United States Department of Labor
Employees' Compensation Appeals Board

LAURA FRANKLIN, Appellant	)	
and	)	**Docket No. 04-1418**
	)	**Issued: September 30, 2004**
U.S. POSTAL SERVICE, POST OFFICE, Cleveland, OH, Employer	)	

Appearances:
Laura Franklin, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On May 5, 2004 appellant filed a timely appeal from the July 15, 2003 merit decision of the Office of Workers' Compensation Programs, which denied her claim for wage loss. The Board has jurisdiction to review this decision.[1] The Board also has jurisdiction to review the Office's November 24, 2003 and February 25, 2004 decisions denying modification.

ISSUE

The issue is whether appellant's partial wage loss beginning May 5, 2003 is causally related to her accepted employment injury.

FACTUAL HISTORY

On January 2, 2001 appellant, then a 48-year-old manual distribution clerk, filed a claim alleging that the pain and tendinitis in her left wrist, arm and shoulder was a result of her federal employment. She indicated that she first became aware of this condition on February 7, 1997. A

[1] 20 C.F.R. §§ 501.2(c), 501.3.

supervisor indicated that appellant did not stop work. The Office accepted the claim for tendinitis of the left shoulder and left wrist. The Office later identified the accepted condition as "calcifying tendinitis of left shoulder, ganglion and cyst of synovium, tendon and bursa." On March 19, 2001 Dr. Mark S. Berkowitz, appellant's attending orthopedic surgeon, advised her that she could resume work full time with restrictions.[2]

On May 5, 2003 Dr. Berkowitz restricted appellant to six hours work a day. On May 17, 2003 she filed a claim for compensation for the two hours or so of daily wage loss she incurred as a result of Dr. Berkowitz's restriction. On June 4, 2003 the Office advised appellant that Dr. Berkowitz needed to address how her condition materially worsened and whether the change in her work shift was a result of her work injury: "A detailed narrative report would be necessary to establish this. This report should include: A history of injury; objective findings of disability; diagnosis; and his opinion concerning the relationship of his diagnosis to factors of employment."

In a decision dated July 15, 2003, the Office denied appellant's claim for compensation. The Office noted that the medical evidence did not address whether appellant's condition had worsened as a result of the accepted work injury to warrant a change in work shift from eight hours to six.

Appellant requested reconsideration. She submitted a July 21, 2003 report from Dr. Berkowitz, who responded to the Office's June 4, 2003 request for additional information:

> "This is in response to your letter of June 4, 2003. I have been taking care of [appellant] for injuries sustained to her left shoulder and arm on February 7, 1997. My previous evaluations of [her] stated that she was having increased difficulty with the use of the left shoulder.
>
> "On the last three visits for her left shoulder visits in my history, I stated that I reviewed the patient's history, history of presenting illness, review of systems, family social and medical history and there has been no change from the previous evaluation. Yes, it has been true that there has been no change in [her] history, history of presenting illness, review of systems, family, social and medical history. But when I saw [appellant] on April 28, 2003, she had significant difficulty with the various activities, including the repetitive carrying, pushing, holding and twisting to her right arm at that point. She also mentioned having an increase[d] difficulty with work and increased dysfunction. I recommended on the April 28, 2003 visit that she should limit her workday to six hours and see if that would give her some relief from her repetitive activities.
>
> "It appeared at that point that her condition had materially worsened, although her history had not changed from the previous evaluation. It was requested on previous occasions that an FCE [functional capacities evaluation] should be

[2] The record does not make clear whether appellant previously stopped work because of her accepted employment injury.

completed and noted to ascertain what exactly her functional capacity is and what is feasible for her to do at work.

"In a 25-minute office visit, it is very difficult for me to state exactly how long a day [appellant] is able to perform at the [employing establishment]. Therefore, please allow approval for her physical capabilities evaluation to get an objective and definitive decision as to what her physical capabilities are."

In a decision dated November 24, 2003, the Office reviewed the merits of appellant's claim and denied modification of its prior decision. The Office found that Dr. Berkowitz failed to provide objective evidence and medical reasoning to support appellant's partial disability.[3]

Appellant requested reconsideration. She argued that the Office did not address Dr. Berkowitz's July 21, 2003 report. In a report dated January 8, 2004, Dr. Berkowitz again addressed the six-hour restriction:

"I have been taking care of [appellant] for a problem that she is having with her left shoulder and wrist. She had exacerbation of her left shoulder pain with much difficulty and on May of 2003 I decrease[d] her hours of work from 8 hours to 6 hours for that period of time of six months in an attempt to see if we could keep her at work without taking her out completely. She was able to work a bit better with a decrease in the length of a day and subsequently went back to an eight-hour day."

In a decision dated February 25, 2004, the Office reviewed the merits of appellant's claim and denied modification of its prior decision. The Office noted that Dr. Berkowitz did not provide adequate medical reasoning and did not discuss the objective findings that were present and which medically precluded appellant from performing limited duty for eight hours a day.

LEGAL PRECEDENT

A claimant seeking benefits under the Federal Employees' Compensation Act[4] has the burden of proof to establish the essential elements of her claim by the weight of the evidence,[5] including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.[6]

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a

[3] On November 24, 2003 Dr. Berkowitz advised appellant that she was able to resume restricted duty eight hours a day.

[4] 5 U.S.C. §§ 8101-8193.

[5] *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

[6] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

causal connection between the claimed condition or disability and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury and must explain from a medical perspective how the claimed condition or disability is related to the injury.[7]

Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work.[8] The Board has held that, when a physician's statements regarding an employee's ability to work consist only of a repetition of the employee's complaints that he or she hurt too much to work, without objective signs of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.[9]

ANALYSIS

Appellant claims compensation for partial wage loss beginning May 5, 2003, so she has the burden of proof to establish that this wage loss is causally related to her accepted employment injury. To support her claim, she submitted reports from Dr. Berkowitz, who explained that he restricted appellant to six hours a day because "it appeared at that point that her condition had materially worsened" and that appellant "had exacerbation of her left shoulder pain." But Dr. Berkowitz was unable to document this worsening or exacerbation with clinical findings. Indeed, he reported no change from previous evaluations. It appears that he imposed the six-hour restriction because appellant complained of significant difficulty with various activities and because she mentioned increased difficulty with work. This was a doctor's prerogative, to be sure, but the Board will not require the Office to pay appellant compensation for disability without findings on examination that support the claimed worsening or exacerbation of her accepted condition. To do so would essentially allow appellant to self-certify her disability and entitlement to compensation.[10]

Supportive clinical findings are not enough to discharge appellant's burden of proof: Dr. Berkowitz must also explain how the partial disability that began on May 5, 2003 was causally related to the accepted employment injury. He need not be so conclusive as to remove all doubt, but he does need to convince the lay adjudicator that his conclusion is medically rational, sound and logical.[11] Without a well-reasoned explanation of the connection between the accepted employment injury and the onset of partial disability, Dr. Berkowitz's opinion is of little probative value and is insufficient to establish the critical element of causal relationship.[12]

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[7] *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988); *see Jane A. White*, 34 ECAB 515 (1983).

[8] *See Dean E. Pierce*, 40 ECAB 1249 (1989); *Paul D. Weiss*, 36 ECAB 720 (1985).

[9] *John L. Clark*, 32 ECAB 1618 (1981).

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

[11] *Kenneth J. Deerman*, 34 ECAB 641, 645 (1983) and cases cited therein at note 1.

[12] *See generally Melvina Jackson*, 38 ECAB 443, 450 (1987) (discussing the factors that bear on the probative value of medical opinions).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that her partial wage loss beginning May 5, 2003 is causally related to her accepted employment injury. The medical opinion evidence offers no clinical basis for her increased complaints and does not discuss how her partial disability was a result of the accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the February 25, 2004, November 24 and July 15, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 30, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member