

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

J.E., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
London, KY, Employer**

)
)
)
)
)
)
)
)
)

**Docket No. 08-2356
Issued: June 5, 2009**

Appearances:

Alan J. Shapiro, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

DAVID S. GERSON, Judge

COLLEEN DUFFY KIKO, Judge

JURISDICTION

On August 28, 2008 appellant filed a timely appeal from February 13 and July 23, 2008 merit decisions of the Office of Workers' Compensation Programs' Branch of Hearings and Review. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of appellant's case.

ISSUE

The issue is whether appellant has established that she was entitled to wage-loss benefits intermittently between December 8 and 21, 2007 due to attendance at physical therapy appointments.

FACTUAL HISTORY

Appellant, a 47-year-old rural route carrier, has an accepted occupational disease claim (Form CA-2) for bilateral carpal tunnel syndrome. She first became aware of her condition and its relation to her employment on December 27, 2006. Appellant underwent carpal tunnel

releases on August 7 and October 18, 2007. She returned to work for six hours a day and received compensation for two hours a day.

Appellant submitted a medical treatment note dated November 30, 2007 from Dr. Margaret Napolitano, a Board-certified hand surgeon, who stated that appellant was to continue physical therapy for scar management and strengthening exercises related to bilateral carpal tunnel release. Dr. Napolitano also stated that appellant is to attend physical therapy for right cubital tunnel syndrome and modalities. She asserted that appellant could return to full duty without restrictions on December 3, 2007.

Appellant filed a claim for wage-loss compensation (Form CA-7) for intermittent periods December 8 through 21, 2007. Time analysis (CA-7a form) revealed that appellant claimed .5 hours of leave without pay (LWOP) on December 10 and .5 hours LWOP on December 15, 2007. The record reflects that the claimed LWOP was for physical therapy.

The employing establishment controverted this wage-loss compensation claim.

Appellant submitted no additional medical evidence in support of her wage-loss compensation claim and by letter dated January 3, 2008 the Office notified appellant that the compensation claim forms she submitted were illegible and asked appellant to verify the actual dates she was claiming. Additionally, the Office notified appellant that there was no medical evidence of record to support her attendance of any medical appointments on the dates claimed.

Appellant submitted an illegible medical report signed by Dr. Napolitano, who also submitted a work capacity evaluation, which released appellant to full duty with restrictions concerning the amount of lifting and pulling she could perform as well as requiring she take frequent 15-minute breaks.

Additionally, appellant submitted a physical therapy report, regarding treatment on December 21, 2007 by Mark Lindsay, a physical therapist. The report states that she was referred for physical therapy services with a diagnosis of left thumb carpometacarpal (CMC) osteoarthritis.

By decision dated February 13, 2008, the Office denied appellant's wage-loss compensation claim. Appellant, through counsel, requested a telephonic hearing.

At the hearing appellant testified that she was not working and was receiving compensation on the periodic rolls for a shoulder injury. The Office hearing representative advised appellant that she needed to submit medical evidence identifying the dates of her appointment. Appellant submitted no medical evidence concerning the actual dates of the appointment(s) underlying her compensation claim.

By decision dated July 23, 2008, the Office's Branch of Hearings and Review affirmed the Office's February 13, 2008 decision.

LEGAL PRECEDENT

Under the Federal Employees' Compensation Act,¹ the term disability is defined as an inability, due to an employment injury, to earn the wages the employee was receiving at the time of the injury, *i.e.*, an impairment resulting in loss of wage-earning capacity.² For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.³

The Board will not require the Office to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his disability and entitlement to compensation.⁴

Case law makes clear that an employee is entitled to disability compensation for any loss of wages incurred during the time she receives authorized treatment and for the loss of wages for times spent incidental to such treatment. The rationale for this entitlement is that during such required examinations and treatment and during the time incidental to undergoing such treatment, an employee did not receive his or her regular pay.⁵

ANALYSIS

The Office accepted that appellant sustained bilateral carpal tunnel syndrome in the performance of duty. Appellant submitted a medical treatment note dated November 30, 2007 wherein Dr. Napolitano authorized appellant to continue physical therapy for scar management and strengthening exercises related to her bilateral carpal tunnel release.

The only record pertaining to a physical therapy appointment was the physical therapy report dated December 21, 2007 from Mark Lindsay which did not provide any details regarding the time and length of this appointment.

The Office instructed appellant on several occasions that she would have to substantiate the dates and times of the physical therapy appointments for which she claimed wage loss. It is appellant's burden of proof to establish that she actually missed time from work due to her physical therapy appointments.⁶

¹ 5 U.S.C. §§ 8101-8193.

² See *S.F.*, 59 ECAB ____ (Docket No. 08-426, issued July 16, 2008); *Prince E. Wallace*, 52 ECAB 357 (2001).

³ *Sandra D. Pruitt*, 57 ECAB 126 (2005); *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁴ *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁵ *Henry Hunt Searles, III*, 46 ECAB 192 (1994).

⁶ It is noted that, while the Office's procedure manual provides that no more than four hours of compensation should be allowed for routine medical appointments, longer amounts of time may be allowed when required by the nature of the medical procedure and or/to travel a substantial distance to obtain the medical care. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Administrative Matters*, Chapter 3.900.8 (June 1999).

The Board finds that appellant has not established that she was disabled between December 8 and 21, 2007 causally related to her accepted employment injury.

CONCLUSION

The Board finds that appellant has not established that she was disabled between December 8 and 21, 2007 causally related to her accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the July 23, 2008 decision of the Office of Workers' Compensation Programs' Branch of Hearings and Review is affirmed.

Issued: June 5, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board