

**United States Department of Labor
Employees' Compensation Appeals Board**

NATASHA TRELEAVEN, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Washington, DC, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 04-669
Issued: July 6, 2004**

Appearances:
Natasha Treleaven, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On January 13, 2004 appellant filed a timely appeal of a merit decision of the Office of Workers' Compensation Programs' hearing representative dated March 31, 2003 which affirmed a prior decision denying her wage-loss compensation for the period April 8 through August 3, 2002, causally related to her accepted right carpal tunnel syndrome. On April 30, 2004 the Board issued an order and remanded the case to the Office for reconstruction and proper assemblage of the case record as it did not contain the March 31, 2003 hearing representative's decision upon which appellant based her appeal. The case record was duly reassembled with a copy of the March 31, 2003 decision and transmitted for a decision by the Board. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue on appeal is whether appellant is entitled to wage-loss compensation for recurrence of disability during the period April 8 through August 3, 2002, causally related to her accepted right carpal tunnel syndrome.

FACTUAL HISTORY

On February 11, 2002 appellant filed an occupational disease claim alleging that on July 10, 2001 she developed carpal tunnel syndrome on the right due to repetitive work duties while working on a DBCS machine. On April 18, 2002 the Office accepted the claim for right carpal tunnel syndrome and authorized release surgery.¹ Appellant stopped work on July 10, 2001. She was released to return to light-duty work on January 11, 2002 and worked intermittently thereafter.

On August 12, 2002 appellant filed a CA-7 claim for wage-loss compensation for the period April 8 through August 3, 2002, as a result of the employment injury. In a letter dated September 20, 2002, the Office advised appellant that the evidence submitted was insufficient to establish that she was disabled for work for the period claimed as a result of her work injury and requested additional evidence.

The record contains a handwritten note dated February 28, 2002 from Dr. Linda Kirilenko, a Board-certified orthopedic surgeon, which indicated that appellant had been a patient of hers since July 20, 2001 and that due to her work injury of July 10, 2001 which caused right carpal tunnel syndrome, intermittent time off had been needed for her recovery. In a progress note dated April 10, 2002, Dr. Kirilenko noted that appellant was seen on that day for follow-up of carpal tunnel syndrome. Dr. Kirilenko noted that she was leaving the medical practice; therefore, appellant had been referred to Dr. Rafik Muawwad for further treatment. Dr. Kirilenko concluded that appellant should “continue in her light-duty capacity at work.”

The record also contains an attending physician’s report dated August 19, 2002 from Dr. Muawwad, a Board-certified orthopedic surgeon, who noted that appellant could return to work on January 11, 2002. He further indicated that she had a period of partial disability from January 11 through September 4, 2002. In an Office note of record dated August 7, 2002, Dr. Muawwad related that appellant had been working light duty and should continue to do so. In an attending physician’s report dated October 23, 2002, Dr. Muawwad noted that appellant would be totally disabled after surgery on November 5, 2002 for eight or nine weeks until January 7, 2003.

By decision dated November 1, 2002, the Office denied the claim for wage-loss compensation from April 8 through August 3, 2002 on the grounds that the medical documentation submitted failed to establish that she was totally disabled from work on the dates claimed. Appellant thereafter requested an oral hearing.

The Office subsequently received a facsimile dated December 10, 2002 from Dr. Muawwad which stated: “[Appellant] is under my care and has been since April 9, 2002. Prior to being my patient, she was under the care of Dr. Kirilenko, who is no longer with our practice as of May 2002. It has been my understanding that [appellant] has been taking intermittent time off when needed.”

¹ The claim was expanded to include left carpal tunnel syndrome on February 27, 2003.

Following an examination of the written record, by decision dated March 31, 2003, an Office hearing representative found that the record did not contain medical documentation which established that appellant was totally disabled on the days that she was off work and therefore affirmed the prior decision.

LEGAL PRECEDENT

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.²

ANALYSIS

In this case, the Office accepted that appellant sustained an employment-related right carpal tunnel syndrome on July 10, 2001. She had various periods of disability, but was released to limited-duty work on January 11, 2002. Appellant claimed compensation for total disability for the periods April 8 to August 3, 2002, due to the July 10, 2001 employment injury.

Dr. Kirilenko, in a handwritten note dated February 28, 2002, indicated that she treated appellant since July 20, 2001 for right carpal tunnel due to the employment injury and noted that appellant had intermittent periods of disability for recovery. This report was dated prior to the claimed period of disability and did not address the claimed period. In another report dated April 10, 2002, Dr. Kirilenko stated that appellant should continue in her light-duty work capacity. These reports do not provide a rationalized medical opinion to explain if in fact appellant was disabled during claimed period related to the accepted condition.

In an attending physician's report dated August 19, 2002, Dr. Muawwad stated that he had released appellant to work on January 11, 2002 noting that her period of partial disability ran from January 11 through September 4, 2002. This report establishes that appellant was only partially disabled during the claimed period of total disability and could perform limited-duty work. Similar to Dr. Kirilenko's note of February 28, 2002, Dr. Muawwad stated on December 10, 2002 that appellant had been "taking intermittent time off when needed" however this report is also deficient in establishing that appellant was totally disabled for the specified time period claimed due to her right carpal tunnel condition. The only time Dr. Muawwad spoke of total disability in reports of record was when he discussed appellant's need for time off work after her scheduled surgery on November 5, 2002. The Board finds that the evidence of record is overall insufficient to establish that appellant was totally disabled for the period in question due to her accepted employment injury of July 10, 2001. Furthermore, as appellant has not alleged and there is no evidence of record that appellant's light-duty work was not available during the

² *Barry C. Petterson*, 52 ECAB 120 (2000).

alleged time period, appellant has not established a recurrence of disability from April 8 through August 3, 2002.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained a work-related recurrence of disability for the period April 8 to August 3, 2002.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 31, 2003 is affirmed.

Issued: July 6, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member