she continued to be able to work with her current work restrictions. On August 13, 2009 she stated that appellant occasionally had to leave work early due to her symptoms and chronically painful condition.⁴

In a report dated September 10, 2009, Dr. Mason noted that appellant was hospitalized due to pain and performed trigger point injections. She noted that appellant should continue her current work restrictions. In a separate note of the same date, Dr. Mason stated that appellant's August 31, 2009 emergency room visit was due to chest pain as a result of muscle spasm caused by her chronic thoracic outlet syndrome.

By decision dated October 30, 2009, the Office denied appellant's claim for compensation for the periods March 25 through June 15, 2009 and July 8 through 12, 2009 as due to her January 20, 1988 employment injury. It noted that appellant's claim had been accepted for brachial plexus lesions, psychogenic pain and lesion of the ulnar nerve, but found that the medical evidence did not establish disability for work for the dates in question.

⁴ By decision dated September 30, 2009, the Office denied appellant's claim for an additional schedule award. Since more than 180 days has elapsed from the date of issuance of the Office's September 30, 2009 merit schedule award decision to the date of the filing of appellant's appeal, on April 20, 2010, the Board lacks jurisdiction to review that decision. *See* 20 C.F.R. § 501.3(e).

Appellant submitted a report from Dr. Olsen indicating that appellant underwent a cervical facet arthropathy on July 9, 2009.

On November 12, 2009 appellant underwent a bilateral C5-6 and C7 medial branch blockade.

Appellant requested reconsideration of the October 30, 2009 decision on November 10, 2009. By decision dated December 1, 2009, the Office declined to reopen her claim for consideration of the merits. It reviewed the evidence submitted and found that appellant failed to submit relevant new evidence addressing the period of claimed compensation.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Act⁵ has the burden of establishing the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁶ 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.⁷

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.⁸ Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work. When a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that she hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.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 employees to self-certify their disability and entitlement to compensation.¹⁰

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.¹¹ Rationalized medical evidence is medical

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *G.T.*, 59 ECAB 447 (2008); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ 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).

⁸ *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.¹² Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹³

ANALYSIS -- ISSUE 1

Appellant has filed claims for compensation requesting wage-loss compensation for the periods March 25 through June 15, 2009 and July 8 through 12, 2009. She has submitted a series of reports from Drs. Mason and Olsen regarding her medical treatment during the periods in question. Appellant has not submitted any medical evidence supporting that she was totally disabled for a specific date during the periods that she has claimed compensation. In a report dated August 13, 2009, Dr. Mason stated that appellant occasionally had to leave work early due to her symptoms and chronically painful condition. However, she did not provide any specific dates upon which appellant was disabled and this note is not sufficiently detailed and reasoned to meet appellant's burden of proof in establishing the claimed periods of disability.

Dr. Mason advised in reports beginning in February 2009 that appellant could continue to work within her restrictions. She did not provide a statement of any dates upon which appellant was unable to work due to her accepted employment-related conditions. However, Dr. Mason did examine appellant on May 4 and June 15, 2009. In addition, Dr. Olsen provided approved treatment on May 7, 2009. Appellant would be entitled to compensation for the time she missed from work for medical treatment due to her accepted employment injuries. The Office's procedure manual provides that claimants are entitled to up to four hours of compensation due to routine medical appointments.¹⁴ The Board finds appellant received medical treatment for the dates noted. The claim will be remanded to the Office to adjudicate her entitlement to compensation for these dates of medical treatment.¹⁵

CONCLUSION

The Board finds that the case is not in posture for decision.

¹² *Leslie C. Moore*, 52 ECAB 132 (2000).

¹³ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹⁴ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Administrative Matters*, Chapter 3.900.8 (November 1998).

¹⁵ Due to the resolution of this issue, it is not necessary for the Board to address whether the Office properly denied appellant's request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the October 30, 2009 decision of the Office of Workers' Compensation Programs be set aside. The case is remanded for action in conformance with this decision.

Issued: March 10, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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