U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PEGGY FONDREN and U.S. POSTAL SERVICE,
POST OFFICE, Riverdale, GA

Docket No. 00-1909; Submitted on the Record;
Issued April 13, 2001

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof to establish that she was disabled during intermittent periods from January 4 to June 28, 1999 for physical therapy due to her accepted employment injury.

On October 27, 1997 appellant, then a 42-year-old letter carrier, filed a notice of occupational disease claiming that on July 19, 1997, she realized her carpal tunnel syndrome was caused by her federal employment.

By decision dated January 26, 1998, the Office of Workers' Compensation Programs accepted appellant's claim for carpal tunnel syndrome of the right hand.

From the time appellant stopped work on October 27, 1997 and during the next few years, appellant filed several claims for compensation, (Form CA-8) claiming wage loss for her physical therapy appointments. Appellant underwent physical therapy treatment by Dr. Joon Nam Lee[1] intermittently from approximately September 1997 to June 1999.

On January 15, 1999 appellant fell at home in her carport, and exacerbated her carpal tunnel syndrome. On July 26, 1999 appellant filed a claim for compensation (Form CA-8) claiming wage loss for the period of January 4 to June 28, 1999, for her physical therapy appointments.

By letter dated August 4, 1999, the Office informed appellant that medical evidence was necessary to establish that her residuals and the necessity of physical therapy were from her work-related condition and not from her new injury which occurred on January 15, 1999. The Office did, however, authorize compensation for wage loss for physical therapy appointments for the period of January 4 to 11, 1999.

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[1] The Board was unable to ascertain whether Dr. Lee is Board-certified.

In response, the Office received a report from Dr. Lee dated August 16, 1999, in which he stated:

> "On January 15, 1999 [appellant] reported that she had fallen in her carport. This fall aggravated an already existing wrist injury. She had already been under care for an established wrist condition when this fall and aggravation occurred. It was recommended [appellant] rest and immobilize her wrist as a precautionary measure. This aggravation did not change her treatment or its frequency. She returned to her pre-fall status within (1) one week of January 15, 1999.
>
> "Her carpal tunnel syndrome is of a permanent nature and requires therapy to minimize the stress work places on it."

By decision dated November 29, 1999, the Office denied appellant's claim stating that physical therapy was not authorized during 1999 and that time lost from work for unauthorized treatment was not compensable.

The Board finds that this case is not in posture for decision.

Section 8103(a) of the Federal Employees' Compensation Act, 5 U.S.C. § 8103(a), provides as follows:

> "The United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation."

The Board has recognized that an employee is entitled to disability compensation for loss of wages incurred while receiving treatment and for loss of wages incidental to treatment for a work-related injury.[2]

In this case, appellant established that she sustained carpal tunnel syndrome in her right hand as a result of her federal employment and was receiving ongoing physical therapy because of the injury. Appellant was still receiving physical therapy from Dr. Lee when she fell on January 15, 1999.

The only medical evidence of record which addresses the period in question and appellant's January 15, 1999 fall is the report from Dr. Lee dated August 16, 1999.[3] Dr. Lee's report was generally supportive of the fact that appellant was still receiving physical therapy as a result of her accepted employment injury at the time of her nonwork-related fall. While

[2] *Myrtle B. Carlson*, 17 ECAB 644 (1966).

[3] The Office received an additional report from Dr. Lee, dated January 3, 2000, on January 10, 2000. Since this report was received after the Office's final decision, it may not be considered by the Board. The review of a case shall be limited to the evidence of the case record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

Dr. Lee's report indicates that the fall was an intervening injury, his report also supports a finding that the fall only caused a temporary aggravation of appellant's employment-related condition. Dr. Lee explained that appellant returned to status quo approximately one week after the fall. Dr. Lee's report is generally supportive that appellant's condition after January 22, 1999 was work related. His report, however, was not very well rationalized as to why appellant still required physical therapy. Therefore, his statement that appellant's January 15, 1999 fall did not change her treatment or its frequency, and that she had returned to her pre-fall status within one week of the incident, is sufficient to warrant further development by the Office.

The decision dated November 29, 1999 of the Office of Workers' Compensation Programs is hereby remanded for further development by the Office.

Dated, Washington, DC
April 13, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member