United States Department of Labor
Employees' Compensation Appeals Board

S.H., Appellant	)	
and	)	**Docket No. 15-1940**
	)	**Issued: February 24, 2016**
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Houston, TX, Employer	)	

Appearances:
TWR Appeals Case Management, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 29, 2015 appellant, through her representative, filed a timely appeal from an August 19, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant established disability for the period beginning June 18, 2013, causally related to an August 28, 2012 employment injury.

FACTUAL HISTORY

On August 28, 2012 appellant, then a 54-year-old secretary, sustained a traumatic injury in the performance of duty when she fell to the floor while moving an office chair. She stopped

[1] 5 U.S.C. § 8101 *et seq.*

work on the date of injury and returned to modified duty on August 29, 2012. Appellant received intermittent continuation of pay from August 31 to October 14, 2012.

OWCP accepted the claim for sprain of the right shoulder, elbow, forearm, wrist, knee, and neck. The claim was later expanded to include back sprain of the lumbar region.

Initial disability status reports limited appellant to working half days. In a September 27, 2012 report, Dr. Yusuf Mosuro, Board-certified in anesthesiology and pain medicine, noted the history of the August 28, 2012 employment injury and her subsequent treatment. Appellant had a prior history of cervical radiculopathy. Dr. Mosuro noted findings and diagnosed bilateral shoulder sprain, bilateral elbow sprain, neck sprain, right wrist and hand sprain, lumbar sprain, and right knee sprain. He opined that the diagnosed conditions were due to the work injury. Dr. Mosuro advised that appellant should continue working half days with no lifting over 10 pounds. Diagnostic reports revealed small right knee joint effusion, intrasubstance degeneration within the posterior horn of the medial meniscus, foraminal disc bulge at L5-S1 with degeneration, mild disc bulge at L4-5, and a two millimeter ossific density along the lateral margin of the right lateral humeral epicondyle.

Appellant continued working a modified schedule of four and a half hours per day. She received wage-loss compensation for the remaining hours for the period January 14 to 31, 2013. On January 29, 2013 appellant accepted a light-duty position with the employing establishment restricting work to four and a half hours per day.

Dr. Mosuro submitted a February 14, 2013 report which he advised that appellant complained of pain and discomfort in her shoulders and knees. On examination of the shoulder he noted tenderness on palpation of the shoulders worse of the right, 160 degrees forward flexion of the right, 160 degrees of abduction, 60 degrees internal rotation on the right, and 40 degrees internal rotation on the left. Examination of the low back revealed negative straight leg raising, reduced flexion to 40 degrees, and tenderness on palpation of the L4-5, L5-S1, and bilateral sacroiliac joint. On examination of the right knee Dr. Mosuro noted tenderness of palpation on the anterior knee on the medial joint line, flexion at 110 degrees, and extension at 0 degrees. He recommended that appellant continue working four and a half hours per day taking at least one 10-minute break every two hours to avoid prolonged sitting. Dr. Mosuro recommended aquatic therapy and further testing.

OWCP referred appellant on June 27, 2013, together with the medical record and a statement of accepted facts, to Dr. Donald Mauldin, Board-certified in orthopedics, for a second opinion evaluation regarding the need for requested treatment, appellant's work-related conditions, and work status. In a July 25, 2013 report, Dr. Mauldin noted that appellant was injured when her office chair slipped from under her causing her to fall onto the floor. On examination he noted that appellant appeared to have definite symptom magnification. Examination of the cervical spine revealed a voluntary restriction of approximately 30 percent of full range of motion, grimacing with passive range of motion, no palpable spasms, negative Spurling, and no nerve root tension signs or compression signs neurologically. Dr. Mauldin noted no significant atrophy in the upper extremity, no gross motor deficit in any major muscle group in the upper extremity, positive Waddell findings with truncal rotation, negative straight leg raising seated to 80 degrees with no back or leg complaints, supine at 60 degrees with complaints of bilateral leg pain with no radicular pain, free rotation of the hips with no evidence

of sacroiliac joint dysfunction. Examination of the elbows and wrists revealed full symmetrical range of motion with no complaints of pain. On examination of the right shoulder Dr. Mauldin noted no pain with passive right shoulder range of motion, good mobility, and no atrophy. He opined that, based on the lack of objective findings that a significant structural injury occurred, appellant's accepted soft tissue contusion sprains had resolved within 90 days. Dr. Mauldin further opined that there was no indication that additional physical therapy, aquatic therapy, or functional capacity evaluation was necessary. He advised that she was capable of working a full eight to nine hours per day in her preinjury position.

A July 7, 2013 hospital report advised that appellant sustained a back sprain related to a nonwork-related motor vehicle accident. In a July 9, 2013 statement, appellant notified OWCP that she had been involved in a motor vehicle accident on July 7, 2013. She noted that she had pain in her neck, arms, legs, lower back, and right knee following the accident. Appellant advised that due to her injuries she was unable to work that week.

A physician assistant advised on July 10, 2013 that appellant was released to light-duty work on July 15, 2013. She advised that appellant was unable to do any heavy lifting, twisting, or bending.

By letter dated August 7, 2013, OWCP requested that Dr. Mosuro respond to Dr. Mauldin's opinion that appellant was capable of returning to work nine hours per day. In a September 4, 2013 response, Dr. Mosuro expressed no opinion.

OWCP received additional claims for intermittent wage loss in August 2013 for periods of time beginning April 22, 2013. The claims were generally for up to 4.5 hours of compensation each day. By letters dated August 8 and 30, 2013, OWCP advised appellant that her claims for compensation could not be processed as there was insufficient medical evidence to support that she could only work part time.

Appellant submitted an August 26, 2013 report from Dr. Louis Train, Board-certified in family medicine and an associate of Dr. Mosuro. Dr. Train advised that appellant injured her right knee, low back, right hip, elbow, and neck when she fell from her chair at work. He noted that appellant had a preexisting injury to her C5, C6, and C7 discs from a June 3, 2004 motor vehicle accident; however, appellant related that she had been pain free for a year prior to the work injury. Dr. Train also noted that appellant had been involved in another motor vehicle accident on July 7, 2013 where she suffered a low back sprain. He advised that she was off work for one week and later returned to work pain free. On examination of the neck Dr. Train noted 45 degrees rotation, abduction at 30 degrees, and pain in the C5 from a head compression test. Further examination revealed normal range of motion and tenderness of the supraspinatus muscle and tendon, tenderness of the levator scapulae muscle, normal range of motion of the right and left shoulder, normal range of motion of the lower back, and bilateral sacroiliac tenderness. Dr. Train noted that appellant had a history of cervical radiculopathy and diagnosed neck sprain, low back sprain, sacroiliitis, sprained right hip, internal derangement of the right knee, sprains of both shoulders, and right femoral trochanteric bursitis. He recommended keeping appellant off work.

Dr. Train's September 30, 2013 report noted that appellant's lumbar spine was in constant pain, particularly with sitting and standing for a half hour. Examination revealed

bilateral rotation of the neck at 45 degrees, abduction at 45 degrees, and muscle spasms from C1 through T1 paravertebral muscles, 45 degrees of lumbar flexion, negative straight left raising, tenderness of both sacroiliacs, and right knee swelling. Dr. Train noted that appellant's knee contusion caused inflammation resulting in vastus medialis which caused riding right patella which chews up the knee as she walks. He advised that appellant was unable to sit, stand, or walk for more than half an hour and was therefore incapable of work.

By decision dated November 5, 2013, OWCP denied appellant's claim for compensation for the period June 18, 2013 and ongoing finding that the medical evidence did not support disability due to the August 28, 2012 work injury.[2] Appellant requested reconsideration on January 21, 2014.

Appellant provided November 25 and December 4, 2013 reports from Dr. Train in which he advised that appellant had sustained an L4-L5 disc injury attributable to the accepted work injury. He noted that she returned to work in April 2013 working four and a half hours per day and that she continued having discomfort in her right knee. Dr. Train recommended that she continue a half day of work as it was as much as she could tolerate. He noted that she was involved in a motor vehicle accident on June 7, 2013, but opined that the accident did not contribute to her injuries. Dr. Train reiterated his examination findings.[3]

By decision dated April 25, 2014, OWCP denied modification of its prior decision.[4]

On September 30, 2014 appellant requested reconsideration. She submitted multiple muscle strength testing and physical therapy reports.

Dr. Train provided September 8 and October 16, 2014 reports which advised that appellant complained of right hip and right lateral thigh pain. Examination revealed lower back range of motion within normal limits, tenderness of the right piriformis, right femoral trochanter, right lateral thigh, and sacroiliac joint.

In an October 21, 2014 report, Dr. Reginald Newsome, a Board-certified anesthesiologist, advised that appellant complained of right knee and low back pain. He noted that she had a history of chronic numbness, pain, and arthritis. Dr. Newsome made findings on examination and advised that appellant was scheduled to receive a right intra-articular knee steroid injection.

An October 30, 2014 magnetic resonance imaging (MRI) scan report, evaluated by Dr. Alexander Sardina, a Board-certified diagnostic radiologist, reflected minimal soft tissue swelling of the anterior medial aspect of the knee and no evidence of internal derangement.[5]

In a December 30, 2014 decision, OWCP denied modification of its prior decision.

[2] This decision superseded an October 22, 2013 OWCP decision.

[3] On December 31, 2013 appellant retired from the employing establishment.

[4] This decision superseded an April 21, 2015 OWCP decision.

[5] In a January 8, 2015 diagnostic report, Dr. Sardina advised that an MRI scan of the left knee revealed nonspecific soft tissue inflammation posterior to the lateral facet of the patella.

Appellant continued submitting evidence. Dr. Train, in a November 17, 2014 report, reiterated the history of the work injury. He advised that the TOS diagnosis that he previously assessed was resolved. Dr. Train noted that the neck sprain was improving and requested that sacroiliitis be included as an accepted condition.

In a December 22, 2015 report, Dr. Newsome advised that appellant had improved right knee pain and noted that she would continue with diagnostic lumbar epidural steroid injections.

In a December 23, 2014 report, Dr. Novarro Stafford, a family medicine practitioner and an associate of Dr. Train, provided the history of injury and appellant's treatment history. He assessed resolving bilateral shoulder pain, elbow sprain, cervical sprain, resolved wrist sprain, lumbar sprain, and right knee sprain. Dr. Stafford opined that appellant's condition was work related. He noted that appellant had a "long history of disability secondary to the injury which occurred on August 28, 2012." In a January 14, 2015 diagnostic report, Dr. Stafford advised that a nerve conduction study was grossly unremarkable.

Dr. Stafford, on January 30, 2015, advised that appellant was under his care for her work-related accepted conditions. He noted that appellant returned to work for four and a half hours per day from September 2012 through December 2013. Dr. Stafford noted that she worked these hours daily with the exception of one week in July when she was off. He noted that appellant retired on December 31, 2013, yet she did not receive the compensation for the period September 1, 2012 through December 31, 2013.

On February 9, 2015 appellant requested reconsideration. In a February 10, 2015 report, Dr. Stafford reiterated the history of the injury, imaging results, and appellant's treatment history. He assessed resolving bilateral shoulder pain, elbow sprain, cervical sprain, resolved wrist sprain, lumbar sprain, and right knee sprain. Dr. Stafford opined that appellant's condition was work related. In March 10 and April 14, 2015 reports, he reiterated the history and findings found in his earlier reports.

In a February 16, 2014 report, Dr. Newsome advised that appellant was experiencing pain in the lower back. He noted that an MRI scan of the lumbar spine revealed multilevel disc herniation and advised that appellant would receive a lumbar epidural steroid injection.

By decision dated August 19, 2015, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

A claimant has the burden of proving by a preponderance of the evidence that he or she is disabled for work as a result of an accepted employment injury and submit medical evidence for each period of disability claimed.[6] Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues.[7] The issue of whether a particular injury causes disability for work must be resolved by competent medical

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

[7] *Id.*

evidence.[8] To meet this burden, a claimant must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting a causal relationship between the alleged disabling condition and the accepted injury.[9]

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 his or her disability and entitlement to compensation. For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.[10]

ANALYSIS

The Board finds that appellant had not established disability for the period commencing June 18, 2013 due to the August 28, 2012 employment injury accepted for sprain of the right shoulder, elbow, forearm, wrist, knee, neck, and lumbar spine.

In support of her claim for disability, appellant submitted many reports from Dr. Train. On August 26, 2013 Dr. Train noted that she had a preexisting injury to her C5, C6, and C7 discs from a June 3, 2004 motor vehicle accident as well as a history of cervical radiculopathy. He also noted that appellant had a July 7, 2013 motor vehicle accident that caused a low back sprain. Dr. Train advised that she was off work for one week and later returned to work pain free. He assessed neck sprain, low back sprain, sacroiliitis, sprained right hip, internal derangement of the right knee, sprains of both shoulders, and right femoral trochanteric bursitis. Dr. Train recommended keeping appellant off work. On September 30, 2013 he noted that appellant's lumbar spine was in constant pain, that her knee condition remained symptomatic, and that she could not work. In his November 25, 2013 report, Dr. Train advised that appellant had an L4-L5 disc injury attributable to the accepted work injury. He noted that she returned to work on April 2013 working four and a half hours per day and continued having right knee discomfort. Dr. Train recommended that she continue working half days as it was as much as she could tolerate. He asserted that the June 7, 2013 motor vehicle accident did not contribute to her injuries. On December 4, 2013 Dr. Train reported appellant's continuing symptoms and advised that her distress was too great for her to work.

In none of these reports does Dr. Train provide a medically-reasoned explanation for why appellant could not work full time for the specific claimed periods because of the August 28, 2012 work injury. As noted, appellant must submit rationalized medical evidence supporting causal relationship between the disabling condition and the accepted injury. Furthermore, the medical evidence must directly address the specific dates of disability for work for which compensation is claimed.[11] The need for medical rationale is particularly important where the record shows that appellant has a preexisting cervical condition as well as two previous

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

[9] *C.S.*, Docket No. 08-2218 (issued August 7, 2009).

[10] *Sandra D. Pruitt*, 57 ECAB 126 (2005).

[11] *See supra* notes 9 and 10.

nonwork-related motor vehicle accidents. Dr. Train also appears to base appellant's inability to work on her subjective complaints. A complaint of too much pain to work without more support does not establish disability for work.[12] Dr. Train did not provide a discussion of how any objective medical findings attributable to the accepted conditions supported that appellant could not perform her job duties for specific periods. Other reports from Dr. Train are not contemporaneous[13] and do not discuss the period of disability commencing June 18, 2013 through appellant's retirement from work.

Appellant also provided several reports from Dr. Stafford who supported that she had ongoing work-related conditions for which she had disability. In his January 30, 2015 report, Dr. Stafford noted that appellant returned to work for four and a half hours per day from September 2012 through December 2013. He contended that appellant did not receive the appropriate compensation for the period September 1, 2012 through December 31, 2013.[14] Dr. Stafford's report is not contemporaneous and this and his other reports do not provide sufficient explanation as to why appellant was only able to work four and a half hours per day due to the work injury and why any such disability was not attributable to nonemployment-related conditions. As a result it is insufficient to discharge appellant's burden of proof.

Likewise reports from Dr. Mosuro, who treated appellant at the time of the onset of the claimed disability, did not provide a reasoned opinion explaining why appellant could not work full time, due to the work injury, for the specific periods in which compensation is claimed. When OWCP asked for Dr. Mosuro, on August 7, 2013, to comment on Dr. Mauldin's report, which found no work-related disability, Dr. Mosuro provided no responsive opinion. His reports are insufficient to establish any of the claimed periods of disability.

Other medical evidence of record is of limited probative value as it does not address the period of claimed disability commencing on June 18, 2013. Thus, these reports are insufficient to establish the claim for such periods.[15] Appellant also provided reports from physical therapists and a physician assistant. These documents do not constitute competent medical evidence as they are not from a physician.[16]

[12] *See L.A.*, Docket No. 08-1988 (issued April 8, 2009) (a conclusion based on appellant's subjective complaints of pain rather than on any objective tests insufficient to establish a claim).

[13] *See S.S.*, 59 ECAB 315 (2008) (the Board has held that contemporaneous evidence is entitled to greater probative value than later evidence).

[14] It is unclear if Dr. Stafford has an accurate history of the claim as appellant did receive intermittent continuation of pay from August 31 to October 14, 2012 and intermittent wage-loss compensation from January 14 to 31, 2013. Medical conclusions based on inaccurate or incomplete histories are of diminished probative value. *Beverly R. Jones*, 55 ECAB 411 (2004).

[15] *See supra* note 10.

[16] *A.C.*, Docket No. 08-1453 (issued November 18, 2008) (records from a physical therapist do not constitute competent medical opinion); *L.L.*, Docket No. 13-829 (issued August 20, 2013) (a physician assistant not a physician under FECA). *See* 5 U.S.C. § 8101(2). This subsection defines the term "physician." *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

Furthermore, OWCP further developed the claim by referring appellant to Dr. Mauldin. In his July 25, 2013 report, Dr. Mauldin related the history of appellant's injury and noted his findings. He opined that, due to a lack of objective findings, no significant structural injury had occurred and indicated that appellant's accepted conditions resolved within 90 days. Dr. Mauldin further opined that there was no further treatment of therapy needed for the work injury. He advised that appellant was capable of working full time in her preinjury position. Dr. Mauldin found no basis on which to attribute any disability to the accepted work injury.

On appeal appellant argues that medical reports from Dr. Train established her claimed disability from work. As explained above, these reports are not sufficient to establish the claim as Dr. Train did not provide sufficient medical reasoning to support his conclusions that appellant had work-related disability for specific claimed periods.

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 meet her burden of proof to establish disability for the period commencing on June 18, 2013 causally related to an August 28, 2012 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the August 19, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 24, 2016
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board