

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CATHY JO FOSSEN and U.S. POSTAL SERVICE,
POST OFFICE, Minneapolis, Minn.

*Docket No. 97-335; Submitted on the Record;
Issued August 26, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issue is whether appellant is entitled to wage-loss compensation for the period May 28, 1993 to January 1, 1996.

On January 13, 1989 appellant, then a 31-year-old manual distribution clerk, filed an occupational disease claim, alleging that she sustained right elbow tendinitis which she first became aware of and realized was causally related to factors of her federal employment on March 1, 1988. On July 26, 1989 the Office of Workers' Compensation Programs accepted appellant's claim for right lateral epicondylitis and tenotomy of the right elbow. On August 17, 1989 appellant filed an occupational disease claim for the tendinitis in the left arm, alleging increased use of that arm due to her right arm condition. Appellant did not stop work in relation to either claim, however, she was reassigned to a position in which she had restrictions of lifting less than 15 pounds, and limited use of the right arm. On January 9, 1990 the Office accepted appellant's second occupational disease claim for left lateral epicondylitis. On May 4, 1992 appellant underwent right lateral epicondylar inertial release surgery. Appellant was released for work on March 24, 1992 for 4 hours a day with restrictions of no repetitive use, no lifting or throwing over 10 pounds more than once an hour. She gradually increased to working an eight-hour day by the fourth week. Appellant received appropriate compensation for her temporary total disability from March 4 to April 11, 1992. On November 23, 1992 appellant filed a claim for a schedule award. In a decision dated July 8, 1994, the Office awarded appellant a schedule award for a 10 percent permanent impairment of the right upper extremity for 31.2 weeks of compensation for the period of January 12 to August 18, 1994. On June 3, 1996 appellant filed a claim for compensation on account of occupational disease for the period of May 28, 1993 to January 1, 1996. By decision dated September 27, 1996, the Office denied appellant's claim on the grounds that she had not established that she was temporarily partially disabled for the time period in question.

The Board has carefully reviewed the entire record on appeal and finds that appellant was not entitled to wage-loss compensation benefits for the period of May 28, 1993 to January 1, 1996 due to temporary partial disability.

Section 8102(a) of the Federal Employees' Compensation Act¹ sets forth the basis upon which an employee is eligible for compensation benefits. That section provides:

“The United States shall pay compensation as specified by this subchapter for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty....”

In general the term “disability” under the Act means “incapacity because of injury in employment to earn the wages which the employee was receiving at the time of such injury.”² This meaning, for brevity, is expressed as “disability for work.”³

Appellant is entitled to compensation for wage loss between May 28, 1993 and January 1, 1996 if she was disabled from full-time work; *i.e.*, if she was unable to earn the wages that she was receiving on her date of injury.

In the present case, a review of the record reveals the following pertinent facts: Appellant was placed in a limited-duty position when she filed her claim for right elbow tendinitis. In December 1989 appellant's physical restrictions were expanded to no sack pulling, no overhead throwing, no pulling, pushing, lifting or carrying over 15 pounds and limit throwing in both arms. The employing establishment complied with these restrictions. On April 9, 1991 appellant received a limited-duty offer in the contest mail area with restrictions of intermittent lifting, carrying, pushing and pulling of up to 15 pounds, no sack pulling, no overhead throwing and limit throwing in both arms. Appellant continued to work in this area before and after authorized surgery for her right lateral tendinitis. On February 18, 1993 appellant was offered an additional temporary full-time appointment in the contest mail area with physical restrictions within her limits. She accepted this offer. Subsequently, appellant advised her supervisor that she had bid on a part-time regular job as a clerk-typist for 20 hours of work per week and that she intended to take this job if she passed the typing test. On March 9, 1993 Dr. Douglas Drake, a Board-certified orthopedic surgeon and appellant's treating physician, indicated that appellant could work 8 hours a day with restrictions of sitting, walking and squatting 8 hours a day, intermittent lifting and bending 5 to 6 hours a day, lifting between 10 to 20 pounds and intermittent reaching above the shoulder. He also indicated that appellant had a hand restriction with no repetitive flexing and extension of the wrist. The full-time position which appellant was offered and accepted in February 1993 was not only within the restrictions identified by her physician, Dr. Drake, it was also a position that appellant had been performing without further injury since April 1991. Although appellant has generally alleged that she was no longer capable of performing that work and that it was no longer available, there is no medical evidence in the

¹ 5 U.S.C. § 8102(a).

² *John W. Normand*, 39 ECAB 1378 (1988); *Gene Collins*, 35 ECAB 544 (1984).

³ *John W. Normand*, *supra* note 2; *Clarence D. Glenn*, 29 ECAB 779 (1978).

record that supports her contention that she was not capable of performing this full-time limited-duty position or factual evidence to support her contention that it was no longer available. Thus, appellant voluntarily changed to a part-time position from a full-time position within her physical capabilities without a medical basis for the change and she is not entitled to wage-loss compensation as a result of this voluntary reassignment.⁴

The decision of the Office of Workers' Compensation Programs dated September 27, 1996 is hereby affirmed.

Dated, Washington, D.C.
August 26, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member

⁴ See generally *L.E. Bushling*, 24 ECAB 315 (1972).