

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DOROTHY J. BRIDGES and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Cleveland, OH

*Docket No. 99-1121; Submitted on the Record;
Issued June 6, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's claim for continuation of pay on the grounds that she failed to submit medical evidence establishing that she was totally disabled from June 16 to July 10, 1995.

On June 16, 1995 appellant, then a 38-year-old contract service representative, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that on that date she sustained a bruised and swollen right arm and a slight ache in her right leg when a partition fell and hit her right arm and right leg. On the claim form, Betty Mullins, a witness, noted that when appellant slightly touched the partition with a chair, the partition fell over. On the reverse side of the claim form, appellant's supervisor noted that appellant first received medical care on June 16, 1995 from the federal dispensary health unit and she stopped work on that date.

By letter dated July 7, 1995, the employing establishment controverted appellant's claim under sections 10.201(b) and 10.203(b) of the Office's regulations on the grounds that the medical evidence did not show that she was disabled from June 16 to July 10, 1995, the period for which she sought continuation of pay. The employing establishment alleged that if appellant's condition had been truly disabling, she would have sought medical treatment.

By letter dated July 25, 1995, the Office informed appellant that the evidence of file failed to establish fact of injury. The Office noted the employing establishment's controversion, but stated that appellant's pay would continue until her claim was adjudicated. The Office requested that appellant submit a medical report (Form CA-20) from her examining physician and allowed 30 days for her to respond.

To support her claim, appellant submitted a dispensary permit form dated June 16, 1995, stating that she was injured on that date when a partition fell on her while she sat in a chair. In the medical officer's report portion of the form, it was noted that appellant was examined

by R. Carmon, who diagnosed contusions of the right forearm and thigh. The form indicated that appellant's injury was occupational. Appellant also submitted an undated attending physician's report (Form CA-20) from Dr. Creighton G. Heyl, an osteopath. In his report, Dr. Heyl diagnosed contusions of the right arm and leg. He noted that appellant was totally disabled from June 16 to July 10, 1995 and that he first examined her on July 10, 1995.

By letter dated July 28, 1995, the employing establishment submitted a prescription note from Dr. Heyl dated July 11, 1995, excusing appellant from work June 16 to July 10, 1995. The employing establishment questioned how Dr. Heyl could determine on July 11, 1995 that appellant was disabled from June 16 to July 10, 1995 as his examination of appellant was not contemporaneous with her alleged period of disability. Appellant's leave analysis from May 29, 1994 to July 23, 1995 was entered into the record on August 2, 1995.

By decision dated August 23, 1995, the Office accepted appellant's claim for contusions of the right arm and right leg. However, the Office found that the June 16, 1995 dispensary note, Dr. Heyl's July 11, 1995 prescription note and his undated report were insufficient to support a finding that appellant was disabled from June 16 to July 10, 1995, as Dr. Heyl's examination of appellant was not contemporaneous with the alleged period of disability. To support her claim for continuation of pay, the Office requested that appellant submit additional medical evidence showing that she was disabled from June 16 to July 10, 1995 due to her June 16, 1995 employment injury. The Office also requested that appellant explain why she did not seek treatment prior to July 11, 1995. The Office allowed 30 days for appellant to respond to its request.

By letter dated September 6, 1995, appellant responded to the Office's request for additional information. Appellant asserted that she did not seek medical treatment because of her religious beliefs. She stated that "[t]he body shall heal by prayer."

On August 28, 1995 the employing establishment filed a report of termination of disability and/or payment (Form CA-3) dated July 10, 1995. On the report appellant's supervisor noted that appellant stopped work on June 16, 1995 and returned to work July 10, 1995 and that her regular pay continued from June 16 to July 7, 1995.

By decision dated November 3, 1998, the Office denied appellant's claim for continuation of pay from June 17 through July 9, 1995 on the grounds that the medical evidence of file failed to establish that she was disabled due to her June 16, 1995 employment injury.

On appeal, appellant again asserted that she did not seek medical treatment for her June 16, 1995 employment injury because of her religious and personal beliefs.

The Board finds that the Office properly denied appellant's claim for continuation of pay on the grounds that she failed to submit medical evidence establishing that she was disabled from June 16 to July 10, 1995 due to her June 16, 1995 employment injury.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation established in the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury.²

Disability under the Act generally means inability to earn the wages the employee was receiving when injured.³ Under the Act, the term "disability" means incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of the injury.⁴ Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn the wages.⁵ An employee who has a physical impairment causally related to a federal employment injury, but who nonetheless has the capacity to earn wages she was receiving at the time of injury, has no disability as that term is used in the Act.⁶

The general test in determining loss of wage-earning capacity is whether the employment injury prevented the employee from engaging in the type of work she performed at the time she was injured.⁷ If the employee is unable to perform the required duties of her position at the time she sustained the employment injury, she is disabled and had a loss of wage-earning capacity.⁸ Under the Office's regulations, a claimant is entitled to continuation of pay if she sustains a traumatic job-related injury, files a claim for a period of wage loss within 30 days of the injury and the employee's disability begins within 90 days of the date of the injury.⁹

In this case, the Office accepted appellant's traumatic injury claim and properly found that the medical evidence did not establish that she was disabled and entitled to continuation of pay from June 16, 1995, the date of her employment injury, to July 10, 1995, the day she returned to work. The medical evidence of record, consisting of a June 16, 1995 dispensary permit, Dr. Heyl's undated report and his July 11, 1995 prescription note, failed to establish that appellant's June 16, 1995 employment injury caused disability and loss of wage-earning capacity from June 16 to July 10, 1995. The June 16, 1995 dispensary note did not refer to the period of time for which appellant claimed continuation of pay due to disability and, therefore, is

¹ *Id.*

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *Gregory A. Compton*, 45 ECAB 154, 156 (1993).

⁴ *Maxine J. Sanders*, 46 ECAB 835, 839-40 (1995).

⁵ *See id.* at 840.

⁶ *Id.*

⁷ *See Marvin T. Schwartz*, 48 ECAB 521, 523 (1997).

⁸ *See id.*

⁹ *See* 20 C.F.R. § 10.201(a).

irrelevant. In his undated report, Dr. Heyl noted that appellant was totally disabled from June 16 to July 10, 1995, but he also noted that he did not examine appellant until July 11, 1995. Similarly, Dr. Heyl's July 11, 1995 prescription note excusing appellant from work from June 16 to July 10, 1995 was written subsequent to the period of appellant's alleged disability. Because Dr. Heyl did not examine appellant until after the period of her alleged disability, his medical opinion that she was disabled from June 16 to July 10, 1995 was not contemporaneous with the alleged period of disability. Therefore, it was speculative and of diminished probative value. An award of compensation may not be based on surmise, conjecture, speculation, or upon appellant's belief.¹⁰ Moreover, Dr. Heyl failed to explain why he believed that appellant was disabled, or that her alleged disability was caused by her June 16, 1995 employment injury. As appellant had no disability within the meaning of the Act between June 16 and July 10, 1995, she has no entitlement to continuation of pay for that period.

The decision of the Office of Workers' Compensation Programs dated November 3, 1998 is affirmed.

Dated, Washington, D.C.
June 6, 2000

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

¹⁰ See *William Nimitz, Jr.*, 30 ECAB 567 (1979).