U. S. DEPARTMENT OF LABOR

# Employees' Compensation Appeals Board

In the Matter of RONALD RICCA and U.S. POSTAL SERVICE,
POST OFFICE, Waterbury, Conn.

*Docket No. 97-375; Submitted on the Record;*
*Issued October 8, 1998*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof in establishing that intermittent periods of disability in 1992 were causally related to his accepted employment injury.

The Board has duly reviewed the case on appeal and finds that appellant has not met his burden of proof in establishing that intermittent periods of disability in 1992 were causally related to his accepted employment injury.

Appellant filed a notice of occupational disease on August 17, 1992 attributing his neck, left shoulder and arm conditions to factors of his federal employment. The Office of Workers' Compensation Programs accepted appellant's claim for aggravation or precipitation of cervical dorsal spondylosis, cervical radiculopathy and left shoulder impingement bursitis and tendinitis on March 28, 1994. Appellant submitted claims for compensation requesting wage-loss compensation or leave buy back from February 18 to May 2, 1992 and August 1 to 6, 1992. By decision dated April 11, 1995, the Office denied appellant's request for intermittent periods of sick and annual leave as well as leave without pay from February 19 through December 31, 1992.[1] Appellant requested reconsideration on March 18, 1996 and by decision dated June 11, 1996 the Office denied modification of its prior decision.

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the

[1] Specifically, the Office denied sick leave on February 19 to 20; March 18, 27; April 14, 27 to 29; May 2, 21, 30, July 7, 16; August 1, 3 to 5; October 21, 24; November 3, 12; and December 1, 4, 7, 14, 18, 21 to 24, 26, 28 to 31, 1992. The Office denied annual leave on June 8, 27, 30; and July 1, 3, 21 to 22, 25, 27 to 29, 1992 and leave without pay on February 27; March 3 to 5, 9, 17; April 4, 8 to 9, 13; and June 12, 15 to 17, 1992.

[2] 5 U.S.C. §§ 8101-8193.

United States" within the meaning of the Act and that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[3]

In support of his claim for disability, appellant submitted contemporaneous notes and tests. These notes did not provide additional periods of total disability. Dr. R.O. Hillsman, a Board-certified orthopedic surgeon, completed reports on March 6 and 20, April 10 and May 1, 1992 and January 11, 1993. These reports did not provide any periods of total disability and only addressed appellant's partial disability including work restrictions not limitations on the numbers of hours to be worked per day.

In a report dated September 7, 1994, Dr. Hillsman stated that he first examined appellant on March 6, 1992 and that appellant had provided him with a list of dates on which appellant did not work. Dr. Hillsman stated, "I feel, based upon the information available and my review of all medical records, that the patient was, at these times, out of work for the work-related injuries related to his neck and left shoulder." The list of dates included those predating Dr. Hillsman's examination of appellant.

The Board finds that this report is not sufficient to establish appellant's disability due to his accepted employment injury for the dates in question. Dr. Hillsman did not provide his medical records supporting his finding and did not offer any explanation of why appellant would be disabled due to his condition on the specific dates in question.

In a report dated February 8, 1996, Dr. Hillsman again stated that he had reviewed the dates appellant did not work in 1992 and stated, "Each and every time that my patient has claimed a compensable injury, he was under my direct orders when in severe pain to go home, therefore, not to complete his day's work and to take the prescribed medication which I prepared for him." Dr. Hillsman again included copies of the dates claimed for compensation by appellant.

This report is also insufficient to meet appellant's burden of proof as there are no medical notes or records supporting Dr. Hillsman's assertion. Furthermore, Dr. Hillsman did not provide any reasoning explaining how and why he approved appellant's total disability on the dates in question.

As appellant has not submitted the necessary rationalized medical opinion evidence to establish that he was totally disabled on the dates in question in 1992 he has failed to meet his burden of proof and the Office properly denied his claim.[4]

[3] *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

[4] Following the Office's June 11, 1995 decision, appellant submitted additional new evidence, as the Office did not consider this evidence in reaching a final decision, the Board may not review it for the first time on appeal. 20 C.F.R. § 501.2(c).

The decision of the Office of Workers' Compensation Programs dated June 11, 1996 is hereby affirmed.

Dated, Washington, D.C.
October 8, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member