

**United States Department of Labor
Employees' Compensation Appeals Board**

K.S., Appellant)

and)

**U.S. POSTAL SERVICE, POST OFFICE,
Gosling Spring, TX, Employer**)

**Docket No. 07-2435
Issued: July 2, 2008**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 25, 2007 appellant filed a timely appeal from a September 12, 2007 decision of the Office of Workers' Compensation Programs that denied her claim for compensation. 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 was disabled from May 26 to August 17, 2007 causally related to her September 20, 2004 employment injury.

FACTUAL HISTORY

On September 20, 2004 appellant, then a 39-year-old letter carrier, sustained injury to her back while placing a tray of mail in a hamper at work. She stopped work on September 20, 2004 and worked intermittently thereafter in a light-duty capacity. The Office accepted appellant's claim for sprains of the thoracic and lumbar regions.

Appellant came under the treatment of Dr. David W. Strausser, a Board-certified orthopedic surgeon, who obtained x-rays of the lumbar spine which revealed no abnormalities and diagnosed thoracic and lumbar sprains. A magnetic resonance imaging (MRI) scan of the thoracic spine dated November 1, 2004, also revealed no abnormalities. A November 1, 2004 MRI scan of the lumbar spine revealed bilateral facet arthropathies of a moderate degree at the levels of L4-5 and L5-S1, fibrovascular and fatty infiltrative changes around the endplates at L5-S1 and a hemangioma on the left at S2. On December 7, 2004 Dr. Strausser opined that conservative treatment was unsuccessful. He referred appellant to Dr. Benjamin Agana, a Board-certified physiatrist, for treatment.

In reports dated January 5 to August 11, 2005, Dr. Agana reviewed the history of injury and diagnosed mechanical back pain, thoracolumbar strain and lumbar facet syndrome. He provided bilateral facet block injections and performed radiofrequency thermocoagulation treatments. Dr. Agana advised that appellant experienced near total pain relief and diagnosed chronic mechanical axial pain, lumbar facet syndrome, possible S1 joint dysfunction, exogenous obesity and bipolar disorder.

On March 27, 2006 appellant underwent a fitness-for-duty examination with Dr. Bruce R. Weiner, a Board-certified orthopedic surgeon, who diagnosed low back pain and anxiety disorder. Dr. Weiner found no objective evidence of residuals and noted that the diagnostic studies revealed no abnormalities. He recommended that appellant return to full duty without restrictions. Dr. Agana subsequently reviewed the report of Dr. Weiner and recommended that appellant continue light duty for 30 to 60 days and then resume full duty. On June 9, 2006 appellant underwent a lumbar discography which revealed no evidence of annular tear or disc herniation.

On January 10, 2007 the employing establishment offered appellant modified duty as a mail processing clerk effective January 13, 2007, subject to the work restrictions set forth by Dr. Agana with a tour of duty from 3:00 p.m. to 11:30 p.m. The job offer noted: work limitations of sitting limited to 1 hour; standing and walking limited to 15 minutes; lifting, pushing and pulling limited to 10 pounds; normal hand functions; operating a motor vehicle at work, performing repetitive movements of the hands and wrists for up to 8 hours, squatting, bending and kneeling limited to 1 hour and no twisting, climbing or reaching above the shoulder. On January 12, 2007 appellant accepted the position and returned to work.

Appellant submitted reports from Dr. Bret McAden, a Board-certified internist, and Dr. Karl K. Covington, a Board-certified anesthesiologist. They recommended that appellant work the day shift due to her medical condition.

In a February 1, 2007 report, Dr. Agana reviewed appellant's job description and found the duties consistent with her restrictions. However, he opined that her commute to work aggravated her back pain. On February 15, 2007 Dr. Agana stated that appellant reported not being at work due to a dispute regarding driving, which she related was not helping her back. On March 6, 2007 he advised that appellant remained off work pending a dispute with her employment. On April 17, 2007 Dr. Agana advised that appellant had a chronic condition, lumbar facet syndrome, which required intermittent treatment. He noted that appellant wanted to work but that "the biggest issue ... seems to be the drive time." Dr. Agana opined that "the

protracted prolonged sitting aggravates her pain.” On May 3, 2007 appellant underwent trigger point injections and Dr. Agana diagnosed chronic mechanical back pain secondary to lumbar facet syndrome and myofascial pain. Dr. Agana advised that appellant could resume work subject to restrictions of lifting and carrying up to 10 pounds, sitting, standing, walking for eight hours per day; no climbing, kneeling, bending and stooping one hour per day; no twisting, pushing pulling, simple grasping, fine manipulation for eight hours per day, no reaching above the shoulder and no driving a vehicle. On June 6, 2007 appellant presented with persistent low back pain and Dr. Agana provided trigger point injections. Dr. Agana continued her work restrictions.

Appellant submitted several CA-7 claims for compensation, alleging total disability commencing May 26 to August 17, 2007. The employing establishment provided time analysis forms, noting her use of leave without pay for the period.

Appellant submitted progress notes from Dr. Covington dated July 10 to August 7, 2007. Dr. Covington monitored the medication prescribed for her chronic low back pain. He noted that appellant presented with back pain with numbness radiating to her toes. On June 13, 2007 Dr. Agana performed trigger point injections and on July 24, 2007 he performed a right L2-5 radiofrequency neurotomy treatment. He diagnosed chronic mechanical back pain with lumbar facet syndrome and continued appellant’s work restrictions. In duty status reports dated June 13 and 23, 2007, Dr. Agana diagnosed facet syndrome and advised appellant could resume work subject to restrictions. On July 31, 2007 he reported meeting with the postmaster to discuss appellant’s work status and informed the employer that she was returned back to work with restrictions. However, Dr. Agana advised that appellant’s commute aggravated her pain. He noted that the employing establishment indicated a willingness to make accommodations for appellant and he encouraged her to pursue this work opportunity. On August 30, 2007 Dr. Agana continued appellant’s work restrictions and increased her ability to drive from two to four hours per day.

On August 10, 2007 the employing establishment offered appellant full-time work as a modified sales-services distribution associate effective August 18, 2007, subject to the work restrictions set forth by Dr. Agana with a tour of duty from 8:00 a.m. to 5:00 p.m. On August 14, 2007 appellant accepted the position and returned to work on August 18, 2007.

In a letter dated August 22, 2007, the Office requested that appellant submit medical evidence establishing her total disability for work for the period May 26 to August 17, 2007.

In a decision dated September 12, 2007, the Office denied appellant’s claim for compensation, finding that the medical evidence was not sufficient to establish that her disability from May 26 to August 17, 2007 was due to her accepted work injury.

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.¹ Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues.² The issue of whether a particular injury causes disability for work must be resolved by competent medical evidence.³

The Board will not require the Office 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.⁴

ANALYSIS

The Office accepted appellant's claim for lumbar and thoracic strains. The Board finds that the medical evidence of record is not sufficient to establish that appellant was disabled for the period May 26 to August 17, 2007 due to her accepted conditions.

Appellant submitted numerous medical reports from Dr. Agana related to treatment she obtained prior to May 26, 2007, when she stopped work and claimed total disability. However, as these reports predate the period of claimed disability, they are not relevant to the issue on appeal. Although Dr. Agana noted that appellant had symptoms of low back pain and that her commute contributed to her pain, he did not specifically address how her disability beginning May 26 to August 17, 2007 was causally related to her accepted strains of the thoracic and lumbar spine. Rather, he advised that appellant could return to work full time subject to specified physical restrictions. Moreover, Dr. Agana attributed appellant's symptoms to the diagnosed conditions of lumbar facet syndrome and myofascial pain. The Board notes, however, that the Office has not accepted these conditions as related to the September 20, 2004 work injury.⁵ Therefore, these reports are insufficient to meet appellant's burden of proof.

In reports dated June 6 to August 30, 2007, Dr. Agana noted appellant's treatment for persistent low back pain. He again diagnosed chronic mechanical back pain secondary to lumbar facet syndrome and opined that she could continue work within specified work restrictions. On July 31, 2007 Dr. Agana noted appellant's status and opined that she could work full time with restrictions. These treatment records do not specifically address whether appellant sustained any employment-related disability from May 26 to August 17, 2007 causally related to her September 20, 2004 employment injury. Dr. Agana opined that appellant could return to work

¹ See *Fereidoon Kharabi*, 52 ECAB 291 (2001).

² *Id.*

³ See *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁴ *Sandra D. Pruitt*, 57 ECAB 126 (2005).

⁵ For conditions not accepted by the Office as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not the Office's burden to disprove such relationship. *Alice J. Tysinger*, 51 ECAB 638 (2000).

full time subject to restrictions. Again, the physician attributed appellant's symptoms to lumbar facet syndrome which, as noted, has not been accepted as related to the September 20, 2004 work injury.⁶ Therefore, these reports are insufficient to meet appellant's burden of proof. Dr. Agana did not specifically address how the accepted injury gave rise to the diagnosis of lumbar facet syndrome or how the accepted injury caused her to be disabled for work from May 26 to August 17, 2007.⁷

The remainder of the medical evidence, including the reports from Dr. Covington dated July 10 to August 7, 2007, fails to provide a specific opinion on causal relationship between the claimed disability and the accepted employment injury. Consequently, the medical evidence of record is insufficient to establish that appellant sustained disability commencing May 26, 2007 due to her accepted conditions.

CONCLUSION

The Board finds that appellant has failed to establish that her disability from May 26 to August 17, 2007 was causally related to her September 20, 2004 employment injury.

⁶ *Id.*

⁷ The evidence also does not show that there was any wage loss for the period claimed that was incidental to treatment for an accepted injury. See 5 U.S.C. § 8103(a); *Daniel Hollars*, 51 ECAB 355 (2000).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 12, 2007 is affirmed.

Issued: July 2, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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