

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GERALD R. MCDONALD and U.S. POSTAL SERVICE,  
POST OFFICE, Warrendale, PA

*Docket No. 03-477; Submitted on the Record;  
Issued July 11, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant is entitled to intermittent wage-loss compensation for the period January 9, 1998 to March 16, 2000.

On August 4, 1997 appellant, then a 48-year-old mailhandler, filed a claim for a traumatic injury occurring on July 30, 1997 in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for lumbosacral strain, a right trapezoid strain and an exacerbation of spinal stenosis. Appellant stopped work on June 30, 1997 and returned to limited-duty employment on August 6, 1997.

By decision dated October 30, 1998, the Office terminated appellant's compensation effective October 31, 1998 on the grounds that he had no further employment-related disability.<sup>1</sup> In a decision dated August 17, 1999, the hearing representative set aside the Office's October 31, 1998 termination of compensation after finding a conflict in medical opinion. The Office paid appellant wage-loss compensation for intermittent periods between August 6, 1997 and March 12, 2000.

On June 15, 2000 appellant filed a notice of recurrence of disability beginning May 16, 1999 due to his July 30, 1997 employment injury. Appellant also filed a claim for compensation for intermittent dates from February 28, 1999 to March 24, 2000. In a decision dated October 5, 2000, the Office denied appellant's claim for a recurrence of disability and for wage-loss compensation on October 21 and 22, 1999, and February 11 to 13, 2000. The Office found appellant entitled to compensation on December 11, 18, 23 and 29, 1999, January 26 and 27, 2000 and March 25 and 26, 2000. In a decision dated September 13, 2001, a hearing representative affirmed the Office's October 5, 2000 decision as modified to reflect appellant's entitlement to wage-loss compensation on October 21 and 22, 1999 and February 11 to 13, 2000.

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<sup>1</sup> In a decision dated August 31, 1998, the Office denied appellant's claim for a recurrence of disability beginning November 12, 1997.

On May 2, 2001 appellant requested leave buy back for intermittent dates from January 9, 1998 to March 16, 2000. In a decision dated October 24, 2002, the Office denied appellant's claim on the grounds that the evidence was insufficient to establish that he was disabled from employment on the dates in question.

The Board finds that appellant has established entitlement to wage-loss compensation for time lost from work due to medical appointments on January 30, March 26, May 21 and September 3, 1998 and July 1, 1999; however, appellant has not established entitlement to compensation for the other dates claimed from January 9, 1998 to March 16, 2000.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing the essential elements of his or her claim including the fact that the 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.<sup>3</sup> As used in the Act, the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>4</sup> Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.<sup>5</sup> Whether a particular injury caused an employee disability from employment is a medical issue, which must be resolved by competent medical evidence.<sup>6</sup>

With respect to claimed disability for medical treatment, section 8103 of the Act provides for medical expenses, along with transportation and other expenses incidental to securing medical care, for injuries.<sup>7</sup> Appellant would be entitled to compensation for any time missed from work due to medical treatment for an employment-related condition.<sup>8</sup> However, the Office's obligation to pay for medical expenses and expenses incidental to obtaining medical care, such as loss of wages, extends only to expenses incurred for treatment of the effects of any employment-related condition. Appellant has the burden of proof, which includes the necessity to submit supporting rationalized medical evidence.<sup>9</sup>

The Office properly found that appellant had not submitted any medical evidence sufficient to establish that he was unable to perform his work duties during the periods for which he claimed compensation. Appellant submitted numerous office visit notes from his attending physician, Dr. Joseph K. Eshleman, an osteopath; however, none of the office visit notes address appellant's ability to work on the dates in question. The record is devoid of medical evidence

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *Patricia A. Keller*, 45 ECAB 278 (1993).

<sup>5</sup> See *Fred Foster*, 1 ECAB 21 (1947).

<sup>6</sup> See *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

<sup>7</sup> 5 U.S.C. § 8103(a).

<sup>8</sup> *Vincent E. Washington*, 40 ECAB 1242 (1989).

<sup>9</sup> *Dorothy J. Bell*, 47 ECAB 624 (1996).

pertaining to the following dates for which appellant claimed compensation: January 9, 16, 17, 21, 22 and 31, February 7, 12, 13 and 21, March 7, 11 to 13, 21, 22, 25, 27 and 28, April 3, 12 and 29, May 3, 6, 8, 22 and 29, June 4, 12 and 25, October 1 and November 5, 1998; May 22, June 24, July 29, August 7 and 28, September 16, October 30 and November 26, 1999; January 5 to 15 and 30, February 5, 16, 18 and 26 and March 1, 11 and 16, 2000.

As noted above, however, appellant is entitled to compensation for time missed from work to undergo medical treatment for an employment-related condition.<sup>10</sup> The record reveals that, on January 30, March 26, May 21 and September 3, 1998 and July 1, 1999, Dr. Eshleman examined appellant for back pain. In a report dated October 2, 1998, Dr. Eshleman discussed his treatment of appellant due to his July 30, 1997 employment injury on January 30, March 26, May 21 and September 3, 1998. Dr. Eshleman's October 2, 1998 report is sufficient to establish that appellant underwent medical treatment on the above-listed dates due to his accepted employment injury. Additionally, Dr. Eshleman's July 1, 1999 office visit note is substantially similar to his prior reports found to be related to appellant's employment injury.<sup>11</sup> Appellant, therefore, is entitled to compensation for the time he spent on these days undergoing medical treatment.

The decision of the Office of Workers' Compensation Programs dated October 24, 2002 is affirmed, in part, and set aside in part and the case is remanded to the Office for payment of additional compensation for time lost due to appellant's January 30, March 26, May 21, September 3, 1998 and July 1, 1999 medical examinations.

Dated, Washington, DC  
July 11, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>10</sup> See *Charles E. Robinson*, 47 ECAB 536 (1996).

<sup>11</sup> In his July 1, 1999 office visit note, Dr. Eshleman listed findings on examination and indicated that appellant should continue with his current job duties.