United States Department of Labor
Employees' Compensation Appeals Board

V.B., Appellant	)	
and	)	**Docket No. 12-114**
	)	**Issued: June 13, 2012**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY AGENCY, Las Vegas, NV, Employer	)	

Appearances:
Appellant, pro se
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 October 26, 2011 appellant filed a timely appeal from the May 6, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying a claimed period of disability. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant established that he is entitled to wage-loss compensation due to disability for the period November 19, 2006 through November 28, 2009 and continuing.

FACTUAL HISTORY

On September 8, 2006 appellant, then a 56-year-old transportation security officer, filed an occupational disease claim alleging that the frequent lifting of heavy bags caused and/or contributed to the "pain in [his] crotch, anus, and testicles." He first noticed his condition in relation to his employment duties on October 7, 2005. Appellant was placed on light duty on

[1] 5 U.S.C. § 8101 *et seq.*

July 29, 2006 and he accepted a modified position on September 7, 2006. He returned to light duty on September 24 through 26, 2006. Appellant stopped work on September 27, 2006 due to an embarrassing incident that happened on the job on September 26, 2006. On August 3, 2007 the employing establishment terminated his employment as he was absent without leave (AWOL).[2] On February 1, 2008 OWCP accepted the claim for right ilioinguinal neuralgia.

On August 15, 2006 appellant was diagnosed with prostatitis by Dr. Henry Osei, a Board-certified internist. On September 5, 2006 Dr. Mark E. Leo, a Board-certified urologist, diagnosed epididymitis and permanently restricted appellant from lifting over 20 pounds. In an attending physician's report of the same date, Dr. Leo stated that appellant was able to resume regular work on October 12, 2006 as long as there was no lifting over 20 pounds. In a November 30, 2006 report, Dr. Leo indicated that appellant's epididymitis had improved with prescribed medicine and the rest from his work activities. He opined that appellant's initial episode of epididymitis was related to his work and the extended period away from work did a lot of good. Dr. Leo further opined that appellant could return to work "whenever he feels he wants to."

On a Form CA-7 claim for compensation dated November 28, 2009 appellant requested leave without pay (LWOP) for the period November 19, 2006 through November 28, 2009. On the form he indicated that the employing establishment withdrew its offer of limited duty on November 19, 2006 and reassigned him to full duty in Node 8. Appellant claimed no offer of suitable work has been offered to date. OWCP received the claim on August 6, 2010.

In an August 20, 2010 letter, OWCP advised appellant that, if he was claiming temporary total disability from November 19, 2006 to November 28, 2009, he must provide medical documentation to support the period claimed. It noted that there was no medical evidence to support the time period claimed. OWCP stated that the medical documentation must consist of appellant's treating physician's objective findings or medical rationale to support his inability to work due to his accepted work condition during the time period claimed. It noted that appellant had not worked for the employer since August 3, 2007 and that the modified-duty position, which was within his medical restrictions, was available when he stopped working.

In a September 10, 2010 letter, appellant indicated that he was requesting compensation from November 19, 2006 through November 28, 2009. He stated that he stopped work on September 26, 2006 because his employer allowed nonsupervisory employees access to his sensitive medical information. Appellant stated that there was no medical reason why he could not work within his doctor's permanent restrictions (notably repeated lifting under 20 pounds). He stated it was the employer's responsibility to resolve the humiliation he felt when his medical privacy was breached and stated that he remains open to a job placement. Appellant stated the full-duty reassignment to Node 8 changed his hours and days off. He indicated that, to date, the employing establishment had not offered any suitable work.

OWCP received information concerning an alleged breach of appellant's medical privacy; a November 28, 2009 direct deposit sign-up form; a November 27, 2007 letter from appellant disagreeing with his termination along with letters asserting there was no medical reason he could not work; statements of earnings and leave for pay periods September 3 to 16,

[2] The employing establishment placed appellant on AWOL as he failed to provide any medical documentation for his absence.

September 17 to 30 and October 1 to 14, 2006; a shift anomalies sheet dated March 14, 2006 to January 9, 2007; and time and attendance reports dated September 3 to 16, November 12 to 25 and November 26 to December 9, 2006.

Dr. Leo's medical reports, previously of record were provided. In an April 27, 2007 disability form, Dr. Leo indicated that appellant had epididymitis and, beginning August 9, 2006, he was restricted from returning to full duty as a bag inspector and restricted from lifting over 20 pounds.

In a December 21, 2007 report, Dr. Sheldon J. Freedman, a Board-certified urologist, provided an impression of right ilioinguinal neuralgia with a prior history of multiple prostrate surgeries. He concurred with Dr. Leo's recommendation that appellant not do heavy lifting. In a January 24, 2008 report, Dr. Freedman stated that it was possible that appellant's symptoms would resolve if he were to seek another occupation that did not involve lifting.

In a November 13, 2006 telephone report, the employing establishment indicated that appellant had not returned to work and that light duty remained available.

By decision dated May 6, 2011, OWCP denied appellant's claim for wage-loss compensation for the period November 19, 2006 through November 28, 2009 and continuing. It found that there was no medical evidence before or after November 19, 2006 which indicated that appellant would be unable to work November 19, 2006 through November 28, 2009. OWCP further found that the employing establishment terminated appellant on August 3, 2007 for reasons not related to his accepted conditions or limited-duty job. It advised that the privacy issue and case surrounding the embarrassing incident that occurred on September 25, 2006 which resulted in appellant's work stoppage, was not before OWCP.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his claim by the weight of the evidence.[3] For each period of disability claimed, the 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]

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.[6] Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.[7] An employee who has a physical impairment causally related to his federal

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[3] *See Amelia S. Jefferson*, 57 ECAB 183 (2005); *see also Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan,* 20 ECAB 55 (1968).

[4] *See Amelia S. Jefferson, supra* note 3; *see also David H. Goss*, 32 ECAB 24 (1980).

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

[6] *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).

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

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.[8] 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.

To meet this burden, a claimant must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factor(s).[9] The opinion of the physician must be based on a complete factual and medical background, 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.[10]

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.[11]

ANALYSIS

OWCP accepted appellant's claim for right ilioinguinal neuralgia and noted the date of injury as October 7, 2005. Appellant accepted a modified position on September 7, 2006. He stopped work on September 27, 2006 due to an alleged incident that happened on September 26, 2006. On August 3, 2007 the employing establishment terminated appellant's employment as he was AWOL. Appellant filed a claim for wage-loss compensation for the period November 19, 2006 through November 28, 2009. It is his burden of proof to establish the claimed period of employment-related disability. On August 20, 2010 OWCP advised appellant of the evidence needed to establish his claim. However, appellant did not submit sufficient reasoned medical evidence to establish that his work stoppage for the period November 19, 2006 through November 28, 2009 was causally related to his accepted condition. He admitted that there was no medical reason he could not work within his physician's permanent restrictions of no lifting over 20 pounds. The Board notes that, while appellant stated that he stopped work because of a breach of his medical privacy, it does not have jurisdiction over internal employing establishment personnel matters such as whether the employer should have offered appellant alternative employment after the alleged breach of his medical privacy.

On September 5, 2006 Dr. Leo permanently restricted appellant from lifting over 20 pounds. Appellant accepted a modified position on September 7, 2006 but, as noted, he stopped work September 27, 2006 for reasons not related to the accepted injury. In a November 30, 2006 report, Dr. Leo indicated that appellant's work-related epididymitis had improved and he could

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

[9] *A.D.*, 58 ECAB 149 (2006); *Sedi L. Graham*, 57 ECAB 494 (2006).

[10] *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

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

return to work whenever he wanted. The employing establishment indicated on November 13, 2006 that light duty remained available. Appellant was terminated from employment on August 3, 2007 for being AWOL.

For the period November 19, 2006 through August 2, 2007, there is no medical evidence indicating that appellant was not able to work due to his accepted condition. Moreover appellant's employer provided work within his medical restrictions and indicated that light duty remained available. While appellant argued that the employing establishment withdrew its offer of limited duty on November 19, 2006, there is no evidence it was withdrawn due to his employment-related injury or that appellant's medical restrictions were disregarded. He only indicated that the employing establishment changed his days and hours. There is no evidence that the reassignment disregarded appellant's medical restrictions and the employing establishment indicated that light duty remained available to him.[12] Without reasoned medical evidence supporting that he had employment-related disability during the period November 19, 2006 through August 2, 2007, appellant has not met his burden of proof to establish his claim for wage-loss compensation for the period in question.

Appellant's employment was terminated on August 3, 2007 for reasons not related to his accepted employment condition. For the period August 3, 2007 until November 28, 2009 and continuing, appellant did not work for the employing establishment. The Board has held that, when a claimant stops work for reasons unrelated to his accepted employment injury, he has no disability within the meaning of FECA.[13] Accordingly, there is no basis for entitlement to wage-loss compensation for the period August 3, 2007 through November 28, 2009.

On appeal appellant contends that he was reassigned full duty on November 19, 2006 in violation of his medical restrictions. However, as previously noted, there is no evidence of record that his limited-duty assigned was withdrawn due to his employment-related injury or that appellant's medical restrictions were disregarded. Additionally, the employing establishment indicated that light duty remained available to appellant.

An award of compensation may not be based on surmise, conjecture or speculation.[14] Neither the fact that appellant's condition became apparent during a period of employment nor his belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.[15] Causal relationship must be established by rationalized medical opinion evidence.[16] As appellant failed to submit such evidence, appellant has not met his burden of proof to establish an employment-related disability for the period November 19, 2006 to November 28, 2009.

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[12] *See Terry R. Hedman*, 38 ECAB 222 (1986).

[13] *E.S.*, Docket No. 11-657 (issued February 9, 2012); *see John W. Normand*, 39 ECAB 1378 (1988).

[14] *D.I.,* 59 ECAB 158 (2007); *D.E.,* 58 ECAB 448 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

[15] *G.T.,* 59 ECAB 447 (2008); *V.W.*, 58 ECAB 425 (2007); *Ronald K. Jablanski*, 56 ECAB 616 (2005).

[16] *Roy L. Humphrey*, 57 ECAB 238 (2005); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

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 entitlement to wage-loss compensation for the period November 19, 2006 through November 28, 2009 and continuing causally related to his accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs decision dated May 6, 2011 is affirmed.

Issued: June 13, 2012
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