

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

N.B., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
IMMIGRATION & CUSTOMS)
ENFORCEMENT, Atlanta, GA, Employer)

Docket No. 08-148
Issued: July 3, 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
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On October 22, 2007 appellant filed an appeal from the April 16, 2007 merit decision of the Office of Workers' Compensation Programs' terminating her compensation and medical benefits on the grounds that her accepted condition had resolved and the merit decisions dated December 18, 2006, August 31 and October 10, 2007 denying her claims for intermittent periods of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUES

The issues are: (1) whether the Office met its burden of proof to terminate appellant's medical and wage-loss benefits effective October 29, 2006 on the grounds that she had no further disability or residuals due to her accepted April 7, 2005 employment injury; and (2) whether the Office properly denied appellant's claim for wage-loss compensation for intermittent periods of disability from February 7 through September 1, 2006.

FACTUAL HISTORY

On April 8, 2005 appellant, a 47-year-old program assistant, filed a traumatic injury claim alleging that she injured her back, neck and right arm on April 7, 2005, when she slipped and fell on a wet floor. Her claim was accepted for cervical and lumbar strain. Appellant was placed on the periodic rolls on August 18, 2005. On August 30, 2005 she returned to light duty, four hours per day, in a sedentary position. On September 27, 2005 appellant increased her schedule to six hours per day.

On January 24, 2006 the Office issued a formal loss of wage-earning capacity decision, reducing appellant's monetary compensation based on her actual, part-time earnings of \$602.40 per week. The Office paid appellant appropriate compensation benefits pursuant to the January 24, 2006 decision.

Appellant submitted disability certificates from Dr. Clifford Roberson, Jr., a Board-certified psychiatrist, indicating that she was disabled from February 7 through 9, 2006, February 27 through March 11, 2006 and March 13 through 28, 2006. She submitted claims for compensation for the following periods: February 7 to 8, 2006; February 27 through March 3, 2006; and March 6 through 10, 2006. In a letter dated March 21, 2006, the Office informed appellant that the information submitted was insufficient to establish that she was totally disabled during the alleged intermittent periods from February 7 through March 10, 2006, noting that she was only entitled to two hours of compensation pursuant to the wage-earning capacity decision. The Office advised appellant to submit a narrative report from her physician explaining how her alleged disability was related to the accepted April 7, 2005 work injury.

Appellant filed a claim for compensation for the period March 13 through 27, 2006. In support of her claim, she submitted a March 24, 2006 disability slip from Dr. Tranese Greene, a Board-certified internist, indicating that she should be "excused" from work from March 22 through 29, 2006, due to illness. The record contains a March 19, 2006 work release form, bearing an illegible signature, reflecting that appellant was seen in the South Fulton Medical Center emergency department on that date and that she would be able to return to work on March 21, 2006. In a letter dated April 17, 2006, the Office informed appellant that the information submitted was insufficient to establish that she was totally disabled from March 13 through 27, 2006. The Office advised her to submit a doctor's report, with a diagnosis, objective findings and an opinion as to the cause of her alleged disability.

By decision dated April 27, 2006, the Office denied appellant's claim for compensation for February 7, 2006 and for the period February 27 through March 10, 2006.

In order to ascertain whether appellant was disabled as a result of her accepted injury and whether the accepted employment injury had resolved, the Office referred her together with a statement of accepted facts and a copy of the medical record, to Dr. Harold Alexander, a Board-certified orthopedic surgeon, for a second opinion examination. In a May 1, 2006 work capacity evaluation, Dr. Alexander opined that appellant had no disability resulting from her accepted condition and that she was capable of working eight hours per day. In a report dated May 1, 2006, he stated that objective physical residuals from her accepted condition included a mild decrease in range of motion in her back. Dr. Alexander's examination revealed that appellant

had no lower extremity motor or sensory loss. Mobility in flexion, extension and side bending was 25 percent diminished in all ranges. Appellant had mild low back pain on compression of her lumbosacral spine. Dr. Alexander found no motor or sensory loss in the upper extremities and good range of motion of the neck, with minimal loss of extension and no significant pain in all ranges. There was no pain on vertex or spinous process compression. Dr. Alexander stated that appellant had acute, chronic cervical and lumbosacral strains, with preexisting degenerative disc disease. He opined that she could continue performing her light-duty job, without restrictions, on a full-time basis. Dr. Alexander stated that her subjective complaints were out of proportion to the meager physical findings and that she was not disabled. He indicated that no further treatment was necessary, other than exercises for her back and neck, which could be done on her own.

In an April 10, 2006 report, Dr. Roberson stated that appellant continued to experience pain in her lower back, which was aggravated by lifting, bending and stooping. His examination revealed moderate tenderness to palpation over the lumbar vertebrae, with moderate tenderness over the bilateral paraspinal musculature. There was no myospasms or trigger point tenderness present on either side, but there was sacral tenderness present on the right and left. Range of motion examination revealed: flexion -- 40/60 degrees; extension -- 10/25 degrees; and left and right lateral bending -- 10/25 degrees. Dr. Roberson diagnosed lumbosacral strain/sprain and opined that appellant was capable of light-duty work only, six hours per day, with occasional lifting and carrying up to 20 pounds and repetitive lifting and carrying up to 10 pounds.

On May 1, 2006 appellant requested reconsideration of the April 27, 2006 decision denying her claim for compensation for February 7, 2006 and February 27 through March 10, 2006.

Appellant submitted reports and disability certificates from Dr. Roberson for the period August 29, 2005 through May 2, 2006. On February 8, 2006 Dr. Roberson noted appellant's complaints of severe low back pain and her claim that she was unable to work for the previous two days. His examination revealed normal lumbar lordosis and moderate tenderness to palpation over the lumbar vertebrae, with moderate tenderness over the bilateral paraspinal musculature. Dr. Roberson found no myospasms or trigger point tenderness present on either side. Sacral tenderness was present on the left. Reflexes were 2+ and symmetrical. Motor strength testing was poor. Dr. Roberson recommended that appellant work eight hours per day, five days per week, with restrictions.

On February 27, 2006 Dr. Roberson noted that appellant experienced severe pain with range of motion of the neck and spine, which had allegedly been severely aggravated by her work activities over the previous four days. His examination revealed severe tenderness to palpation over the cervical vertebrae, with moderate tenderness over the bilateral paraspinal musculature. Dr. Roberson found no myospasms or trigger point tenderness present on either side. Testing of cervical range of motion indicated: flexion -- 30 degrees; extension -- 45 degrees; left lateral bending -- 20 degrees; right lateral bending -- 20 degrees; turning to the left -- 40 degrees; and turning to the right -- 40 degrees. Dr. Roberson found no loss of motor strength or sensation in either upper extremity. Upper extremity reflexes and vascular status were within normal limits. Examination of the lumbar spine revealed severe tenderness to palpation over the lumbar vertebrae, with severe tenderness over the bilateral paraspinal

musculature. He found no myospasms or trigger point tenderness present on either side. Lumbar range of motion testing indicated: flexion -- 45 degrees; extension -- 0 degrees; right lateral bending -- 10 degrees; left lateral bending -- 10 degrees. Motor function, vascular status and reflexes in both lower extremities were normal. Dr. Roberson diagnosed herniated nucleus pulposus at the C4-5 level and lumbosacral sprain/strain and opined that appellant's condition was related to the April 7, 2005 work injury. He stated, "It is currently my opinion that she should remain entirely out of work at the present time."

On March 10, 2006 Dr. Roberson reiterated his diagnoses and opined that appellant was capable of light duty, five days per week, eight hours per day. On March 15, 2006 he diagnosed lumbosacral strain, herniated lumbar disc at L5-S1 and depression. Noting that "a lot of her musculoskeletal complaints [were] secondary to depression," Dr. Roberson recommended that appellant be placed on "full disability from regular work duties or modified work until the next office visit." On March 27, 2006 he diagnosed herniated nucleus pulposus at the C4-5 level and lumbosacral sprain/strain. Noting that appellant's symptoms were the same as they were on her previous visit, Dr. Roberson opined that she was capable of working light duty.

On May 1, 2006 appellant requested a review of the written record, as well as a request for reconsideration of the April 27, 2006 decision. On May 16, 2006 she submitted a request for an oral hearing.

The record contains a May 3, 2006 report from Dr. Jacquelin Washington, a Board-certified neurologist, who diagnosed three conditions resulting from her accepted injury, namely, multiple cervical disc protrusions with myelogram diculopathy at two levels; cervical myofascial pain syndrome; and depression. In a May 11, 2006 report, of a nerve conduction study, Dr. Washington stated that the results were consistent with chronic left C6-7 radiculopathy. The record contains a report of a May 25, 2006 magnetic resonance imaging (MRI) scan of the cervical spine; physical therapy notes for the period May 25 through June 20, 2006; and disability certificates from Dr. Roberson, who stated that appellant was unable to work from March 26 through April 10, 2006 and from May 1 through 2, 2006.

On June 12, 2006 appellant filed a claim for lost wages for June 7 and 12, 2006. In a June 12, 2006 work capacity evaluation, Dr. Washington indicated that appellant was capable of performing her usual job. In a July 26, 2006 disability certificate, Dr. Roberson stated that she was unable to work from July 26 through August 8, 2006.

The Office found a conflict in the medical opinion evidence between Dr. Roberson and Dr. Alexander as to whether appellant continued to have residuals from her accepted injury and, if so, whether and to what extent, she was disabled as a result of her residuals. In order to resolve the conflict, the Office referred appellant, together with the entire medical record and a statement of accepted facts, to Dr. Thomas R. Cadier, a Board-certified orthopedic surgeon, for an impartial medical examination. In a July 24, 2006 report, based upon an examination of appellant and review of the entire medical file and statement of accepted facts, Dr. Cadier found no objective evidence of residuals directly attributable to appellant's April 7, 2005 work injury. He opined that she was capable of working full time as a program assistant. Examination revealed no atrophy in the upper or lower extremities. Appellant's cervical range of motion was within the 80 to 90 percentile of full range of motion in all planes. Distal pulses were all full and

there was no tremor. All cranial nerves were intact. Dr. Cadier's review of MRI scan reports did not reveal any changes consistent with an acute traumatic disruption, but rather revealed only changes that would be considered normal in a woman of appellant's age. He stated that appellant's subjective complaints of pain seemed out of proportion to objective findings. Dr. Cadier indicated that appellant had nonwork-related degenerative cervical spondylosis. He stated that, while the April 7, 2005 work injury might have aggravated a preexisting condition, the aggravation would have been temporary and would have resolved within six months of the injury or by October 7, 2005. Dr. Cadier also stated that appellant appeared to suffer from depression, which he opined was not related to the accepted work injury.

By letter dated August 16, 2006, the Office proposed to terminate appellant's compensation and medical benefits based on Dr. Cadier's July 24, 2006 report. Appellant was provided 30 days to submit additional evidence or argument in support of her case. In a letter dated August 21, 2006, she disagreed with the proposed termination, contending that the medical evidence established that she was disabled.

Appellant submitted claims for compensation for the periods July 7 through 12, 2006; July 13 through 20, 2006; July 26 through August 7, 2006; August 9 through 18, 2006; and August 21 through September 8, 2006. She submitted disability certificates from Dr. Roberson stating that she was disabled from July 12 to 20, 2006 and from August 9 to September 12, 2006.

The Office informed appellant that the information submitted to date was insufficient to establish that she was disabled from July 13 through 16, 2006; July 18 through August 17, 2006; August 10 through 18, 2006; and August 21 through September 1, 2006. Appellant was advised to submit a report from a physician which explained how her alleged disability was causally related to her accepted injury.

Appellant submitted a June 12, 2006 report from Dr. Washington, who diagnosed cervical myelopathy secondary to disc disease at C5-6 and C6-7. She stated that appellant's condition had "not changed," and that she was able to work with no restrictions. Appellant also submitted narrative reports from Dr. Roberson. On July 12, 2006 Dr. Roberson diagnosed cervical strain, cervical disc disease, L5 strain and depression and opined that appellant was unable to work for one week due to stress-related musculoskeletal pain. On July 20, 2006 he recommended that appellant continue on limited duty. On August 9, 2006 Dr. Roberson's examination revealed tenderness along the cervical spine and paracervical muscles. Range of motion was limited and painful. Stating that appellant's musculoskeletal problems were related to job-related stress, Dr. Roberson recommended that she be placed on disability for at least one month, until she had been adequately treated for her psychological condition.

By decision dated September 25, 2006, the Office finalized the termination of appellant's compensation and medical benefits effective October 29, 2006, finding that the weight of the medical evidence, which was encompassed in Dr. Cadier's report, established that her injury-related disability and residuals ceased no later than that date.

At an October 10, 2006 hearing, appellant testified that she had been totally disabled on February 7, 2006 and February 27 through March 10, 2006 and that she remained totally

disabled. She contended that the medical evidence established that she was disabled due to the accepted injury.

On October 11, 2006 appellant objected to the termination of her medical and compensation benefits and requested a telephone hearing. She contended that her case should remain open, as she continued to experience constant pain due to the April 7, 2005 injury. The record contains a June 12, 2006 report from Myra McGowan, a registered nurse, who opined that appellant was able to return to full duty with restrictions.

By decision dated December 18, 2006, the Office's hearing representative affirmed the April 27, 2006 decision denying wage-loss compensation on February 7, 2006 and from February 27 through March 10, 2006. The representative found that appellant had not established that she sustained a recurrence of her April 7, 2005 injury, as she had not established a change in the nature and extent of her light-duty job requirements and had not shown a material worsening in her accepted condition that would render her disabled from performing the duties of her job during the periods in question.

In a February 8, 2007 telephonic hearing, appellant objected to the Office termination of her medical and compensation benefits. She contended that the impartial medical examiner examined her for only five minutes and contended that the weight of the medical evidence should rest with Dr. Roberson. Appellant alleged that she continued to suffer residuals from her accepted injury and that she was unable to bend and required surgery.

By decision dated April 16, 2007, the Office hearing representative affirmed the September 25, 2006 decision terminating appellant's compensation and medical benefits effective October 29, 2006.

By decision dated August 31, 2007, the Office denied appellant's claim for compensation for June 7, 2006. The Office found that there was no medical evidence to support that she attended a medical appointment or was otherwise disabled on that date.

In a decision dated October 10, 2007, the Office denied appellant's claim for compensation for the following periods: March 13 to 27, July 13 to 20, and July 26 to September 1, 2006. The Office found that there was no medical evidence to support disability during these periods.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.¹ Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.² The right to medical benefits for an accepted condition is not limited to the period

¹ *Paul L. Stewart*, 54 ECAB 824 (2003).

² *Elsie L. Price*, 54 ECAB 734 (2003).

of entitlement to compensation for disability.³ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which requires further medical treatment.⁴

Section 8123(a) provides in pertinent part: If there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.⁵ In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.⁶

ANALYSIS -- ISSUE 1

The Board finds that the Office met its burden of proof to terminate appellant's compensation and medical benefits for her accepted cervical and lumbar strain effective October 29, 2006.

The Office properly determined that a conflict existed in the medical opinion evidence as to whether appellant had any disability or residuals due to her accepted conditions. Appellant's treating physician, Dr. Roberson, opined that she continued to suffer residuals from and was partially disabled due to, her accepted conditions. On the other hand, the Office's second opinion physician, Dr. Alexander, opined that appellant had no disability resulting from her accepted condition and that no further treatment was necessary, other than exercises for her back and neck, which could be done on her own.

In order to resolve the conflict, the Office referred appellant to Dr. Cadier for an impartial medical examination. Dr. Cadier reviewed the entire record and statement of accepted facts and performed a thorough examination of appellant. In his July 24, 2006 report, he opined that appellant was not disabled as a result of her accepted conditions and found no objective evidence of residuals directly attributable to her April 7, 2005 work injury. Dr. Cadier opined that she was capable of working full-time as a program assistant. His examination revealed no atrophy in the upper or lower extremities. Appellant's cervical range of motion was within the 80 to 90 percentile of full range of motion in all planes. Distal pulses were all full and there was no tremor. All cranial nerves were intact. His review of MRI scan reports did not reveal any changes consistent with an acute traumatic disruption, but rather revealed only changes that would be considered normal in a woman of appellant's age. Dr. Cadier stated that appellant's subjective complaints of pain seemed out of proportion to objective findings. He indicated that appellant had nonwork-related degenerative cervical spondylosis and that, while the April 7,

³ *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

⁴ *Wiley Richey*, 49 ECAB 166 (1997); *Furman G. Peake*, *supra* note 3.

⁵ 5 U.S.C. § 8123(a).

⁶ *See Roger Dingess*, 47 ECAB 123 (1995); *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

2005 work injury might have aggravated a preexisting condition, the aggravation would have been temporary and would have resolved within six months of the injury or by October 7, 2005.

The Board finds that the Office properly relied on Dr. Cadier's July 24, 2006 report in determining that appellant was not disabled as a result of and had no residuals from, her accepted employment injury. His opinion is sufficiently well rationalized and based upon a proper factual background. Dr. Cadier not only examined appellant thoroughly, but also reviewed all medical records. He reported accurate medical and employment histories. The Office properly accorded special weight to the impartial medical specialist's findings.⁷

Appellant did not submit any rationalized medical evidence to overcome the weight of Dr. Cadier's opinion or to create a new conflict. She submitted numerous reports from her treating physician, Dr. Roberson, who was on one side of the conflict. Reports from a physician who was on one side of a medical conflict resolved by an impartial specialist, are generally insufficient to overcome the weight accorded to the report of the impartial medical examiner or to create a new conflict.⁸ On July 12, 2006 Dr. Roberson diagnosed cervical strain, cervical disc disease, L5 strain and depression and opined that appellant was unable to work for one week due to stress-related musculoskeletal pain. On July 20, 2006 he recommended that appellant continue on limited duty. On August 9, 2006 Dr. Roberson opined that appellant's musculoskeletal problems were related to job-related stress and recommended that she be placed on disability until she had been adequately treated for her psychological condition. He did not explain how appellant's current condition was causally related to her accepted injury. Rather, Dr. Roberson indicated that her musculoskeletal problems were related to stress, a condition that was not accepted by the Office. Therefore, his reports are of limited probative value. Dr. Washington's June 12, 2006 report is also insufficient to overcome the weight of Dr. Cadier's opinion. His statement that appellant was able to return to work with no restrictions belies her claim of disability. Additionally, Dr. Roberson did not explain how appellant's current condition was causally related to the accepted injury, rather than to preexisting condition, as suggested by the impartial medical examiner.

The weight of the medical evidence establishes that appellant had no residuals and was no longer disabled as a result of her accepted conditions. Therefore, the Office properly terminated her compensation and medical benefits.

LEGAL PRECEDENT -- ISSUE 2

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden to establish, by the weight of reliable, probative and substantial evidence, a recurrence of total disability. As part of this

⁷ *Bryan O. Crane*, 56 ECAB 713 (2005).

⁸ *See Jaja K. Asaramo*, 55 ECAB 200 (2004).

burden of proof, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.⁹

This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with medical reasoning.¹⁰ Where no such rationale is present, the medical evidence is of diminished probative value.¹¹

An award of compensation may not be based on surmise, conjecture, speculation or appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish a causal relationship.¹²

The Board has held that when a wage-earning capacity determination has been issued and appellant submits evidence with respect to disability for work, the Office must evaluate the evidence to determine if modification of wage-earning capacity is warranted.¹³ However, the Office is not precluded from accepting a limited period of employment-related disability, without a formal modification of the wage-earning capacity determination.¹⁴

ANALYSIS -- ISSUE 2

The Board finds that appellant failed to sustain her burden of proof in establishing that she had a period of recurrent total disability, due to her accepted April 7, 2005 injury, for intermittent periods from February 7 through September 1, 2006, entitling her to monetary compensation. There was no evidence presented that appellant's job requirements had changed, or that she was required to perform duties outside of her job restrictions; nor was sufficient medical evidence presented to establish that appellant's condition had worsened to the degree that she was unable to perform the duties of her modified position.¹⁵

Appellant's claim was accepted for cervical and lumbar strain. By decision dated January 24, 2006, the Office determined that appellant's position as a program assistant, working six hours per day, fairly and reasonably represented her wage-earning capacity. Appellant filed claims for compensation for intermittent periods of time from February 7 through

⁹ See *Shelly A. Paolinetti*, 52 ECAB 391, 392 (2001); see also *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

¹⁰ *Ronald A. Eldridge*, 53 ECAB 218 (2001).

¹¹ *Mary A. Ceglia*, 55 ECAB 626 (2004).

¹² *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

¹³ See *Katherine T. Kreger*, 55 ECAB 633 (2004); see also *Sharon C. Clement*, 55 ECAB n.10 552 (2004).

¹⁴ See *Sharon C. Clement*, *supra* note 13.

¹⁵ The record does not contain a description of a modified position held by appellant following her return to work. The evidence of record reflects only that appellant worked a modified shift of six hours per day.

September 1, 2006. The Board has held that when a wage-earning capacity determination has been issued and appellant submits evidence with respect to disability for work, the Office must evaluate the evidence to determine if modification of wage-earning capacity is warranted.¹⁶ However, the Office is not precluded from accepting a limited period of employment-related disability, without a formal modification of the wage-earning capacity determination.¹⁷ Therefore, in the instant case, the Office properly considered the acceptance of these limited periods of employment-related disability. The evidence submitted in support of appellant's claim for disability during these periods fails to show a worsening of her accepted condition such that she was rendered totally disabled. The record does not contain a reasoned medical opinion establishing that she was disabled during the periods in question as a result of her accepted employment injury,

By decision dated December 18, 2006, the Office denied appellant's claim for wage-loss compensation for February 7, 2006 and from February 7 through March 10, 2006. The relevant medical evidence consists of reports and disability certificates from Dr. Roberson. On February 8, 2006 he noted appellant's complaints of severe low back pain. Although Dr. Roberson noted her contention that she was unable to work for the previous two days, he did not express an opinion regarding her disability on February 7, 2006. The Board will not require the Office to pay compensation in the absence of medical evidence directly addressing the particular period of disability for which compensation is sought. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.¹⁸ Therefore, Dr. Roberson's report does not support appellant's claim for disability on February 7, 2006. The Board notes that an exacerbation of appellant's symptoms does not automatically result in her inability to work.¹⁹

On February 27, 2006 Dr. Roberson noted that appellant experienced severe pain with range of motion of the neck and spine, which she alleged had been severely aggravated by her work activities over the previous four days. He provided examination findings and diagnosed herniated nucleus pulposus at the C4-5 level and lumbosacral sprain/strain. Dr. Roberson opined that appellant's condition was related to the April 7, 2005 work injury and "she should remain entirely out of work at the present time." However, he did not explain physiologically how appellant's currently diagnosed herniated nucleus pulposus at the C4-5 level was causally related to her accepted injury. The Board has long held that an opinion without explanation is of little probative value.²⁰ Furthermore, as Dr. Roberson failed to specify a period of time during which appellant was allegedly unable to work, his report does not support her disability from February 7 through March 10, 2006.²¹ In fact, on March 10, 2006 Dr. Roberson opined that

¹⁶ See, *supra* note 13.

¹⁷ See *Sharon C. Clement*, *supra* note 13.

¹⁸ See *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹⁹ See *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

²⁰ *Mary A. Ceglia*, *supra* note 11. See also *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (a medical opinion not fortified by medical rationale is of little probative value).

²¹ See *Fereidoon Kharabi*, *supra* note 18.

appellant was capable of light duty, five days per week, eight hours per day, in direct contravention of her claim for disability on that date. He also failed to discuss appellant's employment duties or to discuss how her current physical condition rendered her unable to perform those duties. Disability slips from Dr. Roberson, which did not provide an opinion or explanation as to the cause of appellant's disabling condition, are of limited probative value and are insufficient to establish appellant's claim.

By decision dated August 31, 2007, the Office denied appellant's claim for compensation for June 7, 2006. There is no medical evidence of record supporting that appellant attended a medical appointment or was otherwise disabled on that date. Therefore, the Board finds that the Office properly denied appellant's claim for compensation.

On October 20, 2007 the Office denied appellant's claims for compensation for the following periods: March 13 through 27, 2006; July 13 through 20, 2006; and July 26 through September 1, 2006. The medical evidence of record is insufficient to establish that appellant was totally disabled during these periods due to her accepted injury.

Relevant medical evidence includes a March 24, 2006 disability certificate from Dr. Greene, indicating that appellant was disabled from work from March 22 through 29, 2006. Disability slips from Dr. Roberson reflected his statements that appellant was disabled from March 13 through April 10, 2006; July 12 through 20, 2006; and July 26 through September 1, 2006. As these slips did not contain an opinion as to the cause of appellant's disability, they are of limited probative value. Appellant submitted a March 19, 2006 work release form from South Fulton Medical Center emergency department, bearing an illegible signature. This report does not constitute probative medical evidence, in that it lacks proper identification.²²

On March 15, 2006 Dr. Roberson diagnosed lumbosacral strain, herniated lumbar disc at L5-S1 and depression. Noting that "a lot of her musculoskeletal complaints [were] secondary to depression," he recommended that appellant be placed on full disability. On July 12, 2006 Dr. Roberson opined that appellant was unable to work for one week due to stress-related musculoskeletal pain. On August 9, 2006 he stated that appellant's musculoskeletal problems were caused by job-related stress and recommended that she be placed on disability for at least one month, until she had been adequately treated for her psychological condition. None of Dr. Roberson's reports contains a definitive opinion that appellant's claimed disability was due to her accepted condition. Rather, he stated that her complaints were secondary to depression, a condition which was not accepted by the Office. Therefore, these reports are of limited probative value on the issue of causal relationship and are insufficient to establish that appellant was disabled due to her accepted injury during the alleged periods.

Dr. Cadier's July 24, 2006 report undermines appellant's claim of disability surrounding the period of his examination of her. In his well-rationalized report, he opined that appellant was not only able to return to full-time employment as of that date, but also had no remaining residuals from her accepted injury. Although Dr. Cadier was not asked to render an opinion as to whether appellant was disabled during the alleged periods, the Board finds that his report

²² See *Merton J. Sills*, 39 ECAB 572 (1988).

constitutes probative medical evidence establishing that appellant's accepted condition had not worsened to the degree that she was disabled at the time of his examination. The Board notes that there is no medical evidence of record supporting a worsening of her accepted condition following Dr. Cadier's report.

For the reasons stated above, the Board finds that appellant failed to sustain her burden of proof to establish that she was totally disabled due to her accepted employment condition from March 13 through 27, 2006; July 13 through 20, 2006; and July 26 through September 1, 2006.

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation and medical benefits effective October 29, 2006 on the grounds that she had no disability or residuals causally related to her accepted injuries. The Board also finds that appellant has not established that she was disabled for work and entitled to wage-loss compensation for intermittent periods alleged from February 7 through September 1, 2006.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated October 10, August 31 and April 16, 2007 and December 18, 2006 are affirmed.

Issued: July 3, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board