

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

AMY J. KEE, Appellant

and

**U.S. POSTAL SERVICE, KENOSHA POST
OFFICE, Kenosha, WI, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 05-125
Issued: April 8, 2005**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member

JURISDICTION

On October 6, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated October 14, 2003 and September 7, 2004, denying her entitlement to wage-loss benefits from July 25 to August 29, 2003. 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 is entitled to wage-loss compensation for total disability from July 25 to August 29, 2003.

FACTUAL HISTORY

On February 13, 2001 appellant, then a 42-year-old clerk, filed an occupational injury claim (Form CA-2) alleging that she suffered from wrist and elbow tendinitis resulting from lifting and pushing heavy equipment and other objects at work. Appellant stated that she first became aware of her condition on September 7, 1999. The record reflects that she was treated for her work-related condition on July 19, 2000 by Dr. John Trotter, a Board-certified orthopedic

surgeon and was released to work with restrictions at that time. On March 2, 2001 appellant's claim was accepted for bilateral wrist tendinitis.

Appellant filed a recurrence of disability claim (Form CA-2a) on March 21, 2003 alleging that she continued to suffer from bilateral wrist tendinitis as well as from tennis elbow in her right arm. She claimed that, as a result of performing heavy duties at work, including unloading trucks and clearing docks, pain in both wrists had become more severe and that she had "burning, aching and pain in her elbows and shoulders." By letter dated June 24, 2003, the Office accepted appellant's claim for recurrence of disability and later expanded its acceptance to include bilateral carpal tunnel syndrome and release.

Medical evidence of record reflects that appellant was treated by Dr. Trotter from July 19, 2000 to March 4, 2002, for bilateral wrist tendinitis. In a report dated March 12, 2003, Dr. Trotter opined that appellant "probably" did not meet the criteria to be placed on total permanent disability. In a report dated April 9, 2003, Dr. Trotter rendered diagnoses of bilateral carpal tunnel syndrome and cervical disc disease with disc protrusion, based upon the results of an electromyogram (EMG)/nerve conduction study performed on April 4, 2003. He reported that he had advised appellant that he could not give her permanent work restrictions, as she had requested, but instead gave her a work restriction for six weeks. Dr. Trotter referred appellant to Dr. Vasan Purighalla, a Board-certified neurosurgeon, who ultimately performed surgery on appellant. In his May 30, 2003 report, Dr. Purighalla indicated that appellant's EMG studies were consistent with carpal tunnel syndrome and that a magnetic resonance imaging scan of the cervical spine revealed evidence of degenerative disc disease. Dr. Purighalla's report further reflected that he informed appellant of her treatment options, including surgery and that he gave appellant a note for work restrictions, including not to lift more than five pounds and not to do repetitive bending, pulling or pushing.

Appellant continued working with restrictions, missing work intermittently beginning March 2003. Appellant stopped work altogether on July 25, 2003 and filed claims for lost wages for the period July 25 to August 29, 2003.

By letter dated September 12, 2003, the Office advised appellant that her claims for compensation could not be processed because she had not submitted any medical evidence explaining how her accepted condition disabled her from all work for the period claimed.

Appellant submitted a disability certificate dated September 5, 2003 and signed by "DM" on behalf of Dr. Purighalla, indicating that appellant would be disabled for approximately two to six weeks following surgery on September 8, 2003 for carpal tunnel release.

Appellant filed claims for compensation following surgery. The Office paid compensation for the period August 30 through September 19, 2003.

On September 25, 2003 appellant filed an occupational disease claim (Form CA-2), alleging that she had been unable to work since July 25, 2003 due to "bilateral carpal tunnel."

By letter dated October 17, 2003, the Office advised appellant that her September 25, 2003 CA-2 form was being deleted from its system in that it was duplicative.¹

By decision dated October 14, 2003,² the Office denied appellant's claim for compensation for the period July 25 through August 29, 2003, finding that the medical evidence was insufficient to establish a causal relationship between appellant's original injury and her alleged total disability from work commencing July 25, 2003.

Appellant requested an oral hearing. In support of her request, appellant submitted a form entitled "Disability Certificate," dated October 10, 2003, bearing an illegible signature and a stamp from Global Rehabilitation Clinic, S.C. The form language provided: "This is to certify that: _____ has been under my professional care and was totally incapacitated from _____ to _____." The individual completing the form filled in the blanks, indicating that appellant had been incapacitated from July 25, 2003 through the date the form was signed and added diagnoses of spinal stenosis, crucial and thoracic spine disc disorder and bilateral carpal tunnel disorder. Appellant also submitted notes from Dr. Purighalla's office. Unsigned notes written by Dr. Purighalla's nurse, Corina D. Gretch, dated July 16, 2003 reflected that appellant telephoned the doctor's office asking for new work restrictions, but that Dr. Purighalla responded that appellant should "continue with same restrictions. Nothing new." Office notes dated August 4, 2003 indicated that appellant cancelled an appointment scheduled on that date. Notes dated August 11, 2003 made by Ms. Gretch reflect that appellant requested that changes be made to the doctor's statement to the Office regarding "the dates she was off work." The August 11, 2003 notes include the statement, "We cannot change the letter. Patient is aware." In his unsigned notes dated August 8, 2003, Dr. Purighalla opined that appellant suffered from a "double crush syndrome," a combination of carpal tunnel syndrome and cervical radiculopathy, resulting from lifting heavy weights and performing repetitive movements of the neck and upper extremities at work. He stated that appellant appeared to be neurologically intact and that she intended to try conservative therapy with work restrictions.

In a report dated July 30, 2003, Dr. Peter Slavin, a chiropractor, opined that appellant's spinal condition and carpal tunnel syndrome were work related. Dr. Slavin did not address work restrictions.

At the hearing held on June 23, 2004 appellant stated that she had been on limited duty since her case was accepted. She further indicated that, although she had been working a light-duty job, she was required to work an alternating schedule, which aggravated her symptoms. She stated that she was also required to load and unload mail and equipment, which caused her so much pain that she "felt like a truck ran over [her]." Appellant stated that she was "sure" that her doctor's office "faxed in something" verifying that she should not work as of

¹ The Board notes that the deletion of appellant's CA-2 form from the Office's system was without prejudice to appellant. All claims for compensation relating to her condition of bilateral carpal tunnel syndrome could be submitted to the Office under appellant's original claim.

² The Board notes that the Office's decision is undated but was received in the Office's record on October 14, 2003.

July 25, 2003. Appellant testified that the disability slip dated October 10, 2003 was from her chiropractor, Dr. Slavin.

Subsequent to the hearing, appellant submitted a disability certificate dated July 10, 2003, indicating that appellant was released to work with restrictions including no lifting over five pounds, no bending, no pushing, no pulling and limited repetitive motion of the upper extremities.³

By decision dated September 7, 2004, the Office's hearing representative affirmed the Office's October 14, 2003 decision, finding that appellant had failed to submit a well-reasoned medical report supporting that her condition had worsened to the degree of total disability for the period July 25 through August 29, 2003.

LEGAL PRECEDENT

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden to establish by the weight of reliable, probative and substantial evidence a recurrence of total disability. As part of this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.⁴

This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with medical reasoning.⁵ Where no such rationale is present, the medical evidence is of diminished probative value.⁶

An award of compensation may not be based on surmise, conjecture, speculation or appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.⁷

³ On June 15, 2004 appellant filed a request for a schedule award. As of the date of the filing of this appeal, the Office had not issued a decision in that regard. Therefore, appellant's request for a schedule award is interlocutory in nature and not subject to review by the Board. See 20 U.S.C. § 501.2(c), which provides that the Board has jurisdiction to consider and decide appeals from final decisions and its review is limited to the evidence, which was in the record at the time of the final decision.

⁴ See *Shelly A. Paolinetti*, 52 ECAB 391, 392 (2001); see also *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁵ *Ronald A. Eldridge*, 53 ECAB 218 (2001).

⁶ *Mary A. Ceglia*, 55 ECAB ____ (Docket No. 04-113, issued July 22, 2004).

⁷ *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

ANALYSIS

The Board finds that appellant failed to sustain her burden of proof in establishing that she had a period of recurrent total disability due to an employment-related condition from July 25 through August 29, 2003, entitling her to monetary compensation.

When an employee who is disabled from the job she held when injured on account of employment-related residuals returns to a light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.⁸

Appellant's original claim was accepted for bilateral wrist tendinitis on March 2, 2001. On March 21, 2003 she filed a claim for recurrence of disability, which was accepted for carpal tunnel syndrome. Appellant returned to work and continued to work in a light-duty status until July 25, 2003, when she stopped work, claiming that she had sustained a recurrence of total disability. She later claimed compensation for total disability for the period July 25 through August 29, 2003. Appellant did not submit any probative medical evidence demonstrating total disability for that period of time. She had been working pursuant to restrictions established by her neurosurgeon, Dr. Purighalla, on May 30, 2003. Although she was scheduled for surgery for carpal tunnel release, nothing in the record reflects that her condition had worsened to the degree that she was unable to work prior to surgery. On the contrary Dr. Trotter advised appellant that he could not give her permanent work restrictions, as she requested. Notes from Dr. Purighalla's office reflect that he refused appellant's request to change her work restrictions on July 16, 2003. Further, his unsigned notes dated August 8, 2003, made during the period of appellant's alleged total disability, reflect that, as of that date, appellant intended to avoid surgery if possible and to try conservative therapy with work restrictions. Although the notes are of diminished probative value because they are unsigned,⁹ they do not provide any support for appellant's position that she was totally disabled.

The only support for the period of claimed disability is an October 10, 2003 form entitled "Disability Certificate" bearing an illegible signature.¹⁰ The form indicated that appellant was totally incapacitated from July 25, 2003 to "the present" and stated diagnoses of spinal stenosis, crucial and thoracic spinal disc disorder and carpal tunnel disorder. However, because the signature on the form cannot be verified to be that of a physician as defined under the Act and

⁸ See *supra* note 4.

⁹ See *Merton J. Sills*, 39 ECAB 572, 575 (1988).

¹⁰ Appellant stated at the hearing that the October 10, 2003 form was signed by her chiropractor. Section 8101(2) of the Federal Employees' Compensation Act provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. The term 'physician' includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the secretary."

the form does not provide a rationalized medical opinion establishing appellant's total disability, it lacks probative value.

The record supports that appellant was totally disabled following her surgery and the Office paid compensation for the period August 30 through September 19, 2003. Dr. Purighalla's office provided a disability slip dated September 5, 2003, indicating that appellant would be disabled for approximately two to six weeks following a September 8, 2003 surgery for carpal tunnel release. However, there was no indication that appellant was totally disabled prior to the date of surgery. Moreover, subsequent to the hearing, appellant submitted a July 10, 2003 disability certificate from Dr. Purighalla's office indicating that she could work with certain restrictions, including no bending, no lifting over five pounds, no pulling and limited repetitive motion of the upper extremities. The Board notes that Dr. Purighalla's work release was dated only 15 days before appellant's alleged total disability and is, therefore, compelling evidence that appellant was not totally disabled on July 25, 2003.

Because appellant returned to a light-duty position after an accepted employment injury, she had the burden to establish by the reliable, probative and substantial evidence a recurrence of the total disability and to show that she could not perform that light duty. She was required to show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the job requirements. The only evidence presented with regard to a change in appellant's job requirements was her testimony at the hearing that she had been required to work an alternating schedule and that she was required to load and unload mail and equipment. Appellant submitted no evidence to corroborate her allegations that she was required to perform duties outside of her job restrictions. Moreover, as indicated above, she failed to provide probative medical evidence establishing that she could not perform her light duty.

For the reasons stated above, the Board finds that appellant failed to sustain her burden of proof in establishing that she was totally disabled due to her accepted employment condition from July 25 through August 29, 2003.

CONCLUSION

The Board finds that appellant has not established entitlement to wage-loss benefits from July 25 to August 29, 2003.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 7, 2004 and October 14, 2003 are affirmed.

Issued: April 8, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member