



myelopathy, adhesive capsulitis of the left shoulder, disc herniations with myelopathy at C3-4 and C5-7 and radiculopathy of the upper extremities as a result of casing large quantities of mail and sweeping the floor at work.<sup>2</sup> It authorized cervical fusion which was performed on August 3, 2005.

Appellant was off work from April 15, 2005 to June 13, 2008. He returned to full-time modified work as a mail processing clerk on June 14, 2008. On September 12, 2008 the employing establishment advised appellant that he was being involuntarily reassigned to another craft position and duty station due to the elimination of his former position. On July 21, 2009 it offered him a modified distribution/window clerk position which was located at the Martins Ferry Post Office in Martins Ferry, Ohio. Appellant contended that the offered position was not within his restrictions and commuting area.

On July 29, 2009 appellant filed claims for compensation (Form CA-7) for intermittent dates from May 6 to July 20, 2009. In a Form CA-7a and time analysis sheets dated August 4, 2009, he claimed time loss from work on May 21 through 24 and July 2, 4, 6, 16, 17, 19 and 20, 2009.

In a June 19, 2009 medical report, Dr. Parshotam C. Gupta, a Board-certified anesthesiologist, noted that appellant had received an epidural block which improved his cervical and lumbar pain completely. He complained about numbness in the fourth and fifth fingers on the right side and was off work from June 4 to 7, 2009. Appellant had numbness in his thumb, first finger and second finger on the left side since August 2000 following surgery. He missed work from April 22 to 25, 2009 and in May 2009. Dr. Gupta listed his findings on physical examination and diagnosed herniated nucleus pulposus at L4-5 and L5-S1, improved cervical herniated disc with failed back syndrome and facet joint arthropathy at L4-5 and L5-S1 on the left side. In a July 6, 2009 report, he noted appellant's complaint of lower back pain which radiated down to his left leg and ankle. Dr. Gupta further noted that, following cervical and lumbar blocks which helped his cervical and not his lumbar pain, appellant did not work from May 6 to 7 and 20 to 23 and on July 1, 2009. He reiterated his prior diagnoses.

By letter dated August 12, 2009, OWCP requested that appellant submit medical evidence that contained a diagnosis, findings and an opinion describing his disability and explaining how it was directly related to his lost time from work due to his accepted conditions.<sup>3</sup>

In an August 4, 2009 report, Dr. Gupta indicated that appellant received an epidural block on July 14, 2009. He currently had no pain in his back or leg, but complained about cramping in

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<sup>2</sup> Prior to the instant claim, appellant filed a traumatic injury claim under File No. xxxxxx329 for a cervical injury sustained on December 31, 1999. OWCP accepted his claim for cervical sprain, herniated disc at C5-6 and left cervical radiculopathy with frozen shoulder and authorized a C5-6 cervical discectomy with fusion which was performed on November 22, 2000. On January 15, 2009 it combined the case File Nos. xxxxxx329 and xxxxxx783 into a master claim assigned number xxxxxx329.

<sup>3</sup> Appellant stopped work effective September 13, 2009. He contended that the offered position was located three hours or 150 miles from his home. On December 10, 2009 OWCP accepted that appellant sustained a recurrence of disability commencing September 13, 2009 as no formal loss of wage-earning capacity determination was in place and suitable employment had been withdrawn by the employing establishment.

his left thigh and leg. Dr. Gupta reported his findings on physical examination and advised that appellant's radiculopathy at L5-S1 on the left side had improved.

Records from Allen Community Hospital indicated that appellant was treated in the emergency room on July 18 and August 8, 2009 for a migraine headache, neck pain and nausea. He was diagnosed with an acute migraine and chronic neck pain. Following his July 18, 2009 treatment, appellant was released to return to work on July 20, 2009.

In a March 2, 2010 decision, OWCP found that the medical evidence was insufficient to establish that appellant was totally disabled during the claimed period due to his accepted conditions. However, it found that he was entitled to four hours of compensation for medical treatment received on July 6, 2009.

By letter dated March 8, 2010, appellant, through counsel, requested a telephone hearing.

Records from Allen Community Hospital indicated that appellant was evaluated for his back pain on July 5, 2009. He was diagnosed as having chronic back pain and released to return to work on July 6, 2009.

In a September 8, 2010 decision, OWCP's hearing representative affirmed the March 2, 2010 decision. She found that appellant failed to submit sufficient medical evidence to establish total disability for the claimed periods.

### **LEGAL PRECEDENT**

With respect to a claimed period of disability, an employee has the burden of establishing that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup> The medical evidence required to establish a period of employment-related disability is rationalized medical evidence.<sup>7</sup> Rationalized medical evidence is medical evidence based on a complete factual and medical background of the claimant, of reasonable medical certainty, with an opinion supported by medical rationale.<sup>8</sup> The Board, however, will not require the Office to pay compensation for disability in the absence

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<sup>4</sup> *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> 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).

<sup>6</sup> *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>7</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>8</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

of medical evidence directly addressing the specific dates of disability for which compensation is claimed.<sup>9</sup> To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.<sup>10</sup>

### ANALYSIS

OWCP accepted that appellant sustained aggravation of displacement/herniation of the cervical and intervertebral disc at C6-7 without myelopathy, adhesive capsulitis of the left shoulder, disc herniations with myelopathy at C3-4 and C5-7 and radiculopathy of the upper extremities on February 25, 2005. Appellant claimed compensation for disability on intermittent dates from May 21 to July 20, 2009. On March 2 and September 8, 2010 OWCP denied compensation for the claimed period of disability. Appellant 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.<sup>11</sup> The Board finds that he did not submit sufficient medical evidence to establish intermittent periods of employment-related disability during the period claimed due to his accepted injuries.

Reports from appellant's attending physician, Dr. Gupta, are insufficient to establish appellant's claim. He listed his findings on physical examination of the cervical and lumbar spines and lower extremities. Dr. Gupta diagnosed herniated nucleus pulposus at L4-5 and L5-S1, improved cervical herniated disc with failed back syndrome and facet joint arthropathy at L4-5 and L5-S1 on the left side. He stated that appellant was off work in May 2009 following his July 14, 2009 cervical and lumbar epidural blocks, but he did not address whether his treatment and claimed disability commencing May 6, 2009 were causally related to the accepted conditions. The Board has held that a physician's opinion, which does not address causal relationship, is of diminished probative value.<sup>12</sup> Further, OWCP has not accepted appellant's claim for a lumbar condition and Dr. Gupta did not provide any rationale explaining how appellant's condition was caused or contributed to by the February 25, 2005 employment injuries.<sup>13</sup> The Board finds, therefore, that Dr. Gupta's reports are insufficient to establish appellant's burden of proof.

The hospital records from Allen Community Hospital indicated that appellant was evaluated on July 5 and 18, 2009 and diagnosed as having a migraine headache and chronic neck and back pain. Appellant was released to return to work on July 6 and 20, 2009, respectively. His claim has not been accepted for migraine headache. Further, pain is considered a symptom, not a diagnosis and does not constitute a basis for payment of compensation.<sup>14</sup> Moreover, the

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<sup>9</sup> *Sandra D. Pruitt*, 57 ECAB 126 (2005).

<sup>10</sup> *See William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, *supra* note 6.

<sup>11</sup> *Alfredo Rodriguez*, 47 ECAB 437 (1996).

<sup>12</sup> *See A.D.*, 58 ECAB 149 (2006) (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).

<sup>13</sup> *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Alice J. Tysinger*, 51 ECAB 638 (2000).

<sup>14</sup> *See Robert Broome*, 55 ECAB 339 (2004).

hospital records did not address whether appellant was totally disabled during the claimed period due to the accepted injuries.<sup>15</sup> The Board finds, therefore, that this evidence is insufficient to establish his claim.

Appellant has failed to submit rationalized medical evidence establishing that his intermittent disability during the period May 21 to July 20, 2009 resulted from residuals of his accepted employment-related cervical and upper extremity conditions.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has failed to establish that he was totally disabled for intermittent periods from May 21 to July 20, 2009 due to her February 25, 2005 employment injuries.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the September 8, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 7, 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

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<sup>15</sup> *A.D.*, *supra* note 12.