United States Department of Labor
Employees' Compensation Appeals Board

T.E., Appellant	)	
and	)	**Docket No. 08-265**
	)	**Issued: July 23, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Mount Airy, NC, 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 November 5, 2007 appellant filed a timely appeal of decisions of the Office of Workers' Compensation Programs' dated June 6 and October 5, 2007, which denied his request for disability for the period November 28, 2006 to March 14, 2007. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction.

ISSUE

The issue is whether appellant has met his burden of proof in establishing that he was disabled for the period November 28, 2006 to March 14, 2007, as a result of his employment-related conditions.

FACTUAL HISTORY

On July 5, 2005 appellant, then a 52-year-old letter carrier, filed a traumatic injury claim alleging that, on that date, his postal vehicle was struck in the rear while he was servicing a box. He sustained a neck strain and contusions with and soreness in his calves and shoulder. Appellant stopped work on July 5, 2005 and returned on July 7, 2005. In a July 5, 2005 report,

Dr. Maryanne Lindsay, Board-certified in emergency medicine, diagnosed a contusion and neck strain. She recommended that appellant rest and use cold packs. A July 5, 2005 computerized axial tomography (CAT) scan of the head, read by Dr. Dennis M. Clemens, a Board-certified diagnostic radiologist, was normal. A July 5, 2005 cervical spine x-ray, read by Dr. Clemens, revealed degenerative disc disease and no evidence of acute cervical spine abnormality. On October 21, 2005 the Office accepted the claim for cervical strain and head contusion. Appellant received appropriate compensation and benefits.

Appellant subsequently submitted several Form CA-7's requesting wage-loss compensation for disability for the period November 27, 2006 to March 14, 2007.[1]

In a December 16, 2006 magnetic resonance imaging scan of the cervical spine, Dr. Jeffrey A. Brody, a Board-certified diagnostic radiologist, advised that appellant had mild bilateral neural foraminal narrowing at C4-5 through C7 and diagnosed mild degenerative disc disease at C3-4, mild spondylosis at C4-5 through C6-7 and mild degenerative disc disease at C7-T1. The Office received duty status reports dated December 29, 2006 and January 12, 2007 from Mark M. Mayas, a nurse practitioner, advising that appellant had been totally disabled since November 27, 2006. It also received other physical therapy and nursing reports.

The Office subsequently received a March 15, 2007 report from Dr. O Del Curling, Jr., a neurologist, who noted appellant's history of injury and treatment and opined that his condition was work related. Dr. Curling explained that "while the major spinal pathology that has been identified to date is predominantly degenerative in nature and therefore would have obviously preexisted the date of injury, there are also suggestions that there may be acute pathology superimposed upon the degenerative change." He also indicated that appellant reported no significant symptoms prior to the date of injury, but thereafter developed radicular symptoms in the weeks that followed. Dr. Curling explained that, while appellant did not report the onset of radicular symptoms until several weeks following that event, "this would not be atypical for the development of radicular pain syndrome. In the absence of any other major precipitating event, it is my impression that the work-related motor vehicle accident of July 5, 2005 is most likely related to the subsequent onset of his present neck and arm symptoms, representing an aggravation of a predominantly preexisting condition." He advised that appellant was restricted from commercial driving activities. Dr. Curling indicated that appellant could perform modified duty provided it did not involve lifting over 20 pounds with occasional lifting and avoidance of upper body or overhead work.

On June 1, 2007 the Office expanded appellant's claim to include brachial neuritis or radiculitis nos (not otherwise specified), on the left, sprain of the neck, contusion to the face, scalp and neck, except the eyes. The record reflects that appellant was placed on the periodic rolls effective March 15, 2007.

By letter dated April 25, 2007, the Office requested additional information from appellant for the period beginning November 26, 2006. In an April 25, 2007 telephone conference with

[1] Appellant also filed a notice of recurrence of disability for the period beginning November 27, 2006. He alleged that his condition continually worsened.

appellant's postmaster, the Office was advised that the employing establishment did not have light duty within appellant's restrictions.

By decision dated June 6, 2007, the Office denied appellant's claim for compensation for the period November 28, 2006 to March 14, 2007. It advised appellant that the medical evidence did not establish his disability for the claimed period.

On July 26, 2007 appellant requested reconsideration. The Office received records which included a July 2, 2007 cervical myelogram and CAT scan of the cervical spine post myelography with contrast from Dr. Stephen L. Bower, a Board-certified diagnostic radiologist. Additionally, the Office received nurses' notes and physical therapy reports and copies of prior reports.

In a July 11, 2007 report, Dr. Curling repeated his opinion that appellant was restricted from commercial driving activities and that he could not lift over 20 pounds occasionally and avoidance of repetitive upper body or overhead work. He opined: while he could not "retroactively write him out of work, I can nonetheless clearly state that I would have considered the restrictions provided on March 15, [2007] to have been appropriate during that time period and would have in fact recommended similar restrictions had I seen him earlier in his course following his injury."

In an August 28, 2007 report, Dr. William O. Bell, a Board-certified neurosurgeon, opined that appellant would benefit from cervical laminectomy from C5 to T1 for decompression of the spinal cord and nerve.

By decision dated October 5, 2007, the Office denied modification of its June 6, 2007 decision. It found that the medical evidence was insufficient to establish that appellant was totally disabled for work during the period November 28, 2006 to March 14, 2007, as a result of his accepted employment injuries.

LEGAL PRECEDENT

A claimant seeking benefits under the Federal Employees' Compensation Act[2] ("Act") has the burden of proof to establish the essential elements of his claim by the weight of the evidence,[3] including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.[4]

As used in the Act, the term "disability" means incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury.[5] When the medical

[2] 5 U.S.C. §§ 8101-8193.

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

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

[5] *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.5(f).

evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his employment, he is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.[6]

Whether a particular injury causes an employee to become disabled for work and the duration of that disability, are medical issues that must be proved by a preponderance of the reliable, probative and substantial evidence.[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] While there must be a proven basis for the pain, due to an employment-related condition it can be the basis for the payment of compensation.[10] The Board will not require the Office to pay compensation for disability in the absence of probative medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.[11]

ANALYSIS

In support of his claim for disability for the period November 28, 2006 to March 14, 2007, appellant provided several reports dating from December 29, 2006 and January 12, 2007 from a nurse practitioner, as well as physical therapy reports. However, these reports do not constitute medical evidence and are insufficient to establish his disability for work. Section 8101(2) of the Act provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by the applicable state law. Only medical evidence from a physician as defined by the Act will be accorded probative value. Health care providers such as nurses,[12] acupuncturists, physician's assistants and physical therapists[13] are not physicians under the Act. Thus, their opinions carry no weight or probative value.[14]

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[6] *Bobby W. Hornbuckle*, 38 ECAB 626 (1987).

[7] *Edward H. Horton*, 41 ECAB 301 (1989).

[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] *Barry C. Peterson*, 52 ECAB 120 (2000).

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

[12] *G.G.*, 58 ECAB ___ (Docket No. 06-1564, issued February 27, 2007).

[13] *See Vickey C. Randall*, 51 ECAB 357 (2000).

[14] *See Jane A. White*, 34 ECAB 515, 518 (1983).

Appellant also submitted reports from Dr. Curling dated March 15 and July 11, 2007. However, these reports provide insufficient support for her claim for total disability for the period November 28, 2006 to March 14, 2007. Dr. Curling's March 15, 2007 report, which found that appellant could perform modified duties, does not specifically address the period of November 28, 2006 to March 14, 2007. In a July 11, 2007 report, Dr. Curling addressed the period prior to March 15, 2007 when he first saw appellant, noting that he "would not retroactively write him out of work." He added that he would have "considered the restrictions provided on March 15, [2007] to have been appropriate during that time period and would have in fact recommended similar restrictions had I seen him earlier in his course following his injury." The Board finds that this opinion on disability is speculative in that the physician initially stated that he could not support retroactive disability but also indicated that, if he had earlier seen appellant, he would have placed him on restrictions.[15] As noted, the Board will not require the Office to pay compensation for disability in the absence of probative medical evidence directly addressing the specific dates of disability for which compensation is claimed. Consequently, Dr. Curling's July 11, 2007 report is insufficient to establish employment-related disability for the claimed period.

Appellant also submitted several medical reports, such diagnostic reports and Dr. Bell's report, which did not contain any discussion of whether he was disabled for the period commencing from November 28, 2006 to March 14, 2007, due to his accepted employment injuries. The Board has long held that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[16]

Although appellant contends that he was disabled for the period November 28, 2006 to March 14, 2007 as a result of his accepted employment injury, the medical evidence of record does not establish disability for this period due to his accepted employment injuries. The Board finds that appellant has failed to submit rationalized medical evidence establishing that his disability from November 28, 2006 to March 14, 2007 was causally related to his accepted employment injury and thus, he has not met his burden of proof.

CONCLUSION

The Board finds that appellant failed to establish that he was totally disabled for the period November 28, 2006 to March 14, 2007.

[15] *See Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions which are speculative or equivocal in character have little probative value).

[16] *Jaja K. Asaramo*, 55 ECAB 200 (2004).

ORDER

IT IS HEREBY ORDERED THAT the October 5 and June 6, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 23, 2008
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