

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of PATRICE PETTIWAY and U.S. POSTAL SERVICE,  
POST OFFICE, Washington, DC

*Docket No. 01-1437; Submitted on the Record;  
Issued February 5, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant was entitled to compensation for disability for intermittent periods between May 27 and June 14, 1999, causally related to her March 1, 1999 employment injury.

The Office of Workers' Compensation Programs accepted that on March 1, 1999 appellant, then a 41-year-old SPBS operator, sustained left thumb tendinitis from repetitive keying and lifting heavy bundles. She did not stop work.

Appellant submitted a verification of treatment form signed by Dr. William Vetter, a Board-certified orthopedic surgeon, which noted that appellant was seen on May 24, 1999 for a left-hand injection. No specific diagnosis was given, nor was any period of disability from work noted.

By report dated June 4, 1999, appellant's treating physician<sup>1</sup> indicated that she was treated on May 24, 1999 for thumb pain due to a mass associated with the proximal pulley of the flexor mechanism of her left thumb and overuse syndrome. He indicated that appellant received an injection of Lidocaine and Kenalog and opined that she was unable to work from March 25 through March 28, 1999 and was partially disabled from March 29 to April 4, 1999 with no left-hand lifting.

Appellant submitted a June 7, 1999 verification of treatment form with a diagnosis noted as "left[-]hand problem." The physician's signature was illegible. No period of disability was identified.

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<sup>1</sup> Appellant's physician's signature is illegible.

Appellant submitted a verification of treatment dated June 14, 1999 signed by a nurse which contained the diagnosis "Left[-]hand pain" and which indicated by checkmark that appellant was unable to work on June 14, 1999.

By report dated July 8, 1999, Dr. Vetter noted that appellant was seen by him on a single occasion on May 24, 1999 for treatment of a mass probably caused by repetitive gripping while at work. He noted that the mass was 1 x 2 x 1/2 cm associated with the proximal pulley of her left nondominant thumb flexor mechanism. Dr. Vetter opined that any work relationship would be dependent on the diagnosis after surgical excision.

By Form CA-7 dated July 16, 1999, appellant claimed compensation for intermittent periods in May and June 1999.

Appellant filed a Form CA-7, claim for compensation dated August 4, 1999 claiming compensation for June 14, 1999 for 2.98 hours of leave without pay.

On a Form CA-7a, dated August 4, 1999 appellant claimed compensation for intermittent periods between May 24 and June 7, 1999. She claimed 1.78 hours on May 24, 1999, 2.95 hours on May 27, 1999, 2.05 hours on May 28, 1999, 8 hours on both June 1 and 2, 1999 and 3.07 hours on June 7, 1999.

By statement dated August 23, 1999, the Office noted receipt of appellant's Form CA-7, claiming compensation for 2.98 hours on June 14, 1999 and it advised that for disability from work that does not exceed 14 days, there was a three-day waiting period that must be charged before monetary benefits were payable. It noted that June 14, 1999 would constitute one of those days. The Office further noted that time lost from work on June 14, 1999 would not be payable because no medical evidence had been submitted which supported disability from work that day due to the accepted condition of left thumb tendinitis.

On October 25, 1999 appellant filed a Form CA-7b, requesting repurchase of leave used for the absences in May and June.

By letter dated November 2, 1999, the Office advised appellant that there was a three-day waiting period for compensation with disability which did not exceed 14 days, that such days in appellant's case would be May 24, June 7 and June 14, 1999 and that disability for these days would not be payable. The Office advised that the remaining days claimed were not payable as they were not supported by medical evidence documenting disability for work due to her March 1, 1999 left thumb tendinitis.

By decision dated April 3, 2001, the Office rejected appellant's claim for compensation for intermittent periods between May 27 and June 14, 1999, finding that the medical evidence of record did not demonstrate disability for work due to left thumb tendinitis. The Office found that the medical evidence supported disability for work on May 24, June 7 and June 14, 1999, but that disability for these days would not be payable as they were the waiting days for an injury causing disability for less than 14 days.

The Board finds that appellant was not entitled to compensation for disability for intermittent periods between May 27 and June 14, 1999, causally related to her March 1, 1999 employment injury.

Title 5 of the United States Code section 8117 discussed the time of accrual of the right to monetary compensation. It states:

“An employee is not entitled to compensation for the first three days of temporary disability, except --

- (1) when the disability exceeds 14 days;
- (2) when the disability is followed by permanent disability; or
- (3) as provided by sections 8103 and 8104 of this title.”

In this case, appellant presented medical evidence supporting that she was being treated for left upper extremity problems on May 24,<sup>2</sup> June 7<sup>3</sup> and June 14, 1999.<sup>4</sup>

The Office accepted that the evidence submitted regarding appellant’s condition on these dates was sufficient to support disability for work on these dates and counted these days as the three days during the accrual of the right to compensation under 5 U.S.C. § 8117.

In a June 4, 1999 report, regarding appellant’s May 24, 1999 treatment, the physician with an illegible signature opined that appellant was retroactively unable to work from March 25 through 28, 1999 and was partially disabled from March 29 to April 4, 1999, however, these were not dates for which compensation was claimed by appellant. Moreover no rationale was provided supporting that appellant was disabled during these periods due specifically to her accepted March 1, 1999 left thumb tendinitis.

No further medical evidence was submitted to support appellant’s August 4, 1999 claim for compensation for intermittent periods between May 24 and June 14, 1999. As no further medical evidence had been submitted to support appellant’s claimed disability on May 27 or 28 or June 1 or 2, 1999, she has not established her entitlement to compensation for these days.

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<sup>2</sup> However, this treatment was for a nonaccepted left-hand mass rather than for left thumb tendinitis.

<sup>3</sup> This treatment was for a “left[-]hand problem,” the physician’s signature is illegible and no period of disability was noted.

<sup>4</sup> This treatment verification was signed only by a nurse, who is not a physician under the Federal Employees’ Compensation Act, noted that treatment was for “left[-]hand pain” and indicated only by a checkmark that appellant was disabled from work.

Accordingly, the decision of the Office of Workers' Compensation Programs dated April 3, 2001 is hereby affirmed.

Dated, Washington, DC  
February 5, 2002

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member