

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

J.P., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Bigfork, MT, Employer**

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**Docket No. 07-471
Issued: November 5, 2007**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 11, 2006 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated September 12, 2006 denying her claim for wage-loss compensation for the period February 22 to March 6, 2006. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she was entitled to wage-loss compensation for the period February 22 to March 6, 2006 causally related to her accepted employment injury.

FACTUAL HISTORY

On February 2, 2001 appellant, then a 48-year-old postal clerk, filed an occupational disease claim alleging that her degenerative cervical disc disease had been caused or aggravated by her employment. The Office accepted the claim for cervical degenerative disc disease.

On January 10, 2006 Dr. Steve Martini, a treating physician, diagnosed a history of chronic neck pain and cervical spondylosis, cervicogenic headaches and occipital neuralgia. He recommended a repeat facet injection as this had proved “beneficial for her in the past.” On January 30, 2006 the Office authorized an epidural injection.

On March 3, 2006 Dr. Steven P. Johnson, a Board-certified pain management physician, diagnosed cervical degenerative disc disease and performed a bilateral transforaminal selective C4-5 epidural. He reported that appellant had previously undergone a bilateral epidural at C4-5 with good results. Appellant reported bilateral neck pain “with some radiation up into the occipital region” and bilateral arm numbness. Dr. Johnson related that appellant had significant C4-5 degenerative changes.

On April 27, 2006 appellant filed a claim for a recurrence of disability, which the Office accepted beginning that day.

On July 1, 2006 appellant filed claim for compensation (Form CA-7) requesting wage loss for the period December 8, 2005 to June 30, 2006.

On July 20, 2006 the Office received a letter from the employing establishment detailing the leave used by appellant during the period December 14, 2005 to July 7, 2006. It noted that appellant had recurring problems with migraine headaches associated with her medical condition. The leave used during this period was 246 hours of sick leave, 142 hours of annual leave and 139 hours of leave without pay.

On August 8, 2006 the Office received additional information including a time analysis form for the period February 20 to July 21, 2006 and a July 25, 2006 CA-7 form, which claimed compensation for the period February 22 to July 21, 2006. The time analysis form indicated that appellant used 72 hours of leave without pay during the period February 22 to March 6, 2006. It noted that appellant underwent medical treatment on March 3, 2006 for facets in the neck and that for the period February 20 to March 2, 2006 she was “waiting for facets in neck.” Under reason for leave for March 6, 2006, the employing establishment noted 4/5 degenerative cervical disc disease.

By letter dated August 10, 2006, the Office noted receipt of appellant’s claim for wage-loss compensation for the period February 22 to July 21, 2006. It informed appellant that the Office was unable to pay her for all the time claimed due to a lack of medical evidence establishing her disability for the period February 22 to March 6, 2006. The Office advised appellant that medical evidence was required to support her claim for lost wages during the period in question.

By decision dated September 12, 2006, the Office denied appellant's claim for wage-loss compensation for the period February 22 to March 6, 2006.¹ It noted that objective evidence from her physician was required and a diagnosis of pain was "not an objective finding."

LEGAL PRECEDENT

Under the Federal Employees' Compensation Act, 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 injury.² Whether a particular injury causes an employee to be disabled for work and the duration of that disability are medical issues which must be proved by the weight of substantial and reliable medical evidence.³ The claimant has the burden of proving that she is disabled for the period claimed as a result of the employment injury. The medical evidence of record must directly address the particular period of disability for which compensation is sought; to do otherwise would essentially allow employee's to self-certify their disability and entitlement to compensation.⁴

A claimant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed disability for the period February 22 to March 6, 2006 and her accepted cervical degenerative disc disease.⁵ The Board has held that the mere belief that a condition was caused or aggravated by employment factors or incidents is insufficient to establish a causal relationship between the two.⁶ 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 compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.⁷

With respect to claimed disability for medical treatment, section 8103 of the Act provides for medical expenses, along with transportation and other expenses incidental to securing medical care for injuries.⁸ An employee would be entitled to compensation for any time missed

¹ The Office paid compensation for total disability for the periods March 7 to 10, June 26 to 30 and July 10 to 21, 2006. The issue of whether appellant is entitled to wage-loss compensation for the periods not covered by the September 12, 2006 decision or the period paid by the Office is not before the Board as the Office has not issued a final decision on this issue. 20 C.F.R. § 501.2(c).

² See *Robert A. Flint*, 57 ECAB ____ (Docket No. 05-1106, issued February 7, 2006); *Prince E. Wallace*, 52 ECAB 357 (2001).

³ See *Carol A. Lyles*, 57 ECAB ____ (Docket No. 05-1492, issued December 13, 2005); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁴ *Amelia S. Jefferson*, 57 ECAB ____ (Docket No. 04-568, issued October 26, 2005); see also *William A. Archer*, 55 ECAB 674 (2004).

⁵ *Sandra D. Pruitt*, 57 ECAB ____ (Docket No. 05-739, issued October 12, 2005); *Alfredo Rodriguez*, 47 ECAB 437 (1996).

⁶ *Alfredo Rodriguez*, *supra* note 5.

⁷ *Fereidoon Kharabi*, *supra* note 3.

⁸ 5 U.S.C. § 8103(a).

from work due to medical treatment for an employment-related condition.⁹ However, the Office's obligation to pay for medical expenses and expenses incidental to obtaining medical care, such as loss of wages extends only to expenses incurred for treatment of the effects of any employment-related condition. The claimant has the burden of proof which includes the necessity to submit supporting rationalized medical evidence.¹⁰

ANALYSIS

Appellant filed a claim for wage-loss compensation alleging that she was disabled for work from February 22 to July 21, 2006. By decision dated September 12, 2006, the Office found the evidence insufficient to establish entitlement to wage-loss compensation for the period February 22 to March 6, 2006.

The evidence relevant to appellant's claimed disability includes a March 3, 2006 operative report by Dr. Johnson, the January 30, 2006 authorization for epidural treatment and time analysis sheets by the employing establishment. On January 30, 2006 the Office issued an authorization for appellant to have an epidural. Appellant submitted no medical evidence, other than the March 3, 2006 epidural report by Dr. Johnson, which discusses the medical treatment she received for her employment-related back condition that day. In the March 3, 2006 report, Dr. Johnson related that appellant underwent a bilateral transforaminal selective C4-5 epidural on that date.

The time analysis sheets are insufficient to support appellant's claim as they are not considered medical evidence.¹¹ They merely noted the type of leave used and the reason for the leave.

There is no other probative medical evidence of record which addresses whether appellant was disabled on the dates claimed or explaining why she lost time from work due to treatment for her accepted condition. Appellant has failed to submit sufficient rationalized medical opinion evidence to establish that she was unable to work on the days claimed, except for March 3, 2006 when she received medical treatment for the effects of her employment-related injury. She has failed to establish that she was disabled or undergoing medical treatment and, thus, is not entitled to wage-loss compensation for the days claimed, except for March 3, 2006. Appellant has not established her claim for wage-loss compensation during the period February 22 to March 6, 2006, except for March 3, 2006.

CONCLUSION

The Board finds that appellant has not established entitlement to wage-loss benefits for intermittent periods of disability from February 22 to March 2, 2006 and March 6, 2006.

⁹ *Vincent E. Washington*, 40 ECAB 1242 (1989).

¹⁰ *Dorothy J. Bell* 47 ECAB 624 (1996); *Zane H. Cassell*, 32 ECAB 1537 (1981).

¹¹ See *Carol A. Lyles*, 57 ECAB ___ (Docket No. 05-1492, issued December 13, 2005) (whether a particular injury caused an employee disability from employment is a medical issue, which must be resolved by competent medical evidence).

However, the Board finds that appellant is entitled to wage-loss compensation for March 3, 2006.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 12, 2006 is affirmed as modified.

Issued: November 5, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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