United States Department of Labor
Employees' Compensation Appeals Board

J.W., Appellant	)	
and	)	**Docket No. 10-1854**
	)	**Issued: May 20, 2011**
U.S. POSTAL SERVICE, POST OFFICE, St. Louis, MO, Employer	)	

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

JURISDICTION

On July 7, 2010 appellant, through his attorney, filed a timely appeal of a June 9, 2010 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that he was disabled for the period September 18 to October 23, 2009 as a result of his employment-related conditions.

FACTUAL HISTORY

On November 23, 2001 appellant, then a 54-year-old rural carrier, filed an occupational disease claim alleging that his back condition was due to factors of his federal employment. He indicated that he sustained a herniated disc as a result. Appellant stopped work on September 22,

[1] 5 U.S.C. § 8101 *et seq.*

2001 and returned to full duty on November 16, 2001. The Office accepted the claim for herniated disc L5-S1 on the left.[2] Compensation benefits were authorized.[3]

On March 19, 2009 appellant underwent a posterior spinal fusion at L4-5, posterior spinal fusion L5-S1, posterior spinal instrumentation L5-S1, posterior spinal instrumentation L4-5, laminectomy of L5 left sided, partial laminectomy of L4 left sided and partial laminectomy of the S1 left sided. The Office authorized the surgery. Appellant was released to sedentary work with a five-pound weight restriction on June 8, 2009 and on that day he accepted a limited-duty job offer based on these restrictions.

Dr. R. Scott Collins, a Board-certified orthopedic surgeon and treating physician, noted that, in a report dated August 11, 2009, appellant had full range of motion in the lumbar spine, was nontender and stable, and the lower extremity length was normal throughout with no tension signs and a normal gait. He advised that appellant had permanent restrictions based on the functional capacity evaluation and had reached maximum medical improvement.[4]

Dr. Collins noted that, in a September 18, 2009 report, appellant had complaints of pain that were worse over the last week. He advised that the pain was fairly severe, and that appellant was not able to do activities of daily living as his pain was a 7 out of 10, nonradicular and essentially in the low back. Dr. Collins noted no other musculoskeletal or neurological complaints. He determined that range of motion was limited with some paraspinal muscle spasms and diagnosed acute low back pain, probable strain. Dr. Collins recommended physical therapy for stretching and strengthening modalities. A disability certificate of the same date advised that appellant would be unable to work for four weeks.

On September 28, 2009 the employing establishment informed the Office that appellant had not worked since September 18, 2009. The employing establishment confirmed that appellant continued to work full-time limited duty until he stopped work. In an October 1, 2009 progress report, an Office field nurse noted that he reported that his back started hurting on September 15, 2009, though he did not remember doing anything other than bending over to get a few magazines from a bin. Appellant reported that the pain worsened until he saw Dr. Collins on September 18, 2009 who took him off work for four weeks.

Appellant claimed wage-loss compensation for total disability for the period September 18 to October 23, 2009.

In a report dated October 23, 2009, Dr. Collins noted that appellant came in for follow up and reported that he was "still unable to do his full duties at work." He indicated that appellant had a mild disability and was unable to tolerate prolonged sitting, standing or lying down.

[2] The record reflects that appellant has preexisting conditions which include atrial flutter, coronary obstructive pulmonary disease, anxiety, emphysema, hypertension, post-traumatic stress disorder, brachial plexopathy, chronic theophylline and arrhythmia.

[3] Appellant has several prior claims involving his back that are not before the Board on the present appeal.

[4] A July 22, 2009 functional capacity evaluation advised that appellant could work with restrictions of standing for 10 minutes, no bending and weight restrictions of 35 pounds.

Dr. Collins advised that appellant was post status L4-5 and L5-S1 posterior spinal instrumented fusion with decompression and doing fairly well. He advised that appellant could return to work with restrictions on a permanent basis as Dr. Collins did not think appellant would be able to perform his job without restrictions. Dr. Collins noted that appellant was taken off work because of a "recurrence of his symptoms. There was no reinjury." Dr. Collins indicated that appellant could work within his previous restrictions.

The Office informed appellant of the type of evidence needed to support his claim for the dates of September 18 to October 23, 2009 and requested that he submit such evidence within 30 days.

A November 19, 2009 treatment note was received from Dr. Collins which stated that appellant's condition was unchanged.

In a December 11, 2009 decision, the Office denied his claim for compensation for the period from September 18 to October 23, 2009. It advised appellant that the medical evidence was insufficient.

Appellant submitted a December 11, 2009 report from Dr. Collins which noted that he had spoken to appellant, who was going to do the "best he can at this point in time."

On December 21, 2009 counsel requested a telephonic hearing, which was held on March 23, 2010. During the hearing, appellant noted that he had severe pain in his back and there was no real reason for it. He related that his physician indicated that it was a probable lumbar strain and he was placed off work for five weeks.

In a January 19, 2010 report, Dr. Collins noted that appellant came in with some questions that needed to be answered but had no "other complaints otherwise." He indicated that appellant had some limitations with range of motion which had improved. Dr. Collins diagnosed well-healed status post L4-5 posterior instrumented fusion with decompression. He explained that appellant was off work from September 18 to October 23, 2009 with back pain and muscle spasms. Dr. Collins noted that, as a result, appellant had a lumbar strain, which was the reason that he was placed off work.

Counsel submitted additional medical evidence. He included a February 20, 2010 report from Dr. Richard L. Kreiter, a Board-certified orthopedic surgeon and a second opinion physician, who diagnosed chronic low back pain secondary to previous injury and laminectomies. Dr. Kreiter noted that, after the most recent fusion of L4-5 and L5-S1, appellant was doing well with much less pain and no sciatica, with probable degenerative medical meniscus of the left knee with chronic effusion.[5]

In a February 24, 2010 report, Dr. Collins noted that appellant was off work from September 18 to October 23, 2009 because of a recurrence of his back symptoms. He advised

[5] The record reflects that on January 27, 2010 the Office requested that Dr. Kreiter provide a second opinion examination regarding the nature and extent of appellant's condition. Dr. Kreiter was not requested to comment on the claimed period of disability at issue in the present appeal.

that there were no other difficulties or complaints. Dr. Collins indicated that appellant tried some conservative measures, "but during that time he felt he was really unable to work without laying down for a period of time in between work. As a result, [appellant] was recommended off work during that time because he would be unable to lie down during the day at any particular time for the necessary time."

An Office hearing representative, by decision dated June 9, 2010, affirmed the December 11, 2009 decision.

LEGAL PRECEDENT

A claimant has the burden of proving by a preponderance of the evidence that he or she is disabled for work as a result of an accepted employment injury and submit medical evidence for each period of disability claimed.[6] Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues.[7] The issue of whether a particular injury causes disability for work must be resolved by competent medical evidence.[8] To meet this burden, a claimant must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting a causal relationship between the alleged disabling condition and the accepted injury.[9]

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 he 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.[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 his or her disability and entitlement to compensation. 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.[11]

ANALYSIS

Appellant's claim was accepted for herniated disc L5-S1 on the left and authorized surgery. After returning to light-duty work following surgery, he claimed total disability from

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

[7] *Id.*

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

[9] *C.S.*, Docket No. 08-2218 (issued August 7, 2009).

[10] *Kharabi*, *supra* note 6.

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

September 18 to October 23, 2009.[12] On October 27, 2009 the Office advised appellant of the type of medical evidence needed to establish his disability claim. The Board finds that he has failed to establish disability for the period in question.

In support of his claim for disability, appellant provided several reports from his treating physician, Dr. Collins. He also included a copy of the second opinion physician's report. These reports fail to provide sufficient support for appellant's claim for total disability from September 18 to October 23, 2009.

The relevant reports from Dr. Collins include a September 18, 2009 report in which he noted that appellant had complaints of pain that were worsening over the previous week. Dr. Collins explained that appellant's low back pain was severe, with muscle spasm, but nonradicular. He diagnosed low back pain and a probable strain. However, Dr. Collins did not particularly address whether appellant's symptoms were due to his accepted condition and he did not offer an opinion regarding appellant's inability to work on September 18 to October 23, 2009. In a separate September 18, 2009 disability certificate, he found appellant disabled for four weeks but he did not relate the disability to appellant's accepted condition. In his October 23, 2009 report, Dr. Collins advised that appellant had been off work due to a "recurrence of his symptoms" but could return to his limited-duty job. He did not provide a rationalized opinion to explain why appellant's total disability for the claimed period was due to his accepted condition. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[13]

In a January 19, 2010 report, Dr. Collins explained that appellant was off work from September 18 to 23, 2009 with a lumbar strain. In a February 24, 2010 report, he noted that appellant was off work from September 18 to October 23, 2009 because of a recurrence of his back symptoms. Dr. Collins indicated that, during that time, appellant "felt he was really unable to work without laying down for a period of time in between work. As a result, [appellant] was recommended off work during that time because he would be unable to lie down during the day at any particular time for the necessary time." As noted, when a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints, without objective findings of disability being shown, there is no basis for the payment of compensation.[14] Although Dr. Collins addressed the time period for which appellant is requesting disability, he did not explain why appellant's accepted condition or residuals of his accepted surgery caused total disability for the claimed period.

Dr. Kreiter's February 20, 2010 report is insufficient to establish the claim as he did not address the cause of disability during the claimed period of September 18 to October 23, 2009. Likewise, other medical reports submitted by appellant do not address whether his accepted condition caused disability from September 18 to October 23, 2009.

[12] The record indicates that the employing establishment made light duty available consistent with appellant's restrictions. *See Terry R. Hedman*, 38 ECAB 222 (1986).

[13] *K.W.*, 59 ECAB 284 (2007).

[14] *See supra* note 10.

Although appellant alleged that he was disabled for the period from September 18 to October 23, 2009, due to his accepted employment injury, the medical evidence of record does not establish that his claimed disability during the time frame was related to his accepted employment injuries. The Board finds that he has failed to submit rationalized medical evidence establishing that his disability from September 18 to October 23, 2009 was causally related to his accepted employment injury and, thus, he has not met his burden of proof.

CONCLUSION

The Board finds that appellant failed to establish that he was disabled for the period September 18 to October 23, 2009 as a result of his employment-related injuries.

ORDER

IT IS HEREBY ORDERED THAT the June 9, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 20, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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