

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

V.M., Appellant

and

**U.S. POSTAL SERVICE, GENERAL MAIL
FACILITY, Jacksonville, FL, Employer**

)
)
)
)
)
)
)
)

**Docket No. 06-1589
Issued: October 17, 2006**

Appearances:

*Ronald S. Webster, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 6, 2005 appellant filed a timely appeal of a June 8, 2006 merit decision of the Office of Workers' Compensation Programs regarding a recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established a recurrence of disability on or after June 29, 2004.

FACTUAL HISTORY

Appellant filed an occupational claim (Form CA-2) on March 18, 2003 alleging that she sustained injuries as a result of her job duties as a distribution clerk. By letter dated March 31, 2003, the Office advised appellant that the claim was accepted for bilateral tennis elbow and left shoulder impingement. It subsequently accepted lateral epicondylitis. Appellant stopped working and received compensation for temporary total disability. She returned to work in a light-duty full-time position on July 9, 2003.

It is not clear from the record whether appellant returned to her regular duties. An attending physician, Dr. Robert Kleinhans, an orthopedic surgeon, indicated in a January 29, 2004 note, that appellant should continue with light duty. In a February 3, 2004 report (Form CA-20), he indicated that appellant was able to “resume regular work” as of January 30, 2004.

On July 6, 2004 appellant submitted a claim for compensation (Form CA-7) from June 29 to July 1, 2004. She indicated that she worked two and one-half hours on June 29, 2004 and was off work June 30 and July 1, 2004. Appellant also filed CA-7 forms for the period commencing August 5, 2004, as she began working only four hours per day.

In a Form CA-20 dated June 30, 2004, an emergency medicine specialist diagnosed bilateral elbow epicondylitis and a right wrist synovitis.¹ The physician checked a box “yes” the conditions were employment related and reported a period of total disability from June 30, 2004 through “to be determined.” In a form report dated August 5, 2004, Dr. Kleinhans stated that appellant’s bilateral epicondylitis was worsening and she should work four hours per day.

By decision dated September 9, 2004, the Office denied appellant’s claim for compensation, finding that she had not established a recurrence of disability as of June 29, 2004.

Appellant requested reconsideration and submitted an undated report from Dr. Kleinhans, who reviewed appellant’s treatment history. Dr. Kleinhans stated that on June 25, 2004 appellant came in complaining of pain in both wrists. He opined that “over the years as a postal worker, (lifting, sorting, grasping and weighing mail), the above conditions are work related. Any sort of repetitive motion would aggravate her symptoms and as a postal worker who takes mail from a utility cart and then bumps postage this is most likely the reason for continued symptoms/problems.” Dr. Kleinhans stated appellant did not have a recurrence; her symptoms were from the original claims and she should continue at four hours per day.

By decision dated February 7, 2005, the Office reviewed the case on its merits and denied modification of the September 9, 2004 decision. Appellant again requested reconsideration and submitted additional evidence. In a June 28, 2005 report, Dr. Richard Curtis, a surgeon, provided results on examination and diagnosed bilateral carpal tunnel syndrome. In a July 28, 2005 report, a psychologist, Dr. Natalie Stamey, provided results on examination and diagnosed mood disorder. By report dated July 28, 2005, Dr. Mark Hoffman, a physiatrist, diagnosed chronic pain syndrome, chronic arm tendinitis/lateral epicondylitis and bilateral carpal tunnel syndrome. None of the physicians provided an opinion regarding disability for work as of June 2004.

By decision dated June 8, 2006, the Office reviewed the case on its merits and denied modification.

LEGAL PRECEDENT

An employee who returns to work and then claims disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial,

¹ The signature of the physician is illegible.

reliable and probative evidence that the disability for which she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.²

A recurrence of disability is defined under the Office's implementing federal regulations as the inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.³

ANALYSIS

Appellant filed a claim for compensation from June 29 to July 1, 2004 and then four hours of disability commencing August 5, 2004. She did not file a notice of recurrence of disability, but she had returned to full-time work and it is her burden of proof to establish an employment-related disability on or after June 29, 2004. The February 3, 2004 form report suggested that appellant could work her regular duties, although there does not appear to be any specific confirmation of a return to regular work.⁴ The Board notes that, if appellant is claiming that the work she performed after her return to work in July 2003 aggravated her condition, this would form the basis for a claim for a new injury.⁵

In this case, appellant did not submit sufficient medical evidence to establish either total disability as of June 29, 2004 or partial disability as of August 5, 2004. The June 30, 2004 form report from the emergency specialist does not provide a complete factual and medical background, nor does it contain a reasoned medical opinion explaining how the disability reported on June 30, 2004 was related to the employment injury. With respect to partial disability commencing August 5, 2004, Dr. Kleinhans stated that appellant should begin working four hours per day because her condition was worsening, but did not provide any additional explanation or medical rationale. He does not discuss appellant's job duties or explain how the employment-related condition had changed such that appellant could not continue to work full time. In his undated report, Dr. Kleinhans noted that appellant reported wrist symptoms on June 25, 2004, but the Office has not accepted any wrist condition as employment related. He referred generally to repetitive activity aggravating appellant's conditions, without discussing specific conditions or explaining the period of time he is referring to regarding the repetitive activity. As noted above, if appellant is claiming her current job duties aggravated her condition, a claim for a new injury should be filed. The Office did accept bilateral tennis elbow, lateral

² *Lourdes Davila*, 45 ECAB 139, 142 (1993).

³ 20 C.F.R. § 10.5(x).

⁴ An employee working light duty has the burden of proof to establish a recurrence of disability by showing either a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the light-duty requirements. *Terry R. Hedman*, 38 ECAB 222 (1986).

⁵ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(2) (May 1997).

epicondylitis and left shoulder impingement; the issue is whether the accepted conditions caused disability for the period claimed.

Appellant did not submit a reasoned medical opinion, based on a complete and accurate background, establishing an employment-related disability from June 29 to July 1, 2004 or commencing August 5, 2004. The Board finds that she did not meet her burden of proof in this case.

CONCLUSION

Appellant did not establish a recurrence of disability on June 29 or August 5, 2004 casually related to her employment injuries.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 8, 2006 is affirmed.

Issued: October 17, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board