

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

KAREN A. KELLEY, Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
TENNESSEE VALLEY HEALTHCARE
SYSTEM, Nashville, TN, Employer**

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**Docket No. 04-2118
Issued: January 25, 2005**

Appearances:
Karen A. Kelley, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On August 27, 2004 appellant filed a timely appeal of the August 3, 2004 merit decision of the Office of Workers' Compensation Programs, which denied wage-loss compensation for the period May 24 to 28, 2004. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.¹

ISSUE

The issue is whether appellant established that she was disabled from May 24 to 28, 2004 as a result of her February 3, 2004 employment injury.

¹ The record on appeal includes evidence that was received after the issuance of the Office's August 3, 2004 decision. The Board's review is limited to the evidence in the case record that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

FACTUAL HISTORY

Appellant, a 50-year-old registered nurse, tripped and fell in the performance of duty on February 3, 2004. The Office accepted her claim for lumbar and cervical strains. On June 1, 2004 appellant filed a claim for compensation (Form CA-7) for wage loss from May 24 to 28, 2004. She submitted a May 24, 2004 return to work status report from the Knoxville Orthopedic Clinic, which stated “employee off work until May 31, 2004.” The report was signed by Nancy Dusek, a nurse practitioner. Appellant also provided May 24, 2004 treatment notes from the clinic. Her treating physician, Dr. David F. Fardon, a Board-certified orthopedic surgeon, was unavailable so Ms. Dusek examined appellant. She noted an impression of persistent cervical pain, adjusted her medication and provided her with a soft cervical collar. Ms. Dusek also reported that appellant would “return to work tomorrow.”

On June 29, 2004 the Office advised appellant of the need for medical evidence establishing disability for work for the claimed period. Other than submitting another copy of Ms. Dusek’s May 24, 2004 treatment notes, appellant did not submit any additional relevant evidence regarding her claimed disability from May 24 to 28, 2004.

In correspondence dated July 9, 2004, the employing establishment verified appellant’s absence from work for the period May 24 to 28, 2004. The employing establishment also questioned the reliability of the evidence submitted; noting that Ms. Dusek was a nurse practitioner and the May 24, 2004 treatment notes indicated an earlier return to work date than the period of disability claimed by appellant.

By decision dated August 3, 2004, the Office denied appellant’s claim for compensation for the period May 24 to 28, 2004.

LEGAL PRECEDENT

A claimant seeking benefits under the Federal Employees’ Compensation Act² has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence, including that any specific condition or disability for work for which she claims compensation is causally related to the employment injury.³ Whether a particular injury causes disability for work is a medical question, which must be resolved by competent medical evidence.⁴ An employee is entitled to disability compensation for loss of wages incidental to treatment for an employment injury.⁵

² 5 U.S.C. § 8101 *et seq.*

³ 20 C.F.R. § 10.115(e) (1999); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

⁴ *Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

⁵ *Daniel Hollars*, 51 ECAB 355, 356-57 (2002); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computing Compensation*, Chapter 2.901.16(a) (December 1995).

ANALYSIS

The record establishes that appellant received medical treatment at a clinic on May 24, 2004. However, she failed to establish that she was disabled for work from May 25 to 28, 2004. The May 24, 2004 treatment notes and work status report, both signed by Ms. Dusek, provided conflicting information regarding appellant's ability to work. On the work status report Ms. Dusek indicated that appellant would be off work until May 31, 2004; however, in the treatment notes she reported that she would "return to work tomorrow;" May 24, 2004. Even had she not contradicted herself, Ms. Dusek findings are insufficient to satisfy appellant's burden of proof. As a nurse practitioner is not considered a "physician" under section 8101(2) of the Act⁶ and thus, she cannot render a medical opinion.⁷ Appellant has not submitted any competent medical evidence to justify her absence from work during the period May 24 to 28, 2004. Therefore, the Office properly denied her claim.

CONCLUSION

The Board finds that appellant is not entitled to wage-loss compensation.

⁶ See 5 U.S.C. § 8101(2) (this subsection defines "physician" to include surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law).

⁷ *Vicky L. Hannis*, 48 ECAB 538, 540 (1997); *see also Ricky S. Storms*, 52 ECAB 349, 353 (2001) (the Board held that a medical opinion, in general, can only be given by a qualified physician).

ORDER

IT IS HEREBY ORDERED THAT the August 3, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 25, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member