United States Department of Labor
Employees' Compensation Appeals Board

R.A., Appellant	)	
and	)	**Docket No. 13-1498**
	)	**Issued: May 19, 2014**
DEPARTMENT OF HOMELAND SECURITY, OFFICE OF INSPECTOR GENERAL, Oakland, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 11, 2013 appellant filed a timely appeal from a December 27, 2012 decision of the Office of Workers' Compensation Programs (OWCP). 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 this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he was entitled to disability compensation for intermittent periods from June 28 to October 26, 2010.

On appeal, appellant asserts that he took leave at the instruction of his physician and that OWCP did not apprise him of the evidence needed to support his claim.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

OWCP accepted that appellant, then a 68-year-old auditor in charge, sustained a right thoracic sprain on May 13, 2010 when he slipped on water and fell. He did not immediately stop work.

In an October 8, 2010 attending physician's report, Dr. Glenna Tolbert, a Board-certified physiatrist, noted the history of injury and diagnosed an employment-related right thoracic sprain/strain, serratus myofascial pain and underlying osteoporosis. She advised that appellant had been seen for treatment on June 14, July 7, August 1 and September 9, 2010. Dr. Tolbert indicated that appellant reported that he was able to work except for prolonged travel, *i.e.*, flying and advised that he should be able to lie down as needed, every two to three hours. On a duty status report, she advised that appellant could return to restricted duty on June 10, 2010.

In a letter dated November 16, 2010 notifying appellant of the acceptance of his claim, appellant was informed that any claim for lost wages needed medical documentation substantiating that the lost time was due to the accepted work-related condition and that reinstatement of leave was subject to approval of the employing establishment.

On October 11, 2011 appellant filed a Form CA-7, claim for compensation and requested leave buyback for intermittent periods between May 13 and December 31, 2010. He attached a leave buyback worksheet, approved by the employing establishment on October 11, 2011 for 107.5 hours and time analysis forms for sick and annual leave totaling 107.5 hours for the period June 28 to December 13, 2010. Appellant indicated that he took off work due to pain and for therapy and physician visits.

On October 24, 2011 OWCP informed appellant that there was no medical evidence to substantiate medical appointments on July 26 and 28, August 3, 5, 10, 19 and 26, September 2, November 22 and 29 and December 3, 2010. Appellant was advised to provide contemporaneous medical evidence for all dates of disability claimed, which included a medical note from his treating physician explaining why he was not able to work.

On a second Form CA-7 filed for the dates May 13 to December 31, 2010, the employing establishment indicated that appellant had returned to his regular duties.

An unsigned letter from Dr. Tolbert's office dated November 2, 2011 indicated that appellant was under treatment beginning May 27, 2010. The letter stated that "it was with my permission that [appellant] took off work as needed related to the injury." The letter listed the following: 2 hours on June 28; 4 hours on July 1; 4 hours on July 7; 10 hours on July 12; 3 hours on July 13; 2 hours on July 19; 4 hours on July 21; 10 hours on July 27; 3 hours on August 19; 4 hours on August 30; 1 hour on September 15; 6 hours on September 27; 4 hours on September 30; and 10 hours on October 26, 2010.

On November 28, 2012 OWCP informed appellant that he was entitled to 47.5 hours of leave buyback for 4 hours on July 26; 4 hours on July 28; 3 hours on August 26; 4.5 hours on September 2; 5 hours on September 9; 4 hours on November 22; 4 hours on November 29; and 4 hours on December 13, 2010. The remaining 60 hours claimed were not payable as there was no

contemporaneous medical evidence with objective findings to support an inability to work. Appellant was informed of the process for buying back leave and provided an appropriate application for reinstatement of leave.

By decision dated December 27, 2012, OWCP denied appellant's claim for 60 hours disability compensation for the dates June 28, July 1, 7, 12, 13, 19, 21 and 27, August 9 and 30, September 15, 27 and 30 and October 26, 2010. It noted that no contemporaneous medical documentation had been received regarding the dates claimed.

LEGAL PRECEDENT

Under FECA, the term "disability" is defined as incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.[2] Disability is thus not synonymous with physical impairment which may or may not result in an incapacity to earn the wages. An employee who has a physical impairment causally related to a federal employment injury but who nonetheless has the capacity to earn wages he or she was receiving at the time of injury has no disability as that term is used in FECA[3] and whether a particular injury causes an employee disability for employment is a medical issue which must be resolved by competent medical evidence.[4] Whether a particular injury causes an employee to be disabled for work and the duration of that disability, are medical issues that must be proved by a preponderance of the reliable, probative and substantial medical evidence.[5]

The Board will not require OWCP 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.[6] Furthermore, it is well established that medical conclusions unsupported by rationale are of diminished probative value.[7]

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[8] 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 employee.[9] Neither the mere fact that a disease or condition manifests itself during a period

[2] *See Prince E. Wallace*, 52 ECAB 357 (2001).

[3] *Cheryl L. Decavitch*, 50 ECAB 397 (1999); *Maxine J. Sanders*, 46 ECAB 835 (1995).

[4] *Donald E. Ewals*, 51 ECAB 428 (2000).

[5] *Tammy L. Medley*, 55 ECAB 182 (2003); *see Donald E. Ewals, id.*

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

[7] *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

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

[9] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

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 Board finds that appellant did not meet his burden of proof to establish that he was totally disabled for the dates June 28, July 1, 12, 13, 19, 21 and 27, August 9 and 30, September 15, 27 and 30 and October 26, 2010 because none of the probative medical evidence indicates that he was disabled on these dates due to the accepted condition of thoracic strain. When he claimed compensation, appellant indicated that he took off work due to pain and for therapy and physician visits.

The only probative medical evidence of record is the two reports dated October 8, 2010 in which Dr. Tolbert indicated that appellant was advised that he could return to work with restrictions on June 14, 2010. A Form CA-7 indicated that he returned to his regular duties. Appellant also submitted unsigned, unidentified correspondence from Dr. Tolbert's office dated November 2, 2011 that listed a number of dates and stated, "it was with my permission that [appellant] took off work as needed related to the injury." Reports lacking proper identification, such as unsigned treatment notes, do not constitute probative medical evidence.[11] Moreover, the November 2, 2011 correspondence contains no explanation of why appellant could not work on the days listed.

When a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that he or 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.[12] The Board has long held that medical conclusions unsupported by rationale are of diminished probative value and insufficient to establish causal relationship.[13] The medical evidence or record is therefore insufficient to establish that appellant was totally disabled for the claimed periods. The Board will not require OWCP 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.[14]

As there is no rationalized medical evidence contemporaneous with the dates of claimed disability listed above, appellant failed to establish entitlement to wage-loss compensation for these dates.

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

[11] *R.M.*, 59 ECAB 690 (2008).

[12] *G.T.*, 59 ECAB 447 (2008).

[13] *See Albert C. Brown*, 52 ECAB 152 (2000).

[14] *William A. Archer, supra* note 6.

The Board, however, finds that appellant would be entitled to wage-loss compensation for attending the medical appointment on July 7, 2010. If a claimant has returned to work following an accepted injury or the onset of an occupational disease and must leave work and lose pay or use leave to undergo treatment, examination or testing for the accepted condition, compensation should be paid for wage loss under section 8105 of FECA, while undergoing the medical services and for a reasonable time spent traveling to and from the location where services were rendered.[15] Dr. Tolbert's October 8, 2010 attending physician's report indicated that appellant was seen for treatment on July 7, 2010. Although, he also reported on his October 8, 2010 report that appellant was also seen on June 14, August 19 and September 9, 2010, appellant was paid compensation for September 9, 2010 and he did not claim compensation for either June 14 or August 19, 2010.

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 did not establish that he was entitled to total disability compensation for June 28, July 1, 12, 13, 19, 21 and 27, August 9 and 30, September 15, 27 and 30 and October 26, 2010. The Board further finds that he is entitled to compensation for lost wages incidental to receiving medical treatment on July 7, 2010.

[15] 5 U.S.C. § 8105. Any leave used cannot be compensated until it is converted to leave without pay. For a routine medical appointment, a maximum of four hours of compensation is usually allowed. *See William A. Archer*, *supra* note 6.

ORDER

IT IS HEREBY ORDERED THAT the December 27, 2012 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: May 19, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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