

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LARRY A. WILLIAMS and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Denver, CO

*Docket No. 01-1161; Submitted on the Record;
Issued September 12, 2002*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant established that he was disabled for intermittent periods from November 12 through December 17, 1999 due to his accepted condition of right lateral epicondylitis.

On November 9, 1999 appellant, then a 52-year-old automation clerk, filed a notice of occupational disease and claim for compensation for pain in his right elbow.

In support of his claim, appellant submitted numerous notes by a physician's assistant at Northwest Family Medicine, PC. In a note dated November 9, 1999, the physician's assistant noted that appellant was unable to work until after he was reevaluated on November 17, 1999. In a note dated November 17, 1999, the physician's assistant noted that appellant was unable to work at the present time and that she would need the recommendation from an orthopedic surgeon before she could make a further determination. On November 19, 1999 the physician's assistant noted that the injury was "definitely aggravated by [appellant's] employment based on the repetitive nature of his job." In a note dated December 1, 1999, the physician's assistant noted that appellant had severe right lateral epicondylitis and was unable to work that week. By note dated December 7, 1999, the physician's assistant returned appellant to limited duty.

In a decision dated March 21, 2000, the Office of Workers' Compensation Programs initially denied appellant's claim for the reason that the medical evidence was not sufficient to establish that the condition was caused by an employment factor or factors. However, on January 13, 2000 the Office received a note dated "January 2, 1999" by Dr. Robert S. Hurlow, a Board-certified family practitioner with Northwest Family Medicine Associates, wherein he indicated, "I have examined [appellant] regarding his elbow problems and agree with the assessment of [the physician's assistant]." Thereafter, on May 10, 2000 the Office accepted appellant's claim for right lateral epicondylitis, noting that the statement by Dr. Hurlow that he agreed with the assessment of the physician's assistant was enough to establish causal relationship.

On October 19, 2000 appellant filed a claim for compensation for intermittent periods between November 11, 1999 and July 10, 2000. The dates that are under consideration at the present time are the dates that appellant listed as having taken “leave without pay.” These dates are November 12, 13, 14 and 15, and December 16 and 17, 1999.

In a letter to claimant dated November 13, 2000, the Office noted that appellant’s recent claim for compensation was being deferred as medical evidence was needed to justify why appellant was off work from November 12 to 15 and December 16 and 17, 1999.

By decision dated December 22, 2000, the Office denied appellant’s claim for benefits for November 12, 13, 14 and 15, and December 6 and 17, 1999 for the reason that the medical documentation did not support that appellant lost time from work due to the accepted injury on these dates.¹

The Board finds that appellant has not established that he was entitled to compensation benefits for November 12, 13, 14 and 15, and December 16 and 17, 1999.

An employee seeking benefits under the Federal Employees’ Compensation Act² has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an “employee of the United States” within the meaning of the Act and that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.³

In the instant case, appellant claims lost compensation for November 12 through 15 and December 16 and 17, 1999. In support thereof, appellant submitted reports by a physician’s assistant with Northwest Family Medicine indicating that appellant was unable to work during the time period of November 12 through 15, 1999. Specifically, the physician’s assistant stated in her note dated November 9, 1999 that appellant was unable to work until after he was reevaluated on November 17, 1999. However, these notes, on their own, have no probative medical value since a physician’s assistant does not qualify as a physician under section 8101 of the Act.⁴ Although notes of a physician’s assistant will be considered probative evidence if cosigned by a physician,⁵ no physician co-signed these notes. Dr. Hurlow’s brief statement that he agreed with the physician’s assistant’s assessment without any further explanation does not amount to a cosigned opinion. Furthermore, Dr Hurlow’s note is not persuasive for the further reason that the note appears to be misdated “January 2, 1999” and the physician’s assistant’s

¹ Although the Office lists December 6, 1999 as one of the dates for which benefits were claimed, this appears to be a typographic error. The actual date listed by appellant is December 16, 1999.

² 5 U.S.C. §§ 8101-8193.

³ *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

⁴ *John H. Smith*, 41 ECAB 444 n.1 (1990).

⁵ See FECA Procedure Manual, Part 3 -- Medical, *Overview*, Chapter 3.100.3(c) (September 1995).

reports do not start until November 9, 1999. For these reasons, appellant has failed to establish that he is entitled to compensation for this period.

Appellant has failed to submit the necessary medical opinion evidence to establish total disability due to his accepted employment condition for the periods he claims. Therefore, he has failed to meet his burden of proof.

The decision of the Office of Workers' Compensation Programs dated December 22, 2000 is hereby affirmed.

Dated, Washington, DC
September 12, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member