United States Department of Labor
Employees' Compensation Appeals Board

Y.J., Appellant	)	
and	)	**Docket No. 09-626**
	)	**Issued: February 25, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Capital Heights, MD, Employer	)	

Appearances:
Lynne K. Zusman, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 5, 2009 appellant, through her attorney, filed for review from an October 6, 2008 decision of an Office of Workers' Compensation Programs' hearing representative who affirmed the denial of her recurrence of disability claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the appeal.

ISSUE

The issue is whether appellant was disabled from August 3 to 29, 2005, May 22 to June 18, 2006 and September 11 to November 5, 2006 causally related to her December 31, 2002 employment injury.

FACTUAL HISTORY

On December 31, 2002 appellant, then a 51-year-old parcel keyer, injured her low back and buttocks when she slipped and fell at work. Her claim was accepted by the Office for a back contusion, sacrum and lumbosacral strains and cervical disc degeneration.

Appellant was treated by Dr. Roger L Raiford, an orthopedic surgeon, for complaints of low back pain. On January 9, 2004 Dr. Raiford noted tenderness and tightness of the paraspinal muscles in the lumbosacral region. Straight leg raising was negative and deep tendon reflexes were equal and active. Dr. Raiford found no motor or sensory deficit. He diagnosed an acute lumbosacral strain and contusion and ordered x-rays which were obtained on January 21, 2004 and revealed mild osteoarthritis of the lumbar spine at L4-5 and L5-S1 with no compression fracture. On February 14, 2004 appellant was released to return to light-duty work. Dr. Raiford recommended a course of physical therapy and on April 8, 2004 noted a resolving lumbosacral strain. He noted that appellant could continue work at light duty. Following examination on May 20, 2005, Dr. Raiford diagnosed a resolved lumbosacral strain. Examination revealed no discomfort in the lumbosacral region. He advised that appellant could return to regular work and would be seen as necessary. Dr. Raiford saw appellant again on November 22, 2004 for pain in the low back without radiation. Straight leg raising was reported as negative with deep tendon reflexes equal and active and no sensory deficits. Dr. Raiford advised that she would resume regular work.

On January 6, 2005 appellant was treated by Dr. Hampton J. Jackson, Jr., a Board-certified orthopedic surgeon, for complaint of back pain radiating into the legs, more on the left side. Dr. Jackson noted the diagnosis of chronic lumbar strain provided by Dr. Raiford. He advised that examination was suspicious for a disc injury as straight leg raising was positive on the left and negative on the right. Dr. Jackson recommended a magnetic resonance imaging (MRI) scan. Diagnostic testing was obtained on January 13, 2005 which revealed degenerative changes at L4-5 and a mile five millimeters anterior subluxation of L4 relative to L5 and associated disc disease. At L5-S1, there was mild disc and facet degenerative changes with disc bulging. Dr. Jackson subsequently treated appellant with epidural blocks. On February 17, 2005 he noted that she was to remain on light duty. On July 21, 2005 Dr. Jackson noted that appellant was again experiencing pain, noting that the block had worn off. He noted restriction of motion and worsening spasm in the low back; however, straight leg raising was not terribly positive. Dr. Jackson diagnosed aggravation of psuedospondylolisthesis at L4-5. In an attached duty status report, he continued appellant's light-duty work restrictions.

Appellant filed claims for wage-loss compensation from August 3 to 29, 2005, May 22 to June 18, 2006 and September 11 to November 5, 2006.

In an August 23, 2005 note, Dr. Jackson advised that appellant was seen that day for worsening back pain. He noted that she had taken off work since August 3, 2005 but was getting better. Dr. Jackson found that she was fit to return to light-duty work as of August 29, 2005. On September 27, 2005 he noted that appellant was back at work. Dr. Jackson advised that she was doing okay and was in a new position as a dock clerk with a 20-pound restriction on lifting and up to an hour a day of sitting and standing.

On May 2, 2006 Dr. Jackson noted that appellant returned and remained on light-duty work. He noted that she took Tylenol for arthritis and that examination revealed some tenderness and spasm in the back, but no worsening of her reflex, sensory or motor status. Dr. Jackson found that she could continue at full time light duty. He saw appellant again on June 13, 2006 for complaint of worsening pain, noting that she had worked up to May 21, 2006. On examination, Dr. Jackson noted back spasm and straight leg raising positive at 45 degrees.

He advised that she was to continue off work and return to physical therapy. On July 11, 2006 Dr. Jackson noted that appellant was back at work part time performing light duty. On examination, he noted lower back spasm, restriction of motion and tenderness with no worsening of motor, sensory or reflex status.

Dr. Jackson noted that, from August 8 to September 5, 2006, appellant was working light-duty full time. He diagnosed chronic lumbar radiculopathy and lumbar disc injury due to the December 31, 2003 fall at work. On October 4, 2006 appellant was seen for worsening of her condition since September 5, 2006. Dr. Jackson diagnosed L4-5 listhesis and L4-5 disc herniation. On physical examination, he noted tenderness and spasm, 50 degrees straight leg raising and no worsening of the reflex or sensory status. Dr. Jackson noted that appellant was able to return to work on October 9, 2006. In a November 1, 2006 progress note, he reiterated the diagnoses. Dr. Jackson noted having recommended that appellant remain off work until he saw her that day. Examination showed less spasm. Dr. Jackson found no basis for appellant not to return to work on November 6, 2006.

In a May 4, 2007 letter, the Office informed appellant that the medical evidence was insufficient to support her claims of total disability. Appellant was requested to submit a medical report from Dr. Jackson which listed the dates of examination and treatment, provided a complete medical history and findings on examination and an opinion on the causal relationship of her claimed disability to the accepted conditions.

On May 31, 2007 appellant noted that following the 2003 injury she had problems in performing her duties in parcel keying due to heavy lifting and stair climbing. She bid on a job as a dock clerk which would not involve stairs and performed the duties for six months. Appellant subsequently worked as a floater, working at whatever dock needed a clerk. She contended that her duties included heavy pushing and pulling, which contributed to her disability beginning May 22 and September 11, 2006.

In a June 12, 2007 note, Dr. Jackson advised that he had completed a series of epidural injections with some improvement. He noted that her December 31, 2003 employment injury had been aggravated by walking up and down stairs every two hours and using her left trunk and arm to push objects, twist and bend. Dr. Jackson stated that she was currently working at a different position; however, appellant was reinjured on May 22, 2006 by lifting doors and aggravated on September 11, 2006 with lifting truck doors. Appellant also had to repeatedly pull chains to open dock doors which contributed to her disability beginning September 11, 2006.

In a March 6, 2008 decision, the Office denied appellant's claims for wage-loss compensation, finding that the medical evidence was insufficient to establish her disability as of August 3, 2005, May 21 and September 11, 2006.

On March 13, 2008 appellant requested an oral hearing before an Office hearing representative that was held on July 3, 2008. She was represented by counsel. In a June 24, 2008 report, Dr. Jackson noted that appellant was injured on December 31, 2003 when she slipped and fell at work. The claim was accepted for a lumbar sprain/strain. Dr. Jackson advised that the performance of her duties since December 31, 2003 had aggravated and accelerated the deterioration of her accepted disabling condition. He advised that appellant's repetitive job

duties incrementally and progressively aggravated and accelerated the deterioration of her work-related musculoskeletal pathology since December, 2003.

By decision dated October 6, 2008, the Office hearing representative affirmed the denial of appellant's wage-loss claims.

LEGAL PRECEDENT

For each period of disability claimed, the employee has the burden of establishing that she was disabled for work as a result of the accepted employment injury.[1] 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 probative and reliable medical opinion evidence.[2] 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 their disability and entitlement to compensation.[3]

ANALYSIS

Appellant sustained injury to her low back on December 31, 2002 which was accepted for a back contusion and strains of the sacrum and lumbosacral spine. She came under the treatment of Dr. Raiford, who diagnosed an acute lumbosacral strain. Dr. Raiford obtained x-rays that showed mild osteoarthritis of the lumbar spine at L4-5 and L5-S1 with no compression fracture. Appellant received physical therapy and, as of May 20, 2005, Dr. Raiford diagnosed a resolved lumbar strain. Dr. Raiford advised that appellant could return to her regular duty.

Appellant was treated by Dr. Jackson on January 6, 2005 for back pain radiating into her left leg. Dr. Jackson obtained an MRI scan which revealed degenerative changes at L4-5 and L5-S1. He diagnosed psuedospondylolisthesis at L4-5 and provided a series of epidural injections. Dr. Jackson recommended that appellant work light duty.

As to appellant's claim of disability from August 3 to 29, 2005, the Board notes that she was treated by Dr. Jackson on August 23, 2005. Dr. Jackson advised that appellant had taken herself off work since August 3, 2005 and he found her capable to returning to light-duty work as of August 29, 2005. His report is not sufficient to establish that appellant was disabled for work commencing August 3, 2006 as she was not examined that day or until August 23, 2009. Dr. Jackson, however, did not provide any medical opinion on the question of whether residuals of appellant's accepted condition caused her to be disabled for work during this period. As noted, an employee may not self-certify his or her disability for work. Whether a particular injury causes an employee to be disabled for work and the period of such disability are medical

[1] *See Amelia S. Jefferson*, 57 ECAB 183 (2005); *see also David H. Goss*, 32 ECAB 24 (1980).

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

[3] *Mary A. Ceglia*, 55 ECAB 626 (2004); *Maurissa Mack*, 50 ECAB 498 (1999).

issues to be proved by reliable and probative medical evidence.[4] Dr. Jackson's treatment notes are not sufficient to establish appellant's claim for wage loss for this period.

Through early 2006, appellant continued under treatment by Dr. Jackson whose reports relevant to the May 22 to June 18, 2006 claim for compensation consists of a June 13, 2006 treatment record. Dr. Jackson noted that appellant had worked up to May 21, 2006 when she took herself off work. He listed findings on examination, including back spasm and positive straight leg raising. Dr. Jackson advised that appellant was to remain off work pending additional physical therapy. On July 11, 2006 he noted that appellant was back at work. The Board finds that the medical evidence does not support appellant's claim of disability due to residuals of her back condition from May 21 through June 12, 2006. Appellant was not examined by Dr. Jackson until June 13, 2006, when he listed objective findings of back spasm and positive straight leg raising. Dr. Jackson found appellant disabled for work and returned her to physical therapy. The Board will modify the Office's October 6, 2008 decision to find that appellant established disability for work from June 13 to 18, 2006 due to residuals of her accepted condition.

For the period September 11 to November 5, 2006, the record establishes that appellant was not treated by Dr. Jackson until October 4, 2006. Dr. Jackson diagnosed L4-5 listhesis and an L4-5 disc herniation. On examination, he noted findings of back spasm, positive straight leg raising but advised that appellant was capable of returning to work on October 9, 2006. The medical evidence does not establish appellant's disability for work from September 11 to October 4, 2006, as it appears she again took herself off work. The medical evidence from Dr. Jackson establishes disability for work from October 4 to 9, 2006. He did not treat appellant again until November 1, 2006, at which time he noted having recommended that appellant remain off work until he examined her that date. This report is insufficient to establish appellant's disability for work from October 10 to November 5, 2006. Although noting that Dr. Jackson recommended that appellant not return to work until November 6, 2006, he provided no medical explanation addressing how her disability was due to residuals of her accepted condition. His subsequent medical reports do not cure the deficiencies noted in the contemporaneous treatment notes.

The Board will modify the October 6, 2008 decision to find that appellant established her disability for work from June 13 to 18, 2006 and October 4 to 9, 2006. In all other respects, the medical evidence is insufficient to establish her disability for the remaining periods claimed.

CONCLUSION

The Board finds that the medical evidence is sufficient to establish appellant's disability from June 13 to 18 and October 4 to 9, 2006 was causally related to her accepted injury. The remainder of the periods of compensation denied by the Office are affirmed.

[4] *See Tammy L. Medley*, 55 ECAB 182 (2003).

ORDER

IT IS HEREBY ORDERED THAT the October 6, 2008 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: February 25, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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