

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

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**A.J., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Grand Rapids, MI, Employer**

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**Docket No. 10-2002  
Issued: May 12, 2011**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
ALEC J. KOROMILAS, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On August 3, 2010 appellant filed a timely appeal from a June 8, 2010 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has established intermittent employment-related disability from January 5 to December 27, 2008.

**FACTUAL HISTORY**

The case has been before the Board on prior appeals. By decision dated December 1, 2004, the Board set aside an April 22, 2004 Office decision regarding a recurrence of disability

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

commencing March 9, 2002.<sup>2</sup> In a decision dated May 2, 2008, the Board affirmed an August 14, 2007 Office decision, denying wage-loss compensation from August 21 to November 25, 2006, as appellant had received a schedule award during this period.<sup>3</sup> By decision dated December 16, 2008, the Board found appellant was entitled to wage-loss compensation from April 15 to June 6, 2003, as the medical evidence contained a rationalized medical opinion on disability for this period.<sup>4</sup> By decision dated April 1, 2010, the Board found appellant had not established an employment-related disability from June 7, 2003 to November 6, 2004.<sup>5</sup> The history of the case as provided in the Board's prior decisions is incorporated herein by reference.

On March 6, 2009 appellant submitted a claim for compensation (Form CA-7) dated February 23, 2009, for intermittent dates from January 5 to December 27, 2008. A time analysis (Form CA-7a) provided specific hours totaling 278.21 for the period claimed.

As to the medical evidence of record, there are reports from Dr. Katherine Young, a family practitioner, and Dr. David Krencik, an osteopath, regarding treatment in 2008. In a report dated March 12, 2008, Dr. Young stated that appellant continued to have pain from RSD in her right leg and needed to miss time intermittently when the condition flared up. Dr. Young listed specific dates from January 5 to March 3, 2008 that appellant had missed work. In a report dated June 6, 2008, Dr. Krencik provided results on examination and stated that appellant had good days and bad days. In a September 12, 2008 report, he stated that appellant was stable on her current medication.

In a report dated February 18, 2009, Dr. Young stated that appellant had chronic pain from RSD that was progressively worsening. She stated that she was attaching "a list of missed dates from work as well as hours due to the work-related injury." The record contains a list of dates and hours missed from January 5 to December 27, 2008. In a March 30, 2009 report, Dr. Young stated that appellant would tend to miss time intermittently and the list of dates she had provided "is compatible with her disease and with her management of it."

By decision dated November 20, 2009, the Office denied the claim for intermittent disability from January 5 to December 27, 2008. It found the medical evidence was insufficient to establish the claim.

Appellant requested a telephonic hearing before an Office hearing representative, which was held on March 19, 2010. At the hearing appellant stated that some days she was unable to work due to pain, weakness and muscle spasms in her foot.

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<sup>2</sup> Docket No. 04-1583 (issued December 1, 2004). The record indicated that the Office had accepted an acute right foot contusion on June 11, 2001. Appellant also filed an occupational illness claim on October 11, 2002 for a right foot condition, which has been accepted for lesions of plantar nerve, right foot dorsal aspect injury and reflex sympathetic dystrophy (RSD) of the right foot.

<sup>3</sup> Docket No. 07-2308 (issued May 2, 2008). Appellant received a schedule award for a 38 percent right leg permanent impairment on August 9, 2006. The period of the award was March 20, 2006 to April 24, 2008.

<sup>4</sup> Docket No. 08-671 (issued December 16, 2008).

<sup>5</sup> Docket No. 09-1840 (issued April 1, 2010).

By decision dated June 8, 2010, the hearing representative affirmed the November 20, 2009 Office decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Act<sup>6</sup> has the burden of establishing the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>7</sup> The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.<sup>8</sup>

Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.<sup>9</sup> Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work. When a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that she hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.<sup>10</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 employees to self-certify their disability and entitlement to compensation.<sup>11</sup>

### **ANALYSIS**

The claim at issue in this case is for intermittent dates of disability from January 5 to December 27, 2008. Appellant received a schedule award on August 9, 2006 for a 38 percent permanent impairment to the right leg, covering the period March 20, 2006 to April 24, 2008. As the Board explained in its May 2, 2008 decision, a claimant is not entitled to dual compensation benefits for the same injury, and may not receive compensation for wage loss and a schedule award covering the same period of time.<sup>12</sup> Since appellant received a schedule award through April 24, 2008, she would not be entitled to compensation for the claimed dates from January 5 to April 24, 2008.

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<sup>6</sup> 5 U.S.C. §§ 8101-8193.

<sup>7</sup> *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>8</sup> 20 C.F.R. § 10.5(f); *see e.g.*, *Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury but no loss of wage-earning capacity).

<sup>9</sup> *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>10</sup> *Id.*

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

<sup>12</sup> *See Eugenia L. Smith*, 41 ECAB 409, 412 (1990); *see also* 5 U.S.C. § 8116.

With respect to the period April 25 to December 27, 2008, the medical evidence does not contain a rationalized medical opinion establishing an employment-related disability on the dates claimed. Dr. Young provided a list of dates in 2008 that appellant had “missed” work. Her only explanation for these dates is a general statement that appellant had pain and would intermittently miss time from work due to her work injury. As the Board explained in its April 1, 2010 decision, this type of general listing of missed days at work is of little probative value.<sup>13</sup> There are no results on examination, discussion of appellant’s condition on the dates claimed or a rationalized opinion as to an employment-related disability for the specific dates claimed. It is not enough for a physician to simply confirm that appellant reported being unable to work on certain dates. Appellant has the burden of proof to establish an employment-related disability for the dates claimed, and the Board finds that she did not meet her burden of proof for the dates claimed from April 25 to December 27, 2008.

**CONCLUSION**

The Board finds that appellant did not establish intermittent employment-related disability from January 5 to December 27, 2008.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers’ Compensation Programs dated June 8, 2010 is affirmed.

Issued: May 12, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees’ Compensation Appeals Board

Alec J. Koromilas, Judge  
Employees’ Compensation Appeals Board

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

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<sup>13</sup> In that decision, the Board noted that Dr. Young had provided a list of “missed workdays” in 2003 and 2004, briefly stating that the missed days were due to continuing problems with foot RSD. The Board found this was not sufficient to establish disability for the dates claimed.