United States Department of Labor
Employees' Compensation Appeals Board

D.H., Appellant	)	
and	)	**Docket No. 11-1739**
	)	**Issued: April 18, 2012**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRATION, Asheville, NC, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On July 27, 2011 appellant, through his attorney, filed a timely appeal from a June 22, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. § 501.3(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant is entitled to compensation for wage-loss compensation for the period August 2 to October 15, 2010.

FACTUAL HISTORY

On July 16, 2010 appellant, then a 32-year-old administrative officer, filed a traumatic injury claim for injuries sustained to his back/spine, right arm and neck during a slip and fall on a

[1] 5 U.S.C. §§8101-8193.

stairwell on July 9, 2010. The employing establishment confirmed that he was going downstairs for lunch when he was injured. Both appellant and the employing establishment acknowledged he *had returned to work on July 9, 2010 from nonwork related back surgery.[2]

Medical evidence contemporaneous to the July 9, 2010 injury included a July 2, 2010 report from appellant's attending surgeon, Dr. Douglas Pahl, a Board-certified orthopedic surgeon, which indicated that appellant could return to work on July 9, 2010 on sedentary duty. Restrictions were lifting/carrying/pushing/pulling not to exceed 10 pounds, frequent/micro breaks, no driving or operating machinery while taking narcotics and no long walking and stairs with heavy equipment.

A July 9, 2010 note from the employing establishment's emergency room noted the prior back injury and provided an impression of coccyx concussion and laceration of right forearm. Appellant was sent home with ice packs and pain medicine and advised to follow-up with Employee Health on July 12, 2010. In a July 12, 2010 note, a physician's assistant from the employing establishment's emergency room held appellant off work until he could follow-up with his treating physician.

In an August 2, 2010 duty status report, Dr. Pahl indicated that he advised appellant on July 20, 2010 that he could return to regular work full time. He advised that he had not treated appellant specifically for the fall. Dr. Pahl indicated that appellant received abrasions from his fall and that he had disability from his lumbar spine fusion.

On September 10, 2010 OWCP accepted the claim for an abrasion of the right forearm and paid continuation of pay for the period July 10 to 26, 2010. Appellant returned to work on July 27, 2010 but stopped again on August 2, 2010.

On October 9, 2010 appellant filed a Form CA-7 claims for wage-loss compensation for the period August 2 to October 15, 2010.

In a November 4, 2010 letter, OWCP requested appellant submit medical evidence supporting that the disability period claimed was related to his accepted July 9, 2001 work injury and/or treatment for the injury-related medical condition. It noted that he had a preexisting back injury/surgery but was released to return to work full duty prior to the August 2, 2010 work stoppage.

In an undated statement, appellant stated that he had indicated on his claim Form CA-1 that he had back, neck and psychological problems.[3] He stated that he had an unrelated back surgery and was provided restrictions, but these were not followed and had to use concrete steps to reach his work area. Appellant stated that he followed this order with trepidation and fell. He noted that he was receiving injections to his neck and back and was on multiple medications. Appellant indicated that he had neck spasms that radiated to the right arm, his sciatica was more

[2] The record indicates that the surgery was performed in March 2010.

[3] Appellant's July 16, 2010 traumatic injury claim did not attribute a psychological problem to the July 9, 2010 fall. The record contains an August 27, 2009 report from Dr. Pamela Lowe-Hogle, a psychiatrist, who treated appellant for anxiety and depression and noted a work situation that he perceived as hostile.

pronounced and that he had debilitating migraines after the work-related fall. He stated that these limitations led to depression and anxiety. Evidence previously of record was received along with a July 22, 2010 statement from Herman Player, a maintenance worker, regarding the July 9, 2010 work injury and new medical evidence.

Several medical reports were received from Dr. Pahl. Several reports predated appellant's July 9, 2001 return to work and concerned his nonwork related back surgery. In a July 19, 2010 report, Dr. Pahl noted appellant had returned to work approximately 10 days prior and had a fall and sustained a bruised "coccyx." He indicated that appellant was seen twice by local emergency room and given a donut. Dr. Pahl noted that, by appellant's account, he has been unable to work due to increased low back pain. He noted examination findings and reviewed a two-view lumbar spine series. Dr. Pahl provided an assessment of stable postoperative course status post anterior-posterior spinal fusion L4-5 and L5-S1 and L5 endplate fracture, secondary to recent trauma. He stated that the injury was relatively benign and no further intervention was needed. Dr. Pahl stated that appellant should continue with pain medications and held him off work for one week. He stated that there was no medical reason to limit appellant's work for more than a week. Dr. Pahl stated that he had great difficulty in advising appellant not to use stairs. While he preferred that appellant use an elevator for a few weeks, he stated that, if this could not be provided, there was no medical reason that appellant could not use stairs at work. In an undated prescription slip, Dr. Pahl stated that he recommended no work until July 26, 2010.

In a September 29, 2010 Coeburn Hospital Clinic slip, Dr. Gurcharan S. Kanwal, a Board-certified psychiatrist, stated that appellant was not able to work for 30 days and diagnosed lumbar disc disease, cervical disc disease, post-traumatic stress disorder, attention deficit disorder, anxiety and Gastroesophageal reflux disease (GERD).

In a December 7, 2010 letter, OWCP expanded appellant's claim to include contusion/bruise of coccyx and L5 end-plate fracture.

By decision dated December 7, 2010, OWCP denied appellant's claim for wage-loss compensation from August 2 to October 15, 2010 on the grounds the medical evidence did not establish that the claimed disability was due to the July 9, 2010 work injury.

On December 14, 2010 appellant, through his attorney, requested a telephonic hearing which was held April 5, 2011 before an OWCP hearing representative. New evidence received included a statement from appellant requesting to expand accepted conditions to include the endplate fracture, cervical spine problems, migraine headaches and spasms that radiated into his extremities. This also included diagnostic testing evidence as well as numerous exhibits in which appellant set forth background information regarding his diagnoses and a letter from a social worker discussing emotional problems.

Treatment notes and discharge instructions from the Pardee Urgent Care Center provided a history of the July 9, 2010 fall at work and contained diagnoses of chronic pain, neck degenerative disc disease and status post lumbosacral fusion. A September 1, 2010 Urgent Care Patient Triage Complaint Form indicated that appellant should see a bone specialist as soon as possible.

In a November 18, 2010 report, Dr. Larry Russell, a Board-certified family practitioner, opined that appellant was totally disabled due to injuries from the July 9, 2010 fall. He indicated that appellant had significant pain in the lumbar area, cervical neck muscle spasms limiting range of motion of the neck and radiating pain and spasms into the right arm. Dr. Russell stated that these problems have led to increased frequency of migraine headaches and made it impossible for him to hold a job of any kind now and in the foreseeable future. Progress reports from him contained diagnoses of situational depression, degenerative lumbar/lumbosacral disc disease and noted, as new diagnoses directly related to the work injury, chronic pain due to trauma, chronic migraine, lumbago, thoracic/lumbosacral neuritis/radiculitis and occipital neuralgia.

In an April 11, 2011 report, Dr. Russell reiterated the contents of his November 18, 2010 report and opined that appellant had several active problems (ventricular tachycardia, occipital neuralgia, thoracic/lumbosacral neuritis/radiculitis, lumbago, chronic migraine without aura, chronic pain due to trauma, PAT, situational depression, degenerative lumbar/lumbosacral disc disease, polyuria, umbilical hernia and GERD) directly related to the fall which rendered him permanently disabled.

In a March 22, 2011 report, Dr. Ricardo Bierrenbach, a psychiatrist, indicated that appellant had been under his care since September 16, 2010 for post-traumatic stress disorder, major depressive disorder and attention deficit hyperactive disorder.

By decision dated June 22, 2011, OWCP's hearing representative affirmed the denial of appellant's claim for wage-loss compensation for the period August 2 to October 15, 2010. The hearing representative noted that OWCP should develop the issue of whether appellant's claim should be expanded to include other conditions such as cervical spine problems with radiation to the extremities, migraine headaches and depression.

LEGAL PRECEDENT

For each period of disability claimed, an 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] The Board will not require OWCP 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.[6]

[4] *See Amelia S. Jefferson*, 57 ECAB 183 (2005); *see also David H. Goss*, 32 ECAB 24 (1980).

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

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

Under FECA the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.[7] Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.[8] 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.[9] When, however, the medical evidence establishes that the residuals or sequelae of an 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.

ANALYSIS

OWCP accepted appellant's claim for an abrasion of the right forearm, L5 endplate fracture and contusion/bruise of coccyx. Continuation of pay was paid from July 10 to 26, 2010. Appellant returned to work July 27, 2010 but stopped on August 2, 2010 and filed a claim for wage-loss compensation from August 2 to October 15, 2010. It is appellant's burden of proof to establish the claimed period of employment-related disability. On November 4, 2010 OWCP advised him of the evidence needed to establish his claim. However, appellant did not submit sufficient reasoned medical evidence to establish that his disability beginning August 2, 2010 was causally related to his accepted conditions. He did not submit a narrative medical report in which his treating physician explained how his disability was related to the accepted July 9, 2010 employment injury.

Dr. Pahl performed nonwork related back surgery in March 2010 and released appellant to full duty on July 9, 2010 with restrictions. Following the July 9, 2010 work injury, he advised appellant on July 20, 2010 that he could return to regular work full time. Dr. Pahl indicated that in a July 19, 2010 report that the L5 endplate fracture, secondary to recent trauma, was relatively benign and no further intervention was needed. He further stated that while he preferred the use of an elevator for a few weeks, there was no medical reason that appellant could not use stairs at work. As noted, appellant returned to work on July 27, 2010 and stopped on August 2, 2010. There are no other reports from Dr. Pahl which either address the specific dates of disability claimed, August 2 to October 15, 2010 or which holds appellant off work due to the accepted conditions. Several of Dr. Pahl's reports predate appellant's claimed period of disability. Thus, reports from him do not support that the accepted conditions caused any disability during the claimed period.

Dr. Russell opined that appellant is totally disabled due to injuries from the July 9, 2010 fall. He also diagnoses several conditions which have not been accepted by OWCP. Dr. Russell did not address the specific dates of disability claimed, August 2 to October 15, 2010 or provide medical rationale or reasoning to explain why appellant was disabled due to the accepted

[7] *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).

[8] *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

[9] *Merle J. Marceau*, 53 ECAB 197 (2001).

conditions.[10] Without reasoned medical evidence supporting that appellant had employment-related disability during the period in question, he has not met his burden of proof to establish his claim for wage-loss compensation beginning August 2, 2010. The need for reasoning is particularly important where Dr. Pahl's more contemporaneous reports indicate that appellant was not disabled.

Appellant submitted a September 29, 2010 clinic slip from Dr. Kanwal which holds appellant off work for 30 days and lists diagnoses of lumbar disc disease, cervical disc disease, post-traumatic stress disorder, attention deficit disorder, anxiety and GERD. He also submitted treatment notes and discharge instructions from Pardee Urgent Care Center and a March 22, 2011 report from Dr. Bierrenbach which reference the accepted July 9, 2010 employment injury and diagnose several conditions. However none of these reports are sufficient to support appellant's claim as this evidence does not contain a physician's narrative opinion explaining the relationship of his inability to work on the dates in question to the accepted conditions.

The other evidence of record, including diagnostic studies, are insufficient to establish appellant's wage loss claim as no medical opinion is offered on total disability due to the July 9, 2010 work injury or accepted conditions during the periods of wage loss claimed.

Appellant argues on appeal that OWCP's decision is contrary to fact and law. As noted, the medical evidence did not sufficiently address the causal relationship of his alleged disability during the claimed period to his accepted work-related injuries. Therefore, appellant failed to meet his burden of proof.

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 not established that he was disabled for the period August 2 through October 15, 2010 due to his accepted work-related injuries.

[10] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value). Furthermore, for conditions not accepted or approved by OWCP, appellant bears the burden of proof to establish that the condition is causally related to the employment injury. *See Jaja K. Asaramo*, 55 ECAB 200 (2004).

ORDER

IT IS HEREBY ORDERED THAT the June 22, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 18, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board