

hearing representative affirmed the December 19, 2005 decision. Appellant appealed this decision to the Board. In an order remanding case dated November 29, 2006, the Board directed the Office to combine appellant's case records pertaining to her right shoulder condition and to issue an appropriate decision.¹

In a letter dated August 22, 2007, the Office noted that appellant was receiving compensation benefits from June 26 through August 18, 2007 due to a left wrist claim.² It accepted appellant's September 29, 2005 injury for aggravation of right shoulder tendinitis and authorized continuation of pay from October 5 through November 2, 2005. The Office also noted that appellant had received a schedule award for 23 percent impairment of her right upper extremity based on an April 10, 2003 claim, accepted for right shoulder tendinitis.³

Appellant completed a claim for wage-loss compensation on October 15, 2007 and requested compensation for leave without pay from September 20 through October 12, 2007. The employing establishment noted that appellant had used 10.28 hours of leave without pay during this period. Appellant stated that she used 10.28 hours of leave without pay on October 10, 2007 due to a "reaction to cortisone shot given on October 9, 2007 for inflamed right shoulder." Her attending physician, Dr. Mark J. Shepard, a Board-certified orthopedic surgeon, completed a report of her work ability on October 27, 2007. He indicated that appellant was totally disabled on October 10, 2007. Dr. Shepard advised that appellant could return to limited-duty work on October 11, 2007.⁴

In a letter dated October 30, 2007, the Office informed appellant that additional medical evidence was needed to establish her claim for compensation on October 10, 2007. The Office allowed appellant 30 days to submit the necessary medical opinion evidence.

By decision dated November 30, 2007, the Office denied appellant's claim for compensation finding that the medical evidence was not sufficient to establish her disability as of October 10, 2007.

LEGAL PRECEDENT

A recurrence of disability is the inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment which caused the illness. The term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force), or when the physical

¹ Docket No. 06-1682 (issued November 29, 2006).

² File No. 092078995.

³ File No. 092034486.

⁴ Appellant requested a schedule award on September 5, 2007. The Office has not issued a final decision on this issue and it is not before the Board. See 20 C.F.R. § 501.2(c).

requirements of such an assignment are altered so that they exceed his or her established physical limitations.⁵

A claimant, for each period of disability claimed, has the burden of proving by a preponderance of the reliable, probative and substantial evidence that she is disabled for work as a result of her employment injury. Whether a particular injury caused an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.⁶

Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work. The Board has stated 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 hurts 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.⁷

ANALYSIS

Appellant filed a claim for compensation alleging that she used 10.28 hours of leave without pay on October 10, 2007 due to her reaction to a cortisone shot. The only medical evidence of record addressing this period of disability is the October 27, 2007 note from Dr. Shepard, a Board-certified orthopedic surgeon, who merely indicated that appellant was totally disabled on October 10, 2007 and could return to limited-duty work on October 11, 2007. Dr. Shepard did not provide a diagnosis of any condition or an explanation for appellant's disability on October 10, 2007. He did not offer any opinion that appellant's disability was caused by or related to her accepted right shoulder conditions or other accepted employment injuries. Dr. Shepard's mere statement that appellant was totally disabled, without additional clarification, diagnoses or findings on examination is not sufficient to establish her claim for disability. Appellant's own statement that she became disabled due to a cortisone shot does not constitute probative medical evidence. It is well established that to constitute competent medical opinion, the medical evidence must be from a qualified physician.⁸

CONCLUSION

The Board finds that appellant has not submitted sufficient medical opinion evidence to establish that she was totally disabled on October 10, 2007 due to her accepted employment injuries.

⁵ 20 C.F.R. § 10.5(x).

⁶ *Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

⁷ *Id.*

⁸ *Vickey C. Randall*, 51 ECAB 357, 360 (2000); *Arnold A. Alley*, 44 ECAB 912, 921 (1993).

ORDER

IT IS HEREBY ORDERED THAT the November 30, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 21, 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