

returned to work on May 29, 2007.¹ The Office accepted the claim for disorder of bursae and tendons in the right shoulder region. Appellant received appropriate compensation and benefits.

A June 8, 2007 emergency room report, diagnosed right shoulder strain and possible rotator cuff tear. A June 8, 2007 x-ray revealed mild acromioclavicular (AC) joint osteoarthritis of the right shoulder. Appellant also submitted treatment notes from Dr. Dave Webster, an osteopath and a family practitioner. On September 25, 2007 Dr. Webster advised that she could do light work with no lifting over 15 pounds and that she should have a rest break after two hours. On September 25, 2007 the employing establishment offered appellant a light-duty position comprised of no lifting or carrying more than 15 pounds and breaks every two hours. Appellant accepted the job offer and returned to work on September 26, 2007.

Appellant submitted several Form CA-7's requesting wage-loss compensation for total disability for the period November 20, 2007 to March 4, 2008. The Office adjudicated this as a claim for a recurrence of disability.

In an October 15, 2007 report, Dr. Webster indicated that appellant complained of a sore throat and also was seen for right shoulder pain. He noted that her right shoulder pain interfered with daily activities such as work and sleep. Dr. Webster diagnosed acute pharyngitis, conjunctivitis and osteoarthritis. He completed a duty status report dated November 20, 2007 and checked "no" in response to the question of whether appellant was "advised to resume work." In his December 4, 2007 duty status report, Dr. Webster, indicated that appellant could do light work with lifting of no more than five pounds utilizing the right upper extremity and 10-minute break every 2 hours. However, in a January 4, 2008, duty status report, he diagnosed right shoulder pain and checked "no" in response to the question of whether appellant was able to resume work.

In a January 24, 2008 statement, Sylvia Liles, an employing establishment injury compensation specialist, noted that appellant was released to light duty on September 25, 2007 and worked about one month. She indicated that appellant was suspended from October 28 to November 27, 2007. Ms. Liles also noted that appellant was supposed to return to work on November 28, 2007; however, she submitted a November 20, 2007 medical report, which indicated that she should be off work.

By letter dated January 31, 2008, the Office requested additional information from appellant for the period beginning November 20, 2007. It informed her that the employing establishment indicated that she was on suspension from October 26 to November 20, 2007, but that she had been released to return to work on September 19, 2007. The Office informed appellant that the evidence failed to establish that she was totally disabled beginning November 20, 2007. It allotted appellant 30 days to submit evidence showing that she was totally disabled beginning November 20, 2007 due to the May 25, 2007 work injury. On February 19, 2008 the Office further advised appellant that she needed to provide evidence to support her claimed disability on and after November 20, 2007.

¹ Appellant returned to light duty on June 4, 2007. On June 10, 2007 she was given a notice of proposed 14-day suspension. On June 30, 2007 appellant was given a notice of proposed 30-day suspension. She also ran a cleaning and painting services business on the side.

Appellant submitted treatment records from Dr. Webster. On January 30, 2008 Dr. Webster diagnosed mixed hyperlipidemia and chronic joint pain in the left elbow. In a February 9, 2008 duty status report, he indicated that appellant was not advised to return to work. Appellant also submitted nursing notes beginning November 20, 2007. The Office also received reports dated March 14 and 18, 2008 from Dr. Christopher Blair, a chiropractor, who indicated that she, had a complaint of neck and shoulder pain.

In a March 7, 2008 report, Dr. Les Benson, an emergency medicine and family medicine practitioner, indicated that appellant related that on May 25, 2007 she moved a 50-pound bag of dog food with a customer and sustained an injury to her back. He examined appellant and noted findings of decreased range of motion in the right shoulder, pain with palpation and crepitus. Dr. Benson diagnosed “right shoulder injury due to lifting 50[-]pound bag of dog food and customer dropping their portion on May 25, 2007.” He opined that appellant was totally disabled from March 5 to May 1, 2008. Appellant received compensation for total wage-loss beginning March 5, 2008.

In a March 19, 2008 duty status report, Dr. Webster indicated that appellant could not work. A March 24, 2008, magnetic resonance imaging (MRI) scan of the right shoulder, read by Dr. Jonathan Kern, a Board-certified diagnostic radiologist, revealed minimal supraspinatus tendinopathy with no rotator cuff tear, mild subacromial-subdeltoid bursitis, minimal inferior labral, bear and very mild AC joint osteoarthritis.

In a March 26, 2008 duty status report, Dr. Benson indicated that appellant had a right shoulder injury causally related to lifting a 50-pound bag of dog food and she was totally disabled from March 5 to August 1, 2008.

In a statement dated March 31, 2008, appellant alleged that she was released to return to light-duty work only for the month of September. She alleged that her injuries prevented her from performing her duties, as her right shoulder pain was incapacitating and that her physician “instructed me not to return to work.”

In an April 2, 2008 statement, the employing establishment controverted the claim. Ms. Liles alleged that appellant informed her that she could not work because she could not drive.

In an April 7, 2008 report, Dr. Juan Yabralan, an orthopedist, indicated that appellant related that on May 25, 2007 she handled a 50-pound bag of dog food and strained her right shoulder. He diagnosed mild to moderate impingement syndrome right shoulder. Dr Yabralan noted that appellant was off work “per Dr. Benson.”

In an April 14, 2008 decision, the Office denied appellant’s claim for recurrent disability from November 20, 2007 to March 4, 2008. It found that the medical evidence did not establish disability causally related to the May 25, 2007 employment injury.

Appellant requested a hearing, which was held on August 11, 2008. In a May 1, 2008 report, Dr. Benson diagnosed right supraspinatus tendinopathy, right subdeltoid bursitis, right inferior labral tear and AC joint osteoarthritis. He indicated that the additional diagnoses were substantiated by the March 24, 2008 arthrogram and occurred while appellant was “performing

her duties as a cashier at the [employing establishment].” In a separate report also dated May 1, 2008, Dr. Benson opined that “[it] is my opinion with reasonable medical certainty, all of the right shoulder injuries arose out of and in the course of her job duties while working as cashier holding on to 50-pound bag of dog food at the [employing establishment].”

In a June 17, 2008 report, Dr. Blair indicated that appellant related that she had pain and stiffness in her neck with pain radiating down her right arm since May 25, 2005. He diagnosed right shoulder injury, rotator cuff syndrome.

On July 10, 2008 the Office authorized right shoulder surgery, which she underwent on July 24, 2008.

In a September 2, 2008 report, Dr. Webster opined that appellant was “disabled and unable to work due to a right shoulder disorder from September 20, 2007 to March 8, 2008.”

By decision dated October 1, 2008, the Office hearing representative affirmed the Office’s April 14, 2008 decision.

LEGAL PRECEDENT

Section 10.5(x) of the Office’s regulations defines “recurrence of disability” as an 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 that caused the illness.² The term disability means incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury.³ The term also means the 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 for when such withdrawal occurs for reasons of misconduct, nonperformance of the job duties or a reduction-in-force.⁴

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 he can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.⁵

² 20 C.F.R. § 10.5(x). *See Carlos A. Marrero*, 50 ECAB 117 (1998).

³ 20 C.F.R. § 10.5(f).

⁴ *Id.*

⁵ *Conrad Hightower*, 54 ECAB 796 (2003); *Terry R. Hedman*, 38 ECAB 222 (1986).

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship, generally, is rationalized medical evidence.⁶ This consists of a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.⁷ The physician's opinion must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁸

ANALYSIS

The Office accepted that appellant sustained disorder of bursae and tendons in the right shoulder region on May 25, 2007. Appellant claimed compensation for total disability from November 20, 2007 to March 4, 2008. On January 31 and February 19, 2008 the Office advised her of the evidence needed to establish her claim. Appellant; however, did not submit any reasoned medical evidence to establish that her total disability from November 20, 2007 to March 4, 2008 was causally related to her accepted injury. For example, she did not submit a medical report in which her treating physician explained why she was totally disabled during the claimed period as a result of her work injury. The Board also notes that there is no evidence showing a change in the nature and extent of the light-duty job requirements or that appropriate light duty was not available during the claimed period. While there is evidence that the employing establishment suspended appellant for part of the claimed period, there is no evidence that the suspension was due to her work injury.⁹

On October 15, 2007 Dr. Webster stated that appellant's right shoulder pain interfered with her work and sleep and diagnosed osteoarthritis. The Board notes that this was not conditions accepted by the Office. The Board also notes that Dr. Webster did not indicate that appellant was unable to work within her work restrictions or advise that she was totally disabled for the period November 20, 2007 to March 4, 2008 due to her accepted condition. In his December 4, 2007 duty status report, Dr. Webster, indicated that she could do light work with lifting of no more than five pounds utilizing the right upper extremity and a 10-minute break every 2 hours. The Board notes that this report indicates that appellant was capable of performing light duty and is inconsistent with other reports from Dr. Webster indicating that she was totally disabled during the claimed period. Dr. Webster did not explain this apparent discrepancy. Other reports submitted by him dated November 20, 2007, January 4, 20, February 9 and March 19, 2008 merely advised that appellant could not return to work and did not address causal relationship for the period at issue. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue

⁶ *Elizabeth Stanislav*, 49 ECAB 540, 541 (1998).

⁷ *Duane B. Harris*, 49 ECAB 170, 173 (1997).

⁸ *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

⁹ *See Terry R. Hedman*, *supra* note 5; *see also* 20 C.F.R. § 10.5(x) (a recurrence is not established where the withdrawal of light duty occurs for reasons of misconduct, nonperformance of the job duties or a reduction-in-force).

of causal relationship.¹⁰ The Board notes that this is particularly important in light of the December 4, 2007 report, in which Dr. Webster advised that she could do light duty. In a September 2, 2008 report, Dr. Webster wrote that appellant “was disabled and unable to work due to a right shoulder disorder from September 20, 2007 to March 8, 2008.” This report is insufficient as it does not provide medical rationale to explain how appellant’s disability for the claimed period was related to the accepted condition. Additionally, Dr. Webster did not explain why he changed his September 25, 2007 opinion where he released appellant to return to light-duty work nor did he explain findings that supported disability during the claimed period.

Findings on examination are generally needed to support a physician’s opinion that an employee is disabled for work. When a physician’s statements regarding an employee’s ability to work consist only of repetition of the employee’s complaints that she hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.¹¹ Consequently, Dr. Webster’s reports are insufficient to establish total disability for the period at issue.

In reports dated March 7 and 26, 2008, Dr. Benson found that appellant was totally disabled from March 5 to August 1, 2008. He did not opine that she was disabled prior to March 5, 2008. Thus, these reports are not relevant to the period at issue. Likewise Dr. Benson’s May 1, 2008 report does not provide an opinion that appellant was disabled or unable to work for the period November 20, 2007 to March 4, 2008. On April 7, 2008 Dr. Yabralan indicated that appellant was off work “per Dr. Benson.” The Board also notes that this report would not be relevant as it does not provide any opinion that appellant was totally disabled for the period November 20, 2007 to March 4, 2008. Other medical reports of record are also insufficient as they do not specifically address the period at issue.

Appellant also submitted several reports from Dr. Blair, a chiropractor. In assessing the probative value of chiropractic evidence, the initial question is whether the chiropractor is considered a physician under section 8101(2) of the Federal Employees’ Compensation Act.¹² A chiropractor cannot be considered a physician under the Act unless it is established that there is a subluxation as demonstrated by x-ray to exist.¹³ The record does not indicate that Dr. Blair diagnosed a subluxation based on x-ray. Thus, he cannot be considered a physician under the Act and his reports are of no probative value as medical evidence.

The Office also received treatment records from nurses. However, nurses are not physicians under the Act and are not competent to render a medical opinion.¹⁴

¹⁰ *K.W.*, 59 ECAB ____ (Docket No. 07-1669, issued December 13, 2007).

¹¹ *G.T.*, 59 ECAB ____ (Docket No. 07-1345, issued April 11, 2008); *S.F.*, 59 ECAB ____ (Docket No. 07-2287, issued May 16, 2008).

¹² *See* 5 U.S.C. § 8101(2) (defines the term physician).

¹³ *Thomas R. Horsfall*, 48 ECAB 180 (1996). *See id.*

¹⁴ *G.G.*, 58 ECAB ____ (Docket No. 06-1564, issued February 27, 2007).

In the instant case, none of the medical reports submitted by appellant contained a rationalized opinion to explain why appellant could no longer perform the duties of her light duty position and why any such disability or continuing condition for the period November 20, 2007 to March 4, 2008 would be due to the accepted condition. The Board finds that appellant has failed to submit rationalized medical evidence establishing that her disability from November 20, 2007 to March 4, 2008 was causally related to her accepted employment injury, and thus, she has not met her burden of proof.

CONCLUSION

The Board finds that appellant failed to establish that she sustained a recurrence of total disability for the period November 20, 2007 to March 4, 2008 as a result of her accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the October 1, 2008 decision of the Office of Workers' Compensation Programs' hearing representative is affirmed.

Issued: September 4, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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