

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

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**IRENE M. STEPA, Appellant**

**and**

**DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE,  
Philadelphia, PA, Employer**

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**Docket No. 05-974  
Issued: September 21, 2005**

*Appearances:*  
*Irene M. Stepa, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
DAVID S. GERSON, Judge  
WILLIE T.C. THOMAS, Alternate Judge

**JURISDICTION**

On March 21, 2005 appellant filed a timely appeal from September 14, 2004 and January 12, 2005 merit decisions of the Office of Workers' Compensation Programs denying her claim for compensation for intermittent periods of disability from May 12 to July 29, 2004, due to her accepted employment injury. Pursuant to 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 has established that she sustained intermittent periods of disability from May 12 to July 29, 2004, causally related to her April 30, 2004 employment injury.

## **FACTUAL HISTORY**

On May 5, 2004 appellant, then a 54-year-old tax examiner technician, filed a traumatic injury claim alleging that on April 30, 2004 she slipped and fell in the bathroom while in the performance of duty.

In a report dated May 12, 2004, Dr. Jack McEwan, who is Board-certified in family practice, noted appellant's history of injury as falling at work on April 30, 2004 on a wet floor in the bathroom. He indicated that she fell on her left side injuring her head, hip, elbow, shoulder, left fifth finger and left ankle. Dr. McEwan listed findings on examination and diagnosed an aggravation of an underlying cervical radiculopathy due to the fall, multiple contusions of the left arm, hip, left shoulder and left ankle and status postconcussion. He recommended x-rays and a computerized tomography (CT) scan of the brain. In a form report of the same date, Dr. McEwan opined that appellant should remain off work until a follow-up examination on May 19, 2004.

X-rays obtained of appellant's left elbow, left wrist, left hand, left shoulder and cervical spine on May 25, 2004 were negative for acute abnormalities. A CT scan of appellant's head obtained on the same date was also normal.

In a report dated May 19, 2004, Dr. McEwan diagnosed an aggravation of an underlying cervical radiculopathy secondary to a fall and multiple contusions.

In a report dated June 2, 2004, Dr. Roy A. Jackel, a Board-certified neurologist, discussed appellant's history of falling on her left side in the bathroom at work on April 30, 2004. He noted: "She states she has baseline pain as a result of a diagnosis that she carries as a result of fibromyalgia, dystonia, cervical lumbar radiculopathies and scoliosis.... However, she tells me her fall worsened her pain on the left side." Dr. Jackel diagnosed left-sided pain and stated:

"[Appellant] appears to have increase in her left-sided pain after a fall back on April 30. This is in the face of her having a lot of baseline symptoms as a result of a diagnosis she carries of fibromyalgia, dystonia, small fiber neuropathy and cervical radiculopathies. She does describe some electric shock-like feeling that goes from her hand up to her arm and I suggested we should at least rule out any clear evidence of a true radiculopathy or disc problem as the cause for her symptoms."

In a disability certificate dated June 21, 2004, Dr. Bohdan Martynec, a Board-certified internist, opined that appellant was totally disabled from June 17 to 22, 2004.<sup>1</sup>

In a progress note dated July 15, 2004, a physician noted appellant's complaints of "severe pain, especially when cold" and recommended that she not work.<sup>2</sup>

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<sup>1</sup> In progress notes dated June 2, 6, 14 and 30, 2004, Dr. McEwan opined that appellant could return to modified employment.

<sup>2</sup> The name of the physician is not legible.

A magnetic resonance imaging scan study of appellant's cervical spine obtained on July 1, 2004 revealed a small spur and disc bulge at C5-6.

In a report dated July 29, 2004, Dr. Sofia Lam, a Board-certified anesthesiologist, evaluated appellant for neck and face pain and noted that she "related the onset of the symptoms to a work-related accident in April of 2004 when she fell, injuring her neck, shoulder area and left hip." Dr. Lam diagnosed cervical radiculopathy in the left C6 nerve root, cervical posterior compartment syndrome with facet arthropathy and paravertebral spasm and trigeminal neuralgia. She recommended epidural injections.<sup>3</sup>

On August 19, 2004 the Office accepted appellant's claim for a temporary aggravation of preexisting cervical radiculopathy and contusions of the left arm, shoulder, elbow and hip.

Appellant filed a claim for compensation (Form CA-7) requesting compensation for intermittent dates from May 12 to July 29, 2004. Specifically, appellant requested compensation for time lost from work on May 12, 13, 17 to 20 and 24 to 27, June 2, 6, 14, 15, 17, 21, 22, 28 and 30 and July 15, 19 to 22 and 26 to 29, 2004.

By letter dated August 23, 2004, the Office requested rationalized medical evidence from appellant supporting disability for the time periods claimed.

In a report dated September 8, 2004, Dr. Martynec noted that appellant had complaints of "severe left-sided facial pain consistent with trigeminal neuralgia" beginning after a fall in January 2004. He indicated that her pain was "severe and incapacitating when it occurs and is triggered by cold air." Dr. Martynec stated:

"As her place of employment is air conditioned, she was in constant pain while at work. I recommended she not work for a period of time pending the resolution of these symptoms. This time off from work helped and allowed her to attempt to come back to work at light duty with certain restrictions."

He further noted that appellant was "also following up with a number of pain specialist for neck, back and left pain that occurred immediately after the trauma on April 30, 2004."

By decision dated September 14, 2004, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that she sustained any periods of disability from May 12 to July 29, 2004 due to her April 30, 2004 employment injury.

On October 27, 2004 appellant requested reconsideration of her claim. In support of her request, she submitted a note from Dr. Martynec indicating that she could return to light duty on August 24, 2004. She further submitted an unsigned report indicating that she received L3-4 and L4-5 left-sided facet injections on September 23, 2004 and a note from a physician finding that she could return to work on September 28, 2004.

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<sup>3</sup> The record contains progress notes dated August 2 and 9, 2004 diagnosing trigeminal neuralgia; however, the signature is not legible.

In an unsigned report dated August 30, 2004, Dr. Jeremy P. Jaffe, a Board-certified anesthesiologist, related that appellant had “several left-sided complaints including facial pain, neck pain, arm pain and hip pain. She states that she has a history of fibromyalgia, trigeminal neuralgia, scoliosis and migraines.” He indicated that appellant related that her problems began after a fall in 1998 in a supermarket but that her symptoms were under control until she fell at work on April 30, 2004. Dr. Jaffe listed findings on examination and concluded that appellant had “multiple complaints, many of which I feel are likely related to her history of fibromyalgia and/or dystonia.” He recommended nerve blocks at C4-6 and physical therapy. Appellant additionally resubmitted the September 8, 2004 report from Dr. Martynec, with a handwritten correction indicating that her facial pain began after her fall in April 2004 rather than January 2004.

By decision dated January 12, 2004, the Office denied modification of its prior decision.<sup>4</sup>

### **LEGAL PRECEDENT**

The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.<sup>5</sup>

Whether a particular injury causes 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.<sup>6</sup> 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.<sup>7</sup> The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.<sup>8</sup>

### **ANALYSIS**

In order to establish disability for the periods claimed from May 12 to July 29, 2004, appellant must submit rationalized medical evidence demonstrating that she was disabled for

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<sup>4</sup> The Office found that appellant had submitted a report dated June 4, 2004 from Dr. Daniel Skubick; however, this report is from Dr. Jackel rather than Dr. Skubick and was considered by the Office in its September 14, 2004 decision.

<sup>5</sup> 20 C.F.R. § 10.5(f). *See e.g., Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury but no loss of wage-earning capacity).

<sup>6</sup> *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

work due to her accepted employment injury.<sup>9</sup> In support of her claim, appellant submitted a report from Dr. McEwan, dated May 12, 2004. Dr. McEwan discussed appellant's history of falling on a wet floor at work on April 30, 2004. He diagnosed an aggravation of underlying cervical radiculopathy, multiple contusions of the left arm, hip, left shoulder and left ankle and status postconcussion. In a form report of the same date, Dr. McEwan opined that appellant should remain off work until a follow-up examination on May 19, 2004. The Board finds that Dr. McEwan's May 12, 2004 reports are insufficient to establish that appellant was unable to work as he provided no rationale in support of his disability finding or explanation of how appellant's employment injury caused disability from work two weeks later. A medical opinion not fortified by medical rationale is of little probative value.<sup>10</sup>

In a report dated May 19, 2004, Dr. McEwan diagnosed an aggravation of an underlying cervical radiculopathy secondary to a fall and multiple contusions. He did not, however, address whether appellant was disabled from employment and thus his opinion is insufficient to meet her burden of proof.

In a report dated June 2, 2004, Dr. Jackel discussed appellant's history of falling on her left side in the bathroom at work on April 30, 2004. He noted that appellant related that she had preexisting pain from fibromyalgia, dystonia, cervical and lumbar radiculopathy and scoliosis and that her fall increased the pain on the left side. Dr. Jackel diagnosed left-sided pain, which he noted "appears to have increase[d]" subsequent to her April 30, 2004 fall. He did not, however, address the relevant issue of whether she was disabled from employment. Further, Dr. Jackel's finding that appellant "appears" to have an increase in pain due to her fall at work is couched in speculative terms and thus of diminished probative value.<sup>11</sup>

Dr. Martynec, in a disability certificate dated June 21, 2004, found that appellant was totally disabled from June 17 to 22, 2004. As he failed to list any findings on examination, provide a diagnosis or address causation, his opinion is insufficient to meet appellant's burden of proof.<sup>12</sup>

In a report dated September 8, 2004, Dr. Martynec noted that appellant had complaints of "severe left-sided facial pain consistent with trigeminal neuralgia" beginning after a fall in January 2004. He noted that her pain worsened in the cold and stated that he had recommended that she remain off work for "a period of time" because she was in pain at work due to the air conditioning. Dr. Martynec did not specify the periods that he recommended that appellant not work. The Board does not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the period of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and

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<sup>9</sup> *Donald E. Ewals*, 51 ECAB 428 (2000).

<sup>10</sup> *Ronald C. Hand*, 49 ECAB 113 (1997).

<sup>11</sup> *Patricia J. Glenn*, 53 ECAB 159 (2001).

<sup>12</sup> *See Allen C. Hundley*, 53 ECAB 551 (2002); *Fereidoon Kharabi*, *supra* note 6.

entitlement to compensation.<sup>13</sup> Further, Dr. Martynec attributed her condition to a fall in January 2004 rather than a work injury on April 30, 2004.<sup>14</sup>

In a report dated July 29, 2004, Dr. Lam evaluated appellant for neck and face pain and noted that she “related the onset of the symptoms to a work-related accident in April of 2004 when she fell, injuring her neck, shoulder area and left hip.” She diagnosed cervical radiculopathy in the left C6 nerve root, cervical posterior compartment syndrome with facet arthropathy and paravertebral spasm and trigeminal neuralgia. Dr. Lam, however, did not address the relevant issue of whether appellant was disabled from employment or specifically relate the diagnosed conditions to her accepted employment injury. Medical evidence that does not offer any opinion regarding the cause of an employee’s condition is of limited probative value on the issue of causal relationship.<sup>15</sup>

In an unsigned report dated August 30, 2004, Dr. Jaffe listed findings on examination and concluded that appellant had “multiple complaints, many of which I feel are likely related to her history of fibromyalgia and/or dystonia.” As his report is unsigned, it is of little probative value.<sup>16</sup>

As the record contains no rationalized medical evidence supporting that appellant was totally disabled for the days claimed from May 12 to July 29, 2004, she has not met her burden of proof in this case.

### CONCLUSION

The Board finds that appellant has not established that she sustained intermittent periods of disability from May 12 to July 29, 2004 causally related to her April 30, 2004 employment injury.<sup>17</sup>

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<sup>13</sup> See *Fereidoon Kharabi*, *supra* note 6.

<sup>14</sup> While appellant submitted a second report from Dr. Martynec of the same date with a handwritten correction changing January 2004 to April 2004, it is not clear who made the correction and thus it is of little probative value.

<sup>15</sup> *Willie M. Miller*, 53 ECAB 697 (2002).

<sup>16</sup> *Merton J. Sills*, 39 ECAB 572 (1988). The record also contains disability certificates dated July 15 and September 28, 2004 from physicians with illegible signatures.

<sup>17</sup> Appellant submitted new evidence with her appeal; however, the Board has no jurisdiction to review evidence for the first time on appeal. See 20 C.F.R. § 501.2(c).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated January 12, 2005 and September 14, 2004 are affirmed.

Issued: September 21, 2005  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge  
Employees' Compensation Appeals Board