United States Department of Labor
Employees' Compensation Appeals Board

G.H., Appellant	)	
and	)	**Docket No. 10-2023**
	)	**Issued: May 12, 2011**
U.S. POSTAL SERVICE, MAINTENANCE DEPARTMENT, St. Louis, MO, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 3, 2010 appellant filed a timely appeal of a March 8, 2010 merit decision of the Office of Workers' Compensation Programs denying compensation benefits and an April 26, 2010 nonmerit decision denying reconsideration. Pursuant to the Federal Employees' Compensation Act[1] and 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 has established total disability for the period February 24 through 27, 2009 entitling her to compensation benefits; and (2) whether the Office properly denied appellant's request for reconsideration on the merits pursuant to 5 U.S.C. § 8128(a).

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On December 8, 2008 appellant, then a 54-year-old laborer/custodian, filed a traumatic injury claim alleging that on December 6, 2008 she injured her head and body when a freight elevator gate struck her head.

Appellant provided work release notes beginning December 15, 2008 indicating that she could not return to work until February 17, 2009 from Dr. Gina McSmith, an osteopath. On February 25, 2009 Dr. McSmith completed a duty status report and indicated that appellant could return to work on March 2, 2009 with restrictions on lifting, standing, climbing, bending, stooping, reaching above the shoulder, and exposure to chemicals and solvents.

Appellant filed a claim for compensation requesting wage-loss from January 17 through February 13, 2009. The Office authorized compensation benefits for the period January 22, 2009 through February 13, 2009.

Dr. Howard M. Place, a Board-certified orthopedic surgeon, completed an office note on February 9, 2009 noting appellant's history of injury on December 6, 2008. He found normal strength and range of motion in the upper extremities and cervical spine with no sensory deficits. Dr. Place reported slight tenderness to palpation diffusely through her trapezius and rhomboids. He diagnosed musculoskeletal shoulder pain and stated that appellant could return to work without restrictions.

Appellant returned to limited-duty work on March 3, 2009. The employing establishment stated that appellant stopped work on December 9, 2008 and received continuation of pay from December 9, 2008 through January 21, 2009.

By decision dated March 23, 2009, the Office formally accepted her claim for contusion to the forehead, neck strain and right shoulder sprain.

In a report dated March 26, 2009, Dr. McSmith reported appellant's history of injury and diagnosed acute cervical and lumbar strain as well as right and left shoulder strain. She stated that appellant returned to work on March 2, 2009 with restrictions. Dr. McSmith stated that appellant should return to full duty in three to four weeks. She provided a duty status report dated March 31, 2009 with continued restrictions. Dr. McSmith released appellant to full duty on April 29, 2009.

By decision dated June 9, 2009, the Office denied appellant's claim for leave without pay for intermittent times during the dates March 19 through April 9, 2009. Appellant requested reconsideration of this decision on July 9, 2009. By decision dated September 17, 2009, the Office vacated the June 9, 2009 decision and granted appellant compensation for the periods requested.

On September 9, 2009 appellant filed a claim for compensation requesting wage-loss compensation for leave without pay used on February 24 through 27, 2009. In a letter dated September 17, 2009, the Office noted that appellant had requested 32 hours of compensation for the period February 24 through 27, 2009. It informed appellant that it found the medical information in the record insufficient to support her claim for compensation for the period

claimed. The Office requested additional supporting medical evidence and allowed 30 days for a response.

In a letter dated September 30, 2009, appellant stated that the employing establishment instructed her to return to work on February 23, 2009. She reported to work on February 24, 2009 and went to the medical unit. Appellant stated that she was not permitted to work due to employing establishment procedures. She visited her physician on February 25, 2009 for a scheduled appointment and Dr. McSmith completed a duty status report indicating that appellant should return to light-duty work on March 2, 2009. Appellant stated that there was no light-duty work available until March 5, 2009.

In a note dated March 3, 2009, the employing establishment nurse, Barbara Greenlee, indicated that appellant was made available to work on March 3, 2009 and provided work restrictions. Appellant resubmitted Dr. McSmith's February 25, 2009 duty status report. She also submitted a February 19, 2009 note from Dr. McSmith indicating that appellant could return to light-duty work on February 23, 2009.

The employing establishment injury compensation specialist provided appellant with a letter dated February 27, 2009 which stated that appellant was paid with sick leave from February 17 through 21, 2009 and that February 24 through 27, 2009 should have been paid by the Office.

Appellant filed a claim for compensation requesting leave without pay compensation for the period February 14 through 27, 2009 on October 23, 2009. The Office requested additional information regarding this claim on October 30, 2009.

By decision dated November 2, 2009, the Office denied appellant's claim for compensation for the period February 24 through February 27, 2009 as the medical evidence did not establish that appellant was totally disabled during this period due to her accepted employment injury.

Appellant requested a review of the written record on December 2, 2009.

By decision dated December 2, 2009, the Office denied appellant's claim for compensation for the date of February 21, 2009.

In a decision dated March 8, 2009, the Branch of Hearings and Review denied appellant's claim for compensation. The hearing representative stated that he had requested that the employing establishment provide "comments or documents believed to be relevant and material to [appellant's] claim." He stated that the employing establishment did not respond. The hearing representative further noted that he telephoned the employing establishment and was promised information from appellant's supervisor which was not received. He concluded that appellant had not submitted probative medical evidence based on specific examination findings which established that appellant was disabled due to her accepted employment injury.

In a letter dated April 15, 2010, appellant requested reconsideration and alleged that the employing establishment health unit sent her home. She noted that she reported to work on March 3, 2009 and was told that there was no light-duty work available.

By decision dated April 26, 2010, the Office declined to reopen appellant's claim for consideration of the merits on the grounds that she failed to submit new or relevant evidence in support of her claim.

LEGAL PRECEDENT

An employee seeking benefits under the Act[2] 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.[3] 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.[4]

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.[5] 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.[6] 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.[7]

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.[8] Rationalized medical evidence is medical 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.[9] Neither the fact that a

[2] 5 U.S.C. §§ 8101-8193.

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

[4] 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).

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

[6] *Id.*

[7] *Id.*

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

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

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.[10]

ANALYSIS

The Office accepted that appellant sustained contusion to the forehead, neck strain and right shoulder sprain on December 6, 2008 when a freight elevator door struck her. It authorized compensation benefits through February 13, 2009. Appellant filed a claim for compensation requesting wage-loss benefits from February 24 through 27, 2009. She alleged that she attempted to return to work on February 24, 2009 by reporting to the employing establishment medical unit, but was not permitted to work. Dr. McSmith then completed a form report and stated that appellant should return to light-duty work on March 2, 2009. Appellant stated that there was no light-duty work available until March 5, 2009.

In a letter dated February 27, 2009, the employing establishment injury compensation specialist stated that on February 24 through 27, 2009 appellant should have been paid by the Office. In the March 8, 2009 decision, the hearing representative stated that he requested additional information from the employing establishment by letter and by telephone and had not received a response.

Proceedings under the Act are not adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.[11] The Office shares responsibility in the development of the evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other government source.[12] In a case where the Office proceeds to develop the evidence it must do so in a fair and impartial manner.[13]

The Board finds that this case is not in posture for decision. Appellant has alleged that the employing establishment would not allow her to report to work and that light-duty work was not available beginning February 24, 2009. The February 27, 2009 letter from the employing establishment supports that the employing establishment believed that appellant was disabled from February 24 through 27, 2009 and entitled to benefits from the Office. The hearing representative stated that he attempted to obtain evidence from the employing establishment through both a letter and a telephone call. The record does not contain either a copy of the letter or a telephone memorandum memorializing these contacts. As the hearing representative attempted to develop the factual evidence regarding whether or not appellant was allowed to work on February 24, 2009 and whether there was appropriate light-duty work available to her on or after February 24, 2009, the Office has the obligation to secure this information from the

[10] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[11] *Donald R.Gervasi*, 57 ECAB 281, 286 (2005).

[12] *Marco A. Padilla*, 51 ECAB 202, 208 (1999); *Carol Cherry (Donald Cherry)*, 47 ECAB 658 (1996).

[13] *Melvin James*, 55 ECAB 407, 411 (2004).

employing establishment. On remand, the Office should request specific information from the employing establishment regarding the availability of light duty from February 24 through 27, 2009 and whether appellant reported to and was allowed to return to work on February 24, 2009. After this and any other development of the factual evidence, the Office should issue a *de novo* decision.[14]

CONCLUSION

The Board finds that the case is not in posture for decision as the Office did not adequately develop the factual evidence under the control of the employing establishment.

ORDER

IT IS HEREBY ORDERED THAT the April 26 and March 8, 2010 decisions of the Office of Workers' Compensation Programs are set aside and remanded for further development consistent with this decision of the Board.

Issued: May 12, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[14] Due to the disposition of this issue, it is not necessary for the Board to address whether the Office properly refused to reopen appellant's claim for consideration of the merits on April 26, 2010.