U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KARL DANIEL and U.S. POSTAL SERVICE,
POST OFFICE, Clarksdale, MS

Docket No. 98-435; Submitted on the Record;
Issued September 3, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly denied payment of compensation related to appellant's accepted conditions of carpal tunnel syndrome and ulnar neuropathy for the following dates: January 7, February 28, May 30 and 31, July 5 to 11, August 22 and September 5, 1995 to January 2, 1996; (2) whether the Office properly paid appellant four hours of compensation for dates on which he underwent medical examination or treatment; and (3) whether the Office properly refused to reopen appellant's case for further consideration of the merits of his claim.

On January 27, 1995 appellant filed a claim for an injury to his right hand sustained that date by picking up a heavy parcel. On March 30, 1995 appellant filed a claim for an occupational disease, citing the January 27, 1995 incident and listing the nature of his disease or illness as cervical spondylolysis, ulnar neuropathy of the right elbow and possible early carpal tunnel syndrome. In a claim for compensation dated August 9, 1996, appellant listed the period for which he was claiming compensation as October 1, 1994 to February 22, 1996.

The Office accepted that appellant sustained bilateral carpal tunnel syndrome and right ulnar neuropathy in the performance of his duties. In letters dated March 29 and September 26, 1996, the Office advised appellant that it needed medical evidence of the dates he was unable to work due to his carpal tunnel syndrome.

By decision dated January 10, 1997, the Office approved payment of compensation for the periods from March 2 to 29, 1995 and from January 3 to February 22, 1996[1] and for four of the eight hours of leave appellant used on February 21, April 26 and June 7, 1995, dates he

[1] Appellant returned to work on February 23, 1996.

underwent examinations by his attending physician. The Office's January 10, 1997 decision, then found:

> "The other days you claimed are not payable for the reasons outlined below.
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> "January 7, 1995: Prior to your January 27, 1995 injury.
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> "February 28, May 30, May 31, July 5, July 11 and August 22 1995: No medical evidence.
>
> "September 5, 1995 through January 2, 1996: Although Dr. [John P.] Howser completed a form on July 1, 1996 indicating you were disabled for this time, contemporaneous reports do not mention a disability. In fact, an October 9, 1995 report states that you are able to work. There is no evidence showing that you are unable to work until Dr. Howser's January 3, 1996 report."

By letter dated January 21, 1997, appellant requested reconsideration and submitted a December 8, 1995 report from Dr. Howser stating appellant was reevaluated that date and was unable to work. Appellant stated that he presented Dr. Howser's September 14, 1995 work tolerance limitations to his Postmaster, who told him that no light duty was available within those limitations. By decision dated July 29, 1997, the Office found that the additional evidence was repetitious and not sufficient to warrant review of its prior decision.

By letter dated September 15, 1997, appellant requested reconsideration and submitted a report from Dr. Howser dated September 5, 1997. By decision dated September 26, 1997, the Office found that the additional evidence was cumulative and not sufficient to warrant review of its prior decision.

The Board finds that the Office properly denied payment of compensation for January 7, February 28, May 30 and 31, July 5 to 11 and August 22, 1995.

Even though the Office accepted that appellant sustained bilateral carpal tunnel syndrome and right ulnar neuropathy, appellant still had the burden of proving that he was disabled for work as a result of his employment-related conditions.[2] Whether an employment injury or condition causes an employee to be disabled from work is a medical issue which must be resolved by competent medical evidence.[3] Appellant has not submitted any medical evidence that he was disabled on the above-mentioned dates. There is no medical evidence addressing January 7, 1995 and the medical report of a February 21, 1995 examination does not indicate appellant was disabled. There are no medical reports between April 26, 1995, when appellant was reported to be doing well and June 7, 1995, when the examining physician stated he was discharging appellant. Thereafter the next medical report was dated September 7, 1995 and this report does not indicate, nor does any other medical report, that appellant was disabled on any date in July or August 1995.

[2] *David H. Goss*, 32 ECAB 24 (1980).

[3] *Debra A. Kirk-Lettleton*, 41 ECAB 703 (1990).

With regard to the period from September 5, 1995 to January 3, 1996, the Board finds that further development of the evidence is necessary. Although Dr. Howser indicated in a July 1, 1996 report that appellant was totally disabled during the entire period from September 5, 1995 to January 3, 1996, Dr. Howser's September 14, 1995 report indicated appellant could work within prescribed work tolerance limitations and Dr. Howser's October 9, 1995 report stated that appellant could "return to work wearing his left carpal tunnel splint and right ulnar splint." These reports indicate that appellant could not perform his regular duties as a city carrier and appellant would be entitled to compensation if light duty within his limitations was not available at the employing establishment.[4] The Office should contact the employing establishment to ascertain if it was made aware of appellant's limitations and if light duty was available during the period from September 5, 1995 to January 3, 1996.

The Board finds that the Office properly paid appellant compensation for four of the eight hours of leave appellant used on February 21, April 26 and June 7, 1995, dates he underwent examinations by his attending physician.

An employee is entitled to compensation for wage loss for time lost from work to undergo treatment, but the entitlement extends only to the time spent obtaining the medical services and a reasonable amount of time spent traveling to and from the location where the services were provided.[5] The evidence indicates that the medical services appellant obtained on the above dates were office visits and examinations and that they occurred in the same city in which appellant resides. The Office did not act unreasonably in approving only four hours of compensation for wage loss on these dates.

The Board further finds that the Office, by its July 29, 1997 decision, improperly refused to reopen appellant's case for further consideration of the merits of his claim.

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

> "The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --
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> '(1) end, decrease, or increase the compensation awarded; or
>
> '(2) award compensation previously refused or discontinued.'"

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a point of law, by advancing a point of law or fact not previously considered by the Office, or by submitting relevant and

[4] *See Louise R. Silva*, 41 ECAB 176 (1989).

[5] *Myrtle B. Carlson*, 17 ECAB 644 (1966); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computing Compensation*, Chapter 2.901.16(a) (December 1995).

pertinent evidence not previously considered by the Office. Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements the Office will deny the application for review without reviewing the merits of the claim. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[6]

In denying appellant's claim for compensation during the period from September 5, 1995 to January 3, 1996, the Office's January 10, 1997 decision found that there was no evidence between October 9, 1995 and January 3, 1996 showing that appellant was unable to work. With his January 21, 1997 request for reconsideration, appellant submitted a report from Dr. Howser, dated December 8, 1995, which stated that appellant was reevaluated that date and was unable to work. This is clearly relevant to the basis of the Office's January 10, 1997 decision. In his January 21, 1997 request for reconsideration, appellant also advanced a point of law or fact not previously considered by the Office: that he had provided his Postmaster with a list of his physician's September 14, 1995 work tolerance limitations and was told no light duty within these limitations was available.

The Board further finds that the Office, by its September 26, 1997 decision, properly refused to reopen appellant's case for further consideration of the merits of his claim.

The medical report appellant submitted with his September 15, 1997 request for reconsideration addresses causal relation and appellant's work tolerance limitations, but does not indicate that appellant was disabled during any of the rejected dates. This report is thus repetitive of prior reports and not sufficient to require the Office to reopen the case for further review of the merits of appellant's claim.

[6] *Eugene F. Butler*, 36 ECAB 393 (1984).

The decision of the Office of Workers' Compensation Programs dated September 26, 1997 is affirmed. The decision of the Office dated July 29, 1997 is reversed. The decision of the Office dated January 10, 1997 is affirmed with regard to all rejected periods of compensation with the exception of the period from September 5, 1995 to January 3, 1996. With regard to this period, the January 10, 1997 decision is set aside and the case remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, D.C.
September 3, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

A. Peter Kanjorski
Alternate Member