

Appellant received medical attention on January 26, 2005. She reported no immediate pain when she fell, but she awoke very stiff and sore the following morning and did not improve over the week. Appellant was diagnosed with mild thoracic and lumbar strain, resolving contusions and chronic pain syndrome. She was given light duty for one week (no lifting over 15 pounds), prescribed gentle stretching and told to return as needed.

The Office accepted appellant's claim for mild thoracic and lumbar strain. It would later accept a permanent aggravation of preexisting lumbar degenerative disc disease.

The Office denied compensation or continuation of pay from May 17 to 20, 2005 because the medical evidence failed to establish that the claimed disability for work was a result of the January 18, 2005 employment injury. Appellant filed several additional claims for wage-loss compensation covering the period August 3 through November 23, 2005.

On June 6, 2005 Dr. Charles M. Colwell, Board-certified in family medicine, related appellant's history of injury and her current complaints. He examined her and found that she presented with classic progressive soft-tissue problems of an overuse type. Dr. Colwell stated that her healing process was slowed or complicated by her nonrestorative sleep cycle and the lack of condition program. He did not take her off regular duty.

On August 2, 2005 Dr. Colwell noted that about five days previous, without precipitating injury or cause, appellant developed an increase in the discomfort across the back of her neck and both shoulders, with aching in the right arm. He concluded that findings were more consistent with muscle stiffness and soreness than with any particular atrophy or cervical disc disease: "Since it has been known that cholesterol-lowering agents can cause diffuse muscle aches, we will have her discontinue her simvastatin for two or three weeks to see if symptoms do not go away." Because of her flare, Dr. Colwell pulled appellant out of work for two or three days until reassessment.

On August 4, 2005 Dr. Colwell found that appellant was failing conservative care. He reduced her work to four hours a day with light duty and stressed the need for restorative sleep to counter her progressive soft-tissue pain. On August 18, 2005 Dr. Colwell noted that as a single mother with three teenagers, appellant had busy evenings, making it difficult for her to get to bed before 9:00 p.m. He assessed ongoing soft-tissue problems responding poorly to conservative care and complicated by her nonrestorative sleep cycle.

On August 25, 2005 Dr. Colwell noted that appellant had been working four hours a day in the laundry room, where much of her work entailed folding sheets: "This requires that she work standing, and she spends much time with her arms out in front of her shaking the sheets. This has resulted in aggravation and worsening of her shoulder symptoms. The constant standing is bothering her low back." If transferal to a clerical position was not possible, Dr. Colwell recommended that appellant be pulled out of work for three or four weeks.

On September 19, 2005 Dr. Colwell diagnosed mechanical low back pain. He noted that appellant was given a clerical position but was repeatedly placed back in the laundry whenever extra help was needed. Dr. Colwell stated that she was to stay out of the laundry and continue her clerical work four hours a day.

On November 22, 2005 Dr. Colwell found that appellant had chronic mechanical low back pain aggravated by deconditioning and obesity. Appellant had been seen by physical therapy since August, and she was not making any appreciable or measurable progress. Dr. Colwell recommended continued light duty advancing to eight hours a day. He stated that he had little more to offer.

On August 24, 2006 Dr. Colwell doubted there was any significant discogenic disease in appellant's back. He found that most of her findings were consistent with soft-tissue problems. On September 20, 2006 Dr. Colwell found that her symptoms were consistent with mild arthritis of the L5-S1 facets and a transitional L5 vertebra with a mild pseudo joint.

Dr. Colwell responded on November 30, 2006 to Office questions. He explained the nature of appellant's low back problem and stated that it was work related: "It is aggravated by forceful/repetitive bending, twisting and pushing. [Appellant's] spondylosis/arthritis change in the low back is permanent." Dr. Colwell added that the aggravation of her industrial condition was ongoing and likely to be permanent.

In a decision dated September 28, 2009, the Office denied appellant's claim for wage-loss compensation for the period August 3 through November 23, 2005. It found that the medical evidence failed to establish that she was disabled for that period as a result of the January 18, 2005 employment injury.

In a decision dated April 13, 2010, an Office hearing representative affirmed the denial of appellant's claim for wage-loss compensation. He found that Dr. Colwell provided no insight into how appellant's work-related injuries would have rendered her disabled for work, even partially, from August to November 2005.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of her duty.¹ "Disability" means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total.²

A claimant seeking benefits under the Act has the burden of proof to establish the essential elements of her claim by the weight of the evidence,³ including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.⁴

¹ 5 U.S.C. § 8102(a).

² 20 C.F.R. § 10.5(f).

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).

The claimant must submit a rationalized medical opinion that supports a causal connection between her current disabling condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the employment injury, and must explain from a medical perspective how the current disabling condition is related to the injury.⁵

ANALYSIS

The issue is whether appellant's disability from August 3 through November 23, 2005, for which she claims compensation, was causally related to her January 18, 2005 employment injury. This is a medical issue, one that her attending family physician, Dr. Colwell, must address. The first observation the Board makes upon reviewing the record is that Dr. Colwell did not directly address this issue. In no report did Dr. Colwell explain whether appellant was disabled for work from August 3 through November 23, 2005 as a result of what happened on January 18, 2005.

Appellant did not stop work following her January 18, 2005 employment injury. She received medical attention on January 26, 2005 and was given light duty for only one week. Appellant first claimed compensation for wage loss in May 2005, but for only four days. She would not again claim compensation for wage loss until August 2005.

So this is not a case in which a traumatic injury caused immediate disability for work. The effects of the injury were not such that appellant needed to stop work. This is a case in which work incidents on January 18, 2005 are alleged to have caused disability in August 2005, some six and a half months later. Any medical opinion addressing whether this disability for work was a result of what happened on January 18, 2005 must provide a well-reasoned explanation for the late onset of disability.

On June 6, 2005 Dr. Colwell found that appellant presented with classic progressive soft-tissue problems of an overuse type. The accepted employment injury was not an overuse injury; it was a traumatic fall, twice, on the ice. So early on, before the period of disability claimed, the attending physician was not attributing appellant's soft-tissue problems to what happened on January 18, 2005.

Dr. Colwell's August 2, 2005 report provides the most contemporaneous insight into the cause of appellant's disability over the following few days. Five days previous, appellant developed, without precipitating injury or cause, an increase in discomfort across the back of her neck and shoulders, with aching in the right arm. It was Dr. Colwell's opinion that findings were more consistent with muscle stiffness and soreness than with any particular atrophy or cervical disc disease. As cholesterol-lowering agents were known to cause diffuse muscle aches, he discontinued her simvastatin for two or three weeks to see if symptoms went away. So when appellant's disability began in August 2005, her attending physician appeared more willing to attribute her neck and shoulder muscle aches to cholesterol-lowering medication than to what

⁵ *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

happened back in January of that year. Dr. Colwell's August 2, 2005 report does not support appellant's claim for wage-loss compensation.

Dr. Colwell's August 4, 2005 report was no more supportive. He began to implicate the absence of restorative sleep. Dr. Colwell continued the notion on August 18, 2005, when he noted that she was a single mother with three teenagers, which made it difficult to get to bed before 9:00 p.m. Again, he did not attribute any disability for work to what happened on January 18, 2005.

Dr. Colwell's next two reports attributed her condition to work, but not to what happened on January 18, 2005. Instead, he attributed her complaints to her more recent exposure to additional work factors. On August 25, 2005 Dr. Colwell noted that working in the laundry for four hours a day required standing, which bothered her low back, and a lot of time with her arms out in front of her shaking the sheets, which aggravated and worsened her shoulder symptoms. He was now suggesting a new occupational injury rather than disability causally related to what happened on January 18, 2005.

By November 22, 2005, when the period of claimed disability was about to end, Dr. Colwell found that appellant's chronic low back pain was being aggravated by deconditioning and obesity. Still no mention of what happened on January 18, 2005.

Finally, when Dr. Colwell responded to Office questions a year later, he attributed appellant's low back problems to forceful or repetitive bending, twisting and pushing, not to her falls on January 18, 2005. At no point did he directly address her disability for the period claimed.

Because the medical opinion evidence does not support that appellant's disability for work from August 3 to November 23, 2005 was causally related to what happened at work on January 18, 2005, the Board finds that appellant has not met her burden of proof. The Board will therefore affirm the Office's April 13, 2010 decision affirming the denial of her claim for wage-loss compensation.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that her disability from August 3 through November 23, 2005 was causally related to her January 18, 2005 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the April 13, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 9, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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