

<sup>1</sup> *Cynthia L. Crawford*, Docket No. 01-1872 (issued March 14, 2003).

Board found that the Office properly denied continuation of pay for intermittent dates between February 10 and March 26, 2000. The Board further found that appellant had not established that she sustained a cervical condition due to her February 10, 2000 employment injury and that the Office properly denied her claim for wage-loss compensation after March 27, 2001. The Board determined, however, that the Office improperly terminated appellant's authorization for medical benefits as it did not provide a pretermination notice. The findings of fact and conclusions of law from the prior decision are hereby incorporated by reference.

On June 13, 2003 the Office notified appellant that it proposed to terminate her compensation benefits and authorization for medical treatment on the grounds that she had no further employment-related condition. Appellant challenged the proposed termination and submitted medical reports dated July 4, 2001 to July 31, 2003 from her attending physician, Dr. Linda Singh, a Board-certified internist.

By decision dated November 4, 2003, the Office terminated appellant's compensation and entitlement to medical benefits effective March 27, 2001. On November 17, 2003 appellant requested an oral hearing and submitted additional medical evidence.

In a decision dated September 27, 2004, the hearing representative modified the November 4, 2003 decision to show that it was a termination of medical benefits. The hearing representative determined that the Office's termination of her compensation benefits was redundant given the Board's finding that she was not entitled to compensation after March 27, 2001.

On April 7, 2005 appellant requested compensation for intermittent disability from September 23, 2000 to September 31, 2003. By letter dated April 7, 2005, the Office notified her that it had approved and paid four hours per day of compensation due to medical appointments on January 9 and 12, 2001. Appellant submitted medical evidence dated 2001 to 2003.

By decision dated May 16, 2005, the Office denied appellant's claim for disability compensation from September 23, 2000 through September 30, 2003. The Office noted that except for reports on December 21, 2000 and November 7, 2001 the medical evidence was dated after the termination of her compensation.

On June 8, 2005 appellant, through her attorney, requested an oral hearing; however, she subsequently requested a review of the written record in lieu of an oral hearing. In a decision dated March 1, 2006, an Office hearing representative affirmed the May 16, 2005 decision.

Appellant appealed to the Board. On September 8, 2006 the Board set aside the May 16, 2005 and March 1, 2006 decisions because the case record as assembled appeared to be missing pages.<sup>2</sup> The Board remanded the case for reconstruction of the case record and an appropriate decision.<sup>3</sup>

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<sup>2</sup> In a memorandum dated September 20, 2006, the Office indicated that the record appeared to be missing over 700 pages due to a numbering error by the Clerk of the Board.

<sup>3</sup> Order Remanding Case, Docket No. 06-958 (issued September 8, 2006).

In a decision dated September 21, 2006, the Office denied appellant's claim for compensation from September 23, 2000 through September 30, 2003. The Office noted that it had informed her on April 12, 2005 that she would be paid four hours of compensation for January 9 and 12, 2001. Appellant could not receive compensation for other dates without providing "proof of total disability for the dates claimed prior to the date that [her] compensation benefits were terminated" on March 27, 2001. The Office stated: "Except for work excuses dated December 21, 2000 and November 7, 2001, the medical evidence is for dates after the date that compensation benefits were terminated." The Office also found that the work excuses of December 21, 2000 and November 7, 2001 did not indicate disability from employment.

### **LEGAL PRECEDENT**

The term disability as used in the Federal Employees' Compensation Act<sup>4</sup> means the incapacity because of an employment injury to earn the wages that the employee was receiving at the time of injury.<sup>5</sup> Whether a particular injury caused an employee disability for employment is a medical issue which must be resolved by competent medical evidence.<sup>6</sup> When the medical evidence establishes that, the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in the employment held when injured, the employee is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.<sup>7</sup> The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employee's to self-certify their disability and entitlement to compensation.<sup>8</sup>

In determining whether a claimant has discharged his or her burden of proof and is entitled to compensation benefits, the Office is required by its statute and regulation to make findings of fact. 5 U.S.C. § 8124(a) provides: "The [Office] shall determine and make a finding of facts and make an award for or against payment of compensation." The Office's regulation provides that an Office decision "shall contain findings of fact and a statement of reasons."<sup>9</sup> The Office decision should contain a discussion of the issues, requirements for entitlement, a background framework so that the reader can understand the issues at hand, a discussion of the relevant evidence, a basis for the decision and a conclusion.<sup>10</sup> Office procedures further specifies that a final decision must provide clear reasoning which allows the claimant to "understand the precise defect of the claim and the kind of evidence which would overcome it."<sup>11</sup> Thus, a final

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<sup>4</sup> 5 U.S.C. §§ 8101-8193; 20 C.F.R. § 10.5(f).

<sup>5</sup> *Sean O'Connell*, 56 ECAB \_\_\_\_ (Docket No. 04-1746, issued December 20, 2004).

<sup>6</sup> *Paul E. Thams*, 56 ECAB \_\_\_\_ (Docket No. 04-1019, issued April 26, 2005).

<sup>7</sup> *Id.*

<sup>8</sup> *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>9</sup> 20 C.F.R. § 10.126.

<sup>10</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.4 (March 1997).

<sup>11</sup> *Id.*

decision must include findings of fact and a description of the basis for the findings so that the parties of interest will have a clear understanding of the reasoning behind the decision.<sup>12</sup>

### **ANALYSIS**

Appellant filed a claim requesting compensation for total disability from September 23, 2000 through September 31, 2003 and submitted medical evidence in support of her claim. The Office, in its September 21, 2006 decision, concluded that she failed to establish entitlement to compensation without providing adequate findings of fact or conclusions of law.<sup>13</sup> The Office did not specifically discuss the factual or medical evidence submitted by appellant in support of her claim for compensation except to reference two work excuses dated December 21, 2000 and November 7, 2001. The Office declined to address the medical evidence subsequent to March 27, 2001 because it found that her benefits had been terminated as of that date.<sup>14</sup> Contrary to the Office's finding, however, appellant is not precluded from filing a claim requesting disability compensation after March 27, 2001.<sup>15</sup> Consequently, the Office's basis for denying her claim and failing to fully analyze the evidence of record is incorrect. The case is, therefore, remanded to the Office for an appropriate decision that properly considers the evidence submitted.

### **CONCLUSION**

The Board finds that the case is not in posture for decision.

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<sup>12</sup> *Paul M. Colosi*, 56 ECAB \_\_\_\_ (Docket No. 04-1042, issued February 3, 2005).

<sup>13</sup> 5 U.S.C. § 8124; 20 C.F.R. § 10.126; *Avalon C. Bailey*, 56 ECAB \_\_\_\_ (Docket No. 04-2178, issued December 23, 2004).

<sup>14</sup> In the prior appeal, the Board affirmed the Office's finding that appellant had not established entitlement to compensation after March 27, 2001. The Board noted that she had not filed a claim for compensation after March 26, 2000. *Cynthia L. Crawford*, *supra* note 1.

<sup>15</sup> See generally *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004) (after termination or modification of compensation, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 21, 2006 is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: June 25, 2007  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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