

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of TIMOTHY CHARLES PITTMAN and U.S. POSTAL SERVICE,  
MTE CENTER, Kansas City, MO

*Docket No. 99-1583; Submitted on the Record;  
Issued September 11, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
VALERIE D. EVANS-HARRELL

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's claim for compensation on the grounds that he failed to submit medical evidence establishing that he was partially disabled from October 6 to 18, 1997.

On October 3, 1997 appellant, then a 46-year-old casual mailhandler, filed a traumatic injury claim (Form CA-1) alleging that on September 23, 1997 he sustained a bruised sternum when he was assaulted by a coworker. He stopped work on September 23, 1997. The Office accepted appellant's claim for bruised ribs on December 1, 1997.

On December 10, 1997 appellant filed a claim for compensation on account of traumatic injury or occupational disease (Form CA-7). He claimed compensation for the period of wage loss from September 23 to October 18, 1997. On the reverse side of the claim form, an employing establishment human resources specialist noted appellant was terminated on September 24, 1997 for fighting with a coworker.

In support of his claim, appellant submitted a prescription note dated October 1, 1997 from a physician whose signature is illegible. In his note, the physician stated that appellant had bruised ribs. Appellant also submitted progress notes dated October 1 and November 17, 1997 from Dr. James P. Walterbach, a Board-certified internist. In his notes dated October 1, 1997, he stated that appellant had bruised ribs and hepatitis-C. In his notes dated November 17, 1997, Dr. Walterbach noted appellant's vital signs and blood contents.

By letter dated February 4, 1998, the Office informed appellant that he was entitled to continuation of pay for the period beginning September 24 through October 5, 1997, however; the evidence of record failed to establish that he was disabled from work subsequent to October 5, 1997. The Office allowed appellant 30 days to submit medical evidence showing that he was totally disabled from work after October 5, 1997.

In response, appellant submitted a personal statement dated March 24, 1998. In his statement, appellant stated that he was “separated from work from the [employing establishment]” on September 23, 1997 and, therefore, was not able to return to work following his September 23, 1997 employment injury. He also submitted a medical records release form dated February 13, 1997. Additionally, appellant submitted an attending physician’s report (Form CA-20), dated February 18, 1997, from Dr. Walterbach. In his report, Dr. Walterbach diagnosed bruised ribs and noted that the period of appellant’s total disability was September 23 through October 5, 1997. He also noted that the period of appellant’s partial disability began October 6, 1997. Additionally, Dr. Walterbach noted that appellant was able to resume light work on October 6, 1997. Appellant further submitted a notice of initial determination of status as an insured worker dated November 10, 1997.

By decision dated April 29, 1998, the Office denied appellant’s claim for compensation for the period of October 6 through 18, 1997 on the grounds that the evidence of record failed to establish that appellant was disabled subsequent to October 5, 1997. The Office noted that the employing establishment would have been willing to provide appellant with a limited-duty position had he not been terminated for fighting with a coworker.

By letter dated May 22, 1998, appellant requested an oral hearing before an Office hearing representative. He alleged that the Office’s prior decision was based upon a finding that his termination was for cause, a “finding that continues in dispute.” Appellant stated, “Any information of record used in support of the notice of decision is unreliable and misleading.”

In support of his request, appellant submitted an affidavit dated May 29, 1998. In his affidavit, appellant discussed his employment history and September 23, 1997 employment injury. He asserted that the employing establishment believed he was not entitled to compensation for the period of October 6 through 18, 1997 because during that period he was released to limited duty and the employing establishment was willing to provide a limited-duty position had appellant not been terminated for cause.

An oral hearing was held before an Office hearing representative on October 29, 1998. Appellant testified that the employing establishment terminated him without cause because his manager received conflicting information regarding his September 23, 1997 employment injury and the manager sought to protect his own position with the employing establishment. Appellant also stated that he did not receive evidence from the employing establishment showing that he had been terminated for cause. The hearing representative read portions of witness statements of record and appellant responded to those statements. The record remained open for 30 days.

By decision dated December 28, 1998, finalized December 31, 1998, the hearing representative affirmed the Office’s prior decision on the grounds that appellant did not meet his burden of proof to show that he sustained a disability subsequent to October 5, 1997 causally related to his September 23, 1997 employment injury. The hearing representative found that appellant was released to light duty by Dr. Walterbach on October 5, 1997 and that the employing establishment would have provided appellant with limited-duty work had he not been terminated for cause. The hearing representative also found that appellant was not terminated due to a work-related injury.

The Board finds that the Office properly denied appellant's claim for compensation for the period of October 6 through 18, 1997 on the grounds that he failed to submit medical evidence establishing that he was disabled subsequent to October 5, 1997 due to his September 23, 1997 employment injury.

An employee seeking benefits under the Federal Employees' Compensation Act 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, that the claim was timely filed within the applicable time limitation established in the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury.<sup>1</sup>

Disability under the Act generally means inability to earn the wages the employee was receiving when injured.<sup>2</sup> Under the Act, the term "disability" means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of the injury.<sup>3</sup> Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn the wages.<sup>4</sup> An employee who has a physical impairment causally related to a federal employment injury, but who nonetheless has the capacity to earn wages she was receiving at the time of injury, has no disability as that term is used in the Act.<sup>5</sup>

In this case, appellant was paid continuation of pay for the period of September 24 through October 5, 1997. The medical evidence of record fails to show, however, that appellant was disabled subsequent to October 5, 1997. Dr. Walterbach's attending physician's report dated February 18, 1997 is insufficient to show that appellant was disabled from October 6 through 18, 1997 and thereby entitled to continuation of pay. In his report, Dr. Walterbach diagnosed bruised ribs and stated that appellant was totally disabled from September 23 through October 5, 1997. He also noted that appellant was partially disabled but able to resume light work on October 6, 1997. Dr. Walterbach did not state his opinion on the issue of whether appellant's condition was caused or aggravated by an employment activity. He also failed to indicate the period of appellant's partial disability, whether appellant was advised that he could return to work or the extent of physical limitations and the type of work appellant could reasonably perform. Dr. Walterbach's October 1, 1997 prescription note and progress notes have no probative value as they are not contemporaneous with the period of appellant's alleged disability. His November 17, 1997 progress notes also have no probative value as they do not address the issue of whether appellant was disabled from work due to his September 23, 1997 employment injury. Appellant's March 24, 1998 narrative statement and May 29, 1998 affidavit have no probative value as disability is a medical issue and appellant, a lay person, is not

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<sup>1</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>2</sup> *Gregory A. Compton*, 45 ECAB 154, 156 (1993).

<sup>3</sup> *Maxine J. Sanders*, 46 ECAB 835, 839-40 (1995).

<sup>4</sup> *See id* at 840.

<sup>5</sup> *Id.*

competent to render a medical opinion.<sup>6</sup> The Board, therefore, finds that appellant had no employment-related disability on or after October 6, 1997. The Board notes that there is no evidence of record showing that the employing establishment terminated appellant due to his September 23, 1997 employment injury.

The decisions of the Office of Workers' Compensation Programs dated December 28, 1998, finalized December 31, 1998 and April 29, 1998 are affirmed.

Dated, Washington, DC  
September 11, 2000

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

Valerie D. Evans-Harrell  
Alternate Member

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<sup>6</sup> *James A. Long*, 40 ECAB 538, 541-42 (1989).