

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ABIGAIL RODRIGUEZ and U.S. POSTAL SERVICE,
INTERNATIONAL SERVICE CENTER, Fort Worth, TX

*Docket No. 98-828; Submitted on the Record;
Issued October 12, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof to establish that she was totally disabled for the period August 3 to November 17, 1997 due to her accepted employment injury.

The Board has duly reviewed the case on appeal and finds that appellant has not met her burden of proof to establish that she was totally disabled from August 3 to November 17, 1997 due to her accepted employment injury.

On August 8, 1997 appellant, then a 31-year-old casual clerk, filed a notice of traumatic injury, (Form CA-1), alleging that on August 3, 1997 she injured her right wrist while lifting a mailbag in the course of her employment duties. Appellant did not return to work and resigned from the employing establishment on August 8, 1997. On November 4, 1997 the Office of Workers' Compensation Programs accepted appellant's claim for a right wrist sprain and hairline fracture of the proximal head of the second metacarpal bone. On November 17, 1997 appellant submitted a Form CA-8 requesting wage-loss compensation for the period August 3 through November 17, 1997. By decision dated December 9, 1997, the Office denied appellant's request for wage-loss compensation for the period requested on the grounds that the medical evidence of record is insufficient to establish that appellant was totally disabled due to her accepted employment injuries.

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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 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

¹ 5 U.S.C. §§ 8101-8193.

duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.²

In support of her claim for disability, appellant submitted an August 3, 1997 medical report, Form CA-16, from a physician, whose signature is illegible, at the Methodist Memorial Hospital. The physician diagnosed right wrist sprain and indicated that appellant was able to return to light work beginning August 3, 1997, but could not lift with her right hand. Appellant also submitted a September 24, 1997 medical report from Dr. Fred B. Thomas, an osteopath, who noted that x-ray studies revealed the presence of a possible hairline fracture of the proximal head of the second metacarpal bone. Dr. Thomas' report did not provide an opinion on appellant's ability to work. Dr. David L. Lewis, an orthopedic surgeon, first examined appellant on September 24, 1997. In a Form CA-20 attending physician's report, Dr. Lewis noted that appellant could not return to work "at this time" and further indicated that she had been disabled beginning August 3, 1997. On a supplemental attending physician's report, Form CA-20a, Dr. Lewis again stated that appellant was not able to return to regular work and indicated by a check mark that appellant's disability for regular work would possibly continue for 90 days or longer. On the section of the form addressing partial disability, Dr. Lewis wrote: "Light duty was not intended to elim[inate] r[igh]t [h]and [and] wrist usage -- pt. indicated."

The Board finds that these reports are not sufficient to establish appellant's disability due to her accepted employment injury for the dates in question. Appellant was released for light duty, with lifting restrictions, on August 3, 1997, the day she injured her wrist. The reports of Dr. Lewis, who first examined appellant on September 24, 1997, are also insufficient to meet appellant's burden of proof as there are no medical notes or records supporting his conclusion. Furthermore, Dr. Lewis did not provide any reasoning explaining how and why he approved appellant's total disability for the period in question.

As appellant has not submitted the necessary rationalized medical opinion evidence to establish that she was totally disabled between August 3 and November 17, 1997 she has failed to meet her burden of proof and the Office properly denied her claim.³

² *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

³ Following the Office's December 9, 1997 decision, appellant submitted additional new evidence both to the Office and the Board. 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 December 9, 1997 is hereby affirmed.

Dated, Washington, D.C.
October 12, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member