United States Department of Labor
Employees' Compensation Appeals Board

P.M., Appellant	)	
and	)	**Docket No. 06-2143**
	)	**Issued: June 1, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Coppell, TX, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 19, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated June 23, 2006. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met her burden of proof in establishing that she had intermittent disability from February 21 to April 11, 2006 and April 13 to May 5, 2006 causally related to an August 2, 2004 employment injury.

FACTUAL HISTORY

On September 2, 2004 appellant, then a 48-year-old supervisor, filed a traumatic injury claim alleging that on August 2, 2004 she injured her left knee when moving a wire cage. The Office accepted that she sustained derangement of the posterior horn of the left medial meniscus,

chondromalacia of the patella and tricompartmental chondromalacia. Appellant did not stop work but returned to a limited-duty position.[1]

Appellant came under the treatment of Dr. Michael Duchamp, an osteopath and Board-certified orthopedic surgeon, who treated appellant on June 6, 2005 for left knee pain associated with a work-related injury. Dr. Duchamp referenced an August 28, 2004 magnetic resonance imaging (MRI) scan of the left knee, which revealed a questionable vertical tear of the posterior horn of the medial meniscus, tricompartmental chondromalacia, most severe in the lateral patella and small suprapatellar joint effusion. On June 21, 2005 Dr. Duchamp performed an arthroscopy of the left knee, partial medial meniscectomy, chondroplasty of the femoral sulcus, medial and lateral tibial plateau, medial femoral condyle and patella and a partial synovectomy. He diagnosed tear of the posterior horn of the medial meniscus of the left knee, Grade 4 chondromalacia of the femoral sulcus, medial and lateral tibial plateaus, medial femoral condyle and patella and synovitis. In reports dated June 21 and 24, 2005, Dr. Duchamp diagnosed derangement of the posterior horn of the medial meniscus and primarily localized osteoarthritis of the lower leg. On October 12, 2005 he advised that appellant reached maximum medical improvement and could return to work in a sedentary position with occasional lifting up to four pounds in conformance with the functional capacity evaluation of October 7, 2005.

On February 10, 2006 the employing establishment offered appellant a modified limited-duty position as a clerk effective February 10, 2006. Appellant accepted the position and returned to work.

By decision dated April 10, 2006, the Office found that appellant had been employed as a full-time modified clerk effective February 8, 2006, which was over 60 days and that the pay in that position of $1,034.19 per week was equivalent to the pay rate for the position appellant held at the time of her injury; thus, no loss of wages occurred. The Office concluded that her actual earnings as a full-time modified clerk fairly and reasonably represented her wage-earning capacity.[2]

On April 12, 2006 appellant filed a Form CA-7, claim for compensation, for 45.67 hours of leave without pay (LWOP) during the period February 21 to April 11, 2006. She requested 8 hours LWOP for February 21, March 27 and 28, April 6 and 11, 2006, 2.9 hours of LWOP for February 27, 2006 and 2.77 hours of LWOP for March 14, 2006.

On May 15, 2006 appellant filed a Form CA-7, claim for compensation, for 68.58 hours of LWOP during the period April 13 to May 5, 2006. She requested 8 hours of LWOP for April 13, 14 and 19, and May 1 to 5, 2006, 1.57 hours of LWOP on April 18, 2006 and 3.01 hours of LWOP on April 26, 2006.

In a letter dated May 23, 2006, the Office authorized appellant to change physicians to a Dr. Bryce Benbow. In a note dated May 26, 2006, Dr. Benbow prescribed a recumbent exercise

[1] Appellant filed a separate claim for a work-related injury, which occurred on June 21, 1993, file number 16-0227748. The facts pertaining to this injury are not in the case record.

[2] Appellant has not appealed this decision.

bike and an ergonomic chair for appellant. He referred appellant to Dr. Mikesh Shah, a Board-certified internist, for an electromyography (EMG) and nerve conduction studies. Dr. Shah opined that appellant was totally incapacitated from work on February 21, March 27 and April 19, 2006, as a result of her work injury of August 2, 2004. In other undated notes, he indicated that she had a doctor's appointment on February 27, 2006 at 1:00 p.m. and had to leave work at 11:50 a.m. and another appointment on March 14, 2006 at 9:00 a.m. and arrived at work at 10:20 a.m. Dr. Shah advised that the medical appointments were necessary for treatment of appellant's work injury of August 2, 2004. Other notes advised that she was totally incapacitated from work on March 28, April 6, 11, 13 and 14, 2006 due to her injury of August 2, 2004. On April 18, 2006 the Office authorized Dr. Shah to perform a series of three steroid injections on appellant's knee. In an undated statement, Dr. Shah noted that on April 18, 2006 appellant had a doctor's appointment at 2:45 p.m. and left work at 1:30 p.m. and advised that this appointment was necessary for medical treatment for her work injury of August 2, 2004. He further noted that on April 19, 2006 appellant was totally incapacitated from work as a result of her work injury of August 2, 2004. Dr. Shah advised that she was totally incapacitated for work on April 26, 2006 for 3.01 hours due to a doctor's appointment for her injury of August 2, 2004. In an undated note, he indicated that appellant was totally incapacitated for work from May 1 to May 5, 2006 and had a doctor's appointment on May 3, 2006. Appellant submitted an EMG and a nerve conduction report dated May 17, 2006, which revealed electrophysiological evidence of left S1 radiculopathy.

By letter dated May 30, 2006, the Office advised appellant that the medical evidence on file was insufficient to establish her intermittent disability from February 21 to May 5, 2006. The Office asked her to submit additional information including a comprehensive medical report from her treating physician which included a reasoned explanation as to how the specific work factors or incidents identified by appellant had rendered her unable to perform the duties of her modified job.

Appellant submitted duplicative notes from Dr. Shah and physical therapy reports from 2005.

In a decision dated June 23, 2006, the Office granted appellant's claim for compensation for three hours on February 24, 2006 three hours for March 14, 2006 and eight hours for May 3, 2006. It denied her claim for compensation for the other intermittent periods on the grounds that the evidence was not sufficient to establish that her disability was due to her accepted work injury.

LEGAL PRECEDENT

A claimant has the burden of proving by a preponderance of the evidence that she is disabled for work as a result of an accepted employment injury and submit medical evidence for each period of disability claimed.[3] Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues.[4] The issue of

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

[4] *Id.*

whether a particular injury causes disability for work must be resolved by competent medical evidence.[5]

ANALYSIS

The Office accepted appellant's claim for derangement of the posterior horn of the left medial meniscus, chondromalacia of the patella and tricompartmental chondromalacia. The Office accepted that she was disabled from work for three hours on March 14, 2006 and eight hours on May 3, 2006 based on Dr. Shah's treatment notes for those dates. It also accepted that appellant had three hours of wage-loss hours on February 24, 2006. However, there is insufficient medical evidence to support that appellant was disabled from work on this day. Rather, Dr. Shah indicated that on February 27, 2006 appellant had a doctor's appointment for treatment of her work injury at 1:00 p.m. and left work at 11:50 a.m. It appears that the Office incorrectly paid appellant three hours of compensation for February 24, 2006 instead of on February 27, 2006. The Board further notes that the evidence is sufficient to award compensation for 1.57 hours for April 18, 2006 as the record reveals that Dr. Shah gave appellant an injection for her employment injury on this date. Additionally, the medical record supports that appellant received further medical treatment on April 26, 2006 and claimed 3.01 hours of LWOP to attend this medical appointment. Dr. Shah noted that appellant was unable to work on April 26, 2006 for 3.01 hours due to a doctor's appointment for her injury of August 2, 2004. The Board, therefore, finds that the record supports that appellant was disabled due to the accepted injury for 3 hours on February 27 and March 14, 2006, 8 hours on May 3, 2006, 1.57 hours on April 18, 2006 and 3.01 hours on April 26, 2006.

However, the medical evidence fails to establish her disability for other intermittent dates of February 21 to May 5, 2006.

In several undated statements, Dr. Shah indicated that appellant was totally incapacitated from work on February 21, March 27 and 28, April 6, 11, 13, 14 and 19 and May 1 to 5, 2006 as a result of her work injury of August 2, 2004. In each of these notes, he indicated that the medical appointments were necessary for the treatment of appellant's work injury of August 2, 2004. Although Dr. Shah generally supported causal relationship, he did not provide medical reasoning, or rationale, explaining his reasons for finding appellant disabled due to her accepted conditions of derangement of the posterior horn of the left medial meniscus, chondromalacia of the patella and tricompartmental chondromalacia.[6] The issue of whether appellant's disability was related to the accepted conditions is a medical question which must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to employment factors and supports that conclusion with sound medical reasoning.[7] Dr. Shah failed to provide adequate medical reasoning to support his determination that the claimed periods of disability were causally related

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

[6] *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

[7] *See Jacqueline M. Nixon-Steward, supra* note 5.

to the accepted work injury. In a letter dated May 30, 2006, the Office advised appellant of the evidence required; however, she did not submit sufficient medical evidence to establish that she was disabled due to her accepted injury for the dates claimed.

The remainder of the medical evidence, specifically an EMG and nerve conduction study dated May 17, 2006 and physical therapy notes failed to provide a specific opinion on causal relationship between the claimed period of disability and the accepted employment injury of August 2, 2004. Consequently, the medical evidence did not establish that the claimed period of disability were due to appellant's employment injury of August 2, 2004.[8]

CONCLUSION

The Board finds that, except as noted, appellant has failed to establish that appellant's condition during the claimed period of disability is causally related to the accepted employment injury of August 2, 2004.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 23, 2006 is affirmed as modified.

Issued: June 1, 2007
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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

[8] The Board notes that, as appellant has sought only a limited period of wage-loss compensation, the Office was not precluded from adjudicating this matter without issuing a formal decision on modification of appellant's previous wage-earning capacity determination. *See Katherine T. Kreger*, 55 ECAB 633 (2004).