

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

A.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
North Metro, GA, Employer**

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**Docket No. 07-1862
Issued: December 14, 2007**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 6, 2007 appellant timely filed an appeal from a June 1, 2007 merit decision of the Office of Workers' Compensation Programs denying her claim for wage-loss compensation for the period May 14 to August 14, 2006. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether appellant established that she was disabled for intermittent periods between May 14 through August 14, 2006.

FACTUAL HISTORY

On May 10, 2006 appellant, then a 44-year-old mail processor, filed an occupational disease claim alleging that she sustained muscle spasms in both forearms lifting heavy flats in the performance of duty. Appellant indicated that she first became aware of her condition on March 29, 2006. In a June 7, 2006 decision, the Office accepted appellant's claim for bilateral wrist sprain and bilateral/lateral epicondylitis of the elbow.

On August 23, 2006 appellant filed a claim for 48 hours of leave buy-back for the period May 14 through August 14, 2006. The Office received an August 1, 2006 physician's report from Dr. Harvey Leslie who found that appellant had tenderness outside both elbows and wrists and stated that appellant needed physical therapy three times a week for an undetermined period of time.

In a September 7, 2006 letter, the Office requested additional information from appellant specifically additional CA-7a and CA-7b forms to be completed by the employing establishment. The Office received numerous physical therapy notes dating from August 25, 2006 until October 9, 2006 and a June 22, 2006 nerve conduction test.

On November 7, 2006 the Office informed appellant that additional medical information was needed. Appellant responded in a December 5, 2006 letter and submitted a time analysis form listing the specific dates she was absent from work: May 14, June 18 and 21, July 30, August 13 and 14, 2006. Appellant also submitted additional physical therapy notes dated from March 29 through September 22, 2006. Dr. Leslie counter signed several of the physical therapy notes. None of these notes offered an opinion regarding appellant's ability to work or any opinion regarding disability.

In an August 18, 2006 physician note, Dr. Leslie stated that Indocin had made appellant sick with an upset stomach for two days, August 13 and 14, 2006. A September 22, 2006 note from Dr. Leslie noted that appellant was off work for a week but did not explain whether this was disability-related leave.

In a June 1, 2007 decision, the Office denied appellant's claim for compensation during the period May 14 to August 14, 2006 on the grounds that the evidence failed to support disability during the claimed time period.

LEGAL PRECEDENT

A claimant, for each period of disability claimed, has the burden of proving by the preponderance of the reliable, probative and substantial evidence that he or she is disabled for work as a result of the employment injury. Whether a particular injury causes an employee to be disabled for employment and the duration of that disability, are medical issues which must be established, probative and substantial evidence.¹

In this case, appellant has the burden of establishing, by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed disability for 48 hours during the period May 14 through August 14, 2006 and her accepted wrist and elbow conditions.² The Board will not require the Office to pay compensation for disability in the absence of medical evidence directly addressing the particular period of disability for which

¹ *Fereidoon Kharabi*, 52 ECAB 291 (2001).

² *Alfredo Rodriguez*, 47 ECAB 437 (1996).

compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.³

ANALYSIS

Appellant's claim was accepted for bilateral wrist sprain and bilateral/lateral epicondylitis of the elbow. She claims that she was totally disabled on six days between May 14 and August 14, 2006 due to her accepted injuries.⁴ Appellant bears the burden to establish through medical evidence that she was disabled during this time period due to her accepted injury. The Board has previously stated that reports of physical therapists have no probative value regarding medical questions because a therapist is not a physician as defined by 5 U.S.C. § 8101(2).⁵ Appellant submitted numerous physical therapy notes but none of them identified her as disabled during the claimed time period and would not be of probative medical value even if they did attempt to establish disability.

The August 18, 2006 progress note from Dr. Leslie stated that appellant was sick for two days, August 13 and 14, 2006 due to an upset stomach from a particular medicine. Dr. Leslie noted that she was sick, not that she missed work or was incapable of working during the two days. The record is also unclear as to whether Indocin was prescribed for appellant's accepted conditions. Dr. Leslie's other progress notes do not substantiate that appellant was disabled due to her accepted work conditions on any of the alleged dates of disability.

In order to establish that she was disabled during this time period, appellant must submit medical evidence which affirmatively states that she was temporarily totally disabled and incapable of work on the specific days due to her accepted conditions. As no such medical evidence has been submitted appellant has not met her burden. The Board finds that appellant has not proved that she was disabled during the claimed time period as a result of her employment injury

CONCLUSION

Appellant failed to establish that she was disabled for an intermittent period from May 14 through August 14, 2006.

³ *Fereidoon Kharabi, supra* note 1.

⁴ Appellant has not alleged wage loss due to physical therapy or other medical appointments.

⁵ *James Robinson, Jr., 53 ECAB 417 (2002).*

ORDER

IT IS HEREBY ORDERED THAT the June 1, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 14, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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