

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUANITA HAMMONDS and U.S. POSTAL SERVICE,
POST OFFICE, Rivergrove, Ill.

*Docket No. 96-1970; Submitted on the Record;
Issued June 25, 1999*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's claim for compensation on the account of continuing disability for the period April 3 through September 13, 1995 on the grounds that the medical evidence of record was insufficient to establish any temporary total disability during this period.

The Board has duly reviewed the case record in this appeal and finds that the Office properly denied appellant's claim for compensation on the account of continuing disability for the period April 3 through September 13, 1995 on the grounds that the medical evidence of record was insufficient to establish any temporary total disability during this period.

On October 26, 1984 appellant, then a mail clerk, filed a claim for an occupational disease (Form CA-2) alleging that she first became aware of her illness or disease in June 1984. Appellant indicated that she experienced pain while keying.¹

By letter dated October 18, 1985, the Office accepted appellant's claim for permanent aggravation of degenerative disc disease at C6-7 with bilateral C7 radiculopathy. Subsequently, the Office accepted appellant's claim for bilateral carpal tunnel syndrome.

By letter dated July 5, 1995, the Office referred appellant along with a statement of accepted facts, a list of specific questions and medical records to Dr. Reynold L. Rimoldi, an orthopedic surgeon, for a second opinion examination. By letter of the same date, the Office advised Dr. Rimoldi of the referral.

Dr. Rimoldi submitted an August 7, 1995 medical report revealing a history of the June 1984 employment injury and appellant's employment with the employing establishment and medical treatment. His report also revealed a review of medical records, appellant's complaints

¹ Appellant resigned from her position effective May 20, 1988.

and his findings on physical and objective examinations. Dr. Rimoldi opined that appellant had a probable cubital tunnel syndrome as evidenced by her tenderness medially and decreased sensation in the ulnar nerve distribution. He provided his recommendation for medical treatment and appellant's work restrictions, which included no forceful use of grasping with her upper extremities bilaterally. Dr. Rimoldi opined that there was no evidence of any previous injury to appellant's upper extremities and that her need for medical treatment was the result of the June 1984 employment injury. In an accompanying work evaluation form dated August 29, 1995, he indicated that appellant could work eight hours per day and that she should refrain from forceful use of or grasping with her upper extremities bilaterally. By letter dated August 28, 1995, the Office authorized the request of Dr. Austin D. Potenza, a Board-certified orthopedic surgeon and appellant's treating physician, to perform surgery on appellant's right elbow.

The Office received a facsimile dated September 21, 1995 from Dr. Potenza revealing that appellant was totally disabled for work beginning April 3, 1995 and that surgery was scheduled for September 14, 1995.

In a September 26, 1995 letter, the Office requested that Dr. Rimoldi provide whether appellant was able to perform the duties as provided in an accompanying description of a cashier position during the period April 3 through September 14, 1995. By letter of the same date, the Office advised Dr. Potenza that appellant had been receiving compensation based on her wage-earning capacity as a cashier.² The Office further advised Dr. Potenza that modification of a formal wage-earning capacity determination required him to show that there was a change in appellant's condition that prevented her from performing the duties of the position that she was rated. The Office then advised Dr. Potenza to review an accompanying description of the cashier position and provide whether appellant was physically capable of performing the duties of this position during the period April 3 through September 14, 1995.

On October 4, 1995 appellant filed a claim for continuing compensation on the account of disability (Form CA-8) for the period April 3 through September 13, 1995.

By decision dated November 8, 1995, the Office denied appellant's claim on the grounds that the medical evidence of record was insufficient to establish that appellant sustained total temporary disability during the period April 3 through September 13, 1995.

In a November 17, 1995 letter, appellant requested reconsideration of the Office's decision accompanied by medical evidence. By decision dated December 6, 1995, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was previously considered in its prior decision.

In a February 19, 1996 letter, appellant requested reconsideration of the Office's decision accompanied by medical evidence. By decision dated April 11, 1996, the Office denied

² By decision dated July 12, 1993, the Office found that the position of cashier at the Nevada Association for the Handicapped Desert Plant Nursery fairly and reasonably represented appellant's wage-earning capacity. Appellant returned to work in this position on April 26, 1993.

appellant's request for reconsideration on the grounds that the evidence submitted was repetitious and irrelevant and thus, insufficient to warrant review of its prior decision.

An employee seeking benefits under the Federal Employees' Compensation Act³ has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, and that the claim was filed within the applicable time limitation of the Act.⁴ The claimant also has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of the employment. As part of this burden, the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.⁵

In this case, appellant has failed to submit rationalized medical evidence establishing that she was totally disabled during the period April 3 through September 13, 1995. In support of her claim, appellant submitted Dr. Potenza's September 21, 1995 disability certificate indicating that she was totally disabled during the period April 3 through September 25, 1995. His disability certificate further revealed that appellant was unable to work prior to surgery on September 14, 1995 and that appellant was disabled postoperative. Dr. Potenza's disability certificate is insufficient to satisfy appellant's burden because it failed to indicate a diagnosis and to discuss whether or how the diagnosed condition was caused by appellant's June 1984 employment-related injury.⁶

Dr. Potenza's response to the Office's September 26, 1995 letter requesting him to determine whether appellant could perform the duties of a cashier during the period April 3 through September 13, 1995 provided "yes" or "no" regarding appellant's ability to perform specific duties of her cashier position. His response "no" indicating that appellant was unable to perform certain duties are insufficient to satisfy appellant's burden inasmuch as he failed to provide any medical rationale explaining how or why appellant was disabled from performing such duties.

In response to the Office's September 26, 1995 letter, Dr. Rimoldi submitted an October 23, 1995 supplemental medical report indicating that appellant could perform the duties of the position of cashier. He stated that appellant could perform the duties of this position because the lifting, as well as, carrying activities could be eliminated since she could instruct trainees to perform these duties. Further, Dr. Rimoldi stated the requirement that 10 percent of the time would involve seizing, holding, grasping, turning and working with hands was appropriate for appellant. The Board finds that Dr. Rimoldi provided a rationalized medical opinion.

³ 5 U.S.C. §§ 8101-8193.

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ *Daniel Deparini*, 44 ECAB 657, 659 (1993).

Because appellant has failed to submit rationalized medical evidence establishing that she was totally disabled during the period April 3 through September 13, 1995, she has failed to satisfy her burden of proof.

The April 11, 1996 and December 6 and November 8, 1995 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, D.C.
June 25, 1999

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member