

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

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D.R., Appellant)	
)	
and)	Docket No. 10-873
)	Issued: April 7, 2011
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Columbia, MO, Employer)	
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Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On February 17, 2010 appellant filed a timely appeal from the August 20, 2009 and January 20, 2010 merit decisions of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant's disability on October 5 and 12 to 30, 2007 and December 25, 2007 to January 4, 2008 was causally related to his accepted back condition.

FACTUAL HISTORY

On June 12, 2008 appellant, then a 43-year-old city mail handler, filed an occupational disease claim alleging that he sustained a back injury due to his work activities. He first became

¹ 5 U.S.C. § 8101 *et seq.*

aware of his condition on February 25, 2005. On March 14, 2005 Dr. John C. Mruzik, an attending Board-certified family practitioner, had released appellant to full duty. On April 3, 2009 the Office accepted appellant's claim for a temporary aggravation of displaced lumbar discs at L4-5 and L5 to S1. On May 14, 2009 appellant filed a claim for disability on October 5 and 12 to 30, 2007 and December 25, 2007 to January 4, 2008.

On October 2 and 8, 2007 reports Dr. Randy A. Foster, an attending Board-certified family practitioner, provided a diagnosis of back pain that began September 25, 2007. Appellant's musculoskeletal examination was consistent with bilateral lumbar paravertebral myofascial tenderness. Straight leg raising and bowstring tests were negative bilaterally. On October 8, 2007 appellant's musculoskeletal examination was improved. In answer to the question of whether appellant needed to work less than a full schedule, Dr. Foster wrote "NA" (not applicable).

On October 16, 2007 Dr. Foster noted an improved musculoskeletal examination and negative x-rays. He stated that appellant was ready to return to work. In an October 16, 2007 disability certificate, Dr. Foster noted that appellant was totally disabled from September 25 to October 30, 2007 due to a severe back sprain. On October 24, 2007 he noted that appellant's back pain was resolved and he was able to go back to work the following day. The musculoskeletal examination was normal. On December 27, 2007 Dr. Foster noted a five-day history of back pain. He found appellant totally disabled from December 24, 2007 to January 6, 2008 due to a back sprain. On January 8, 2008 Dr. Foster noted chronic, intermittent back pain and stated that appellant was totally disabled from December 24, 2007 to January 4, 2008.

By letter dated July 8, 2009, the Office asked appellant to provide additional medical evidence supporting his claim for disability on October 5 and 12 to 30, 2007 and December 25, 2007 to January 4, 2008, including physical findings on examination and a rationalized explanation of how his accepted lumbar spine condition had worsened such that he was unable to work on those dates. No further evidence was received.

By decision dated August 20, 2009, the Office denied appellant's claim for disability on October 5 and 12 to 30, 2007 and December 25, 2007 to January 4, 2008. The medical evidence did not establish that his disability was causally related to his accepted temporary aggravation of displaced lumbar discs at L4-5 and L5 to S1.

On September 2, 2009 appellant requested a hearing that was held on December 3, 2009.

In a January 20, 2010 decision, an Office hearing representative affirmed the August 20, 2009 decision.²

² Subsequent to the January 20, 2010 Office decision, additional evidence was associated with the file. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

LEGAL PRECEDENT

An employee has the burden of proving by the preponderance of the reliable, probative and substantial evidence that he or she was disabled for work as the result of an employment injury.³ Monetary compensation benefits are payable to an employee who has sustained wage loss due to disability for employment resulting from the employment injury.⁴ Whether a particular employment injury causes disability for employment and the duration of that disability are medical issues which must be proved by a preponderance of reliable, probative and substantial medical evidence.⁵

ANALYSIS

Appellant claimed lost wages for October 5 and 12 to 30, 2007 and December 25, 2007 to January 4, 2008. In reports dated October 2 and 8, 2007, Dr. Foster noted that he was experiencing back pain that began on September 25, 2007. Appellant's musculoskeletal examination was consistent with bilateral lumbar paravertebral myofascial tenderness. Straight leg raising and bowstring tests were negative bilaterally. Dr. Foster did not indicate any periods of disability. Additionally, he did not provide a specific diagnosis, noting only back pain and tenderness. On October 8 and 16, 2007 appellant's musculoskeletal examination was improved and x-rays were negative. Dr. Foster did not provide any dates of disability. In an October 16, 2007 disability certificate, he noted that appellant was totally disabled from September 25 to October 30, 2007 due to a severe back sprain. A back sprain is not an accepted condition. The Office accepted a temporary aggravation of displaced lumbar discs at L4-5 and L5 to S1. Dr. Foster did not explain how, if at all, appellant's back sprain was related to the accepted back condition. In none of his reports did he address appellant's accepted condition. He did not explain how his disability was causally related to the accepted back condition.

On October 24, 2007 Dr. Foster noted that appellant's back pain was resolved and he was able to return to work the following day. The musculoskeletal examination was normal. On December 27, 2007 Dr. Foster noted a five-day history of back pain. He found appellant totally disabled from December 24, 2007 to January 6, 2008 due to a back sprain. As noted, a back sprain is not an accepted condition. On January 8, 2008 Dr. Foster noted chronic, intermittent back pain and stated that appellant was totally disabled from December 24, 2007 to January 4, 2008. He did not, however, explain how this disability was causally related to appellants' accepted temporary aggravation of displaced lumbar discs at L4-5 and L5 to S1. There is no rationalized medical evidence explaining how his accepted temporary aggravation of displaced lumbar discs at L4-5 and L5 to S1 had worsened such that he was totally disabled on October 5 and 12 to 30, 2007 and December 25, 2007 to January 4, 2008. Due to these deficiencies, Dr. Foster's reports are insufficient to establish that appellant was disabled on October 5 and 12 to 30, 2007 and December 25, 2007 to January 4, 2008 due to his accepted back condition.

³ *David H. Goss*, 32 ECAB 24 (1980).

⁴ *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

⁵ *Edward H. Horten*, 41 ECAB 301 (1989).

The Office asked appellant to provide additional medical evidence supporting his claim, including physical findings on examination and a rationalized explanation of how his accepted lumbar spine condition had worsened such that he was unable to work on those dates. Appellant did not provide such medical evidence. The Board finds that he has not met his burden of proof to establish that he was disabled on October 5 and 12 to 30, 2007 and December 25, 2007 to January 4, 2008 due to his accepted back injury.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that his disability on October 5 and 12 to 30, 2007 and December 25, 2007 to January 4, 2008 was causally related to his accepted back condition.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 20, 2010 and August 20, 2009 are affirmed.

Issued: April 7, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board