

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of USHA GORRINGE and U.S. POSTAL SERVICE,
POST OFFICE, West Sacramento, CA

*Docket No. 98-1871; Submitted on the Record;
Issued October 17, 2000*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether appellant is entitled to receive disability compensation benefits commencing February 3, 1997 and continuing.

In late 1989, the Office accepted that appellant, then a 41-year-old distribution clerk, sustained employment-related bilateral rotator cuff syndrome, bilateral elbow and wrist tendinitis and thoracic outlet syndrome. Appellant stopped work in June 1989 and later returned to work in a limited-duty position for the employing establishment on a full-time basis.

Based on the recommendations of Dr. Ronald Sockolov, her attending physician who is Board-certified in physical medicine and rehabilitation, the position restricted appellant from lifting more than two pounds, pushing or pulling, reaching above her head, or engaging in repetitive motion. Appellant received appropriate compensation for periods of disability.

By notice of removal dated December 30, 1996, the employing establishment terminated appellant effective February 3, 1997 for unacceptable conduct, failure to follow instructions and exceeding medical restrictions. Appellant stopped receiving disability compensation after February 3, 1997 and claimed that she was entitled to receive such compensation after that date.

By decision dated May 15, 1997, the Office determined that appellant was not entitled to disability compensation after February 3, 1997 because the withdrawal of her limited-duty position was due to her termination for cause and was unrelated to her employment injury or the employing establishment's inability to provide limited-duty work.¹ Appellant requested a hearing, which was held on January 28, 1998. The hearing representative affirmed the Office's decision on March 11, 1998 on the same grounds.

¹ The record also contains a June 1, 1998 decision in which the Office granted appellant a schedule award for a four percent permanent impairment of her right arm and a seven percent impairment of her left arm. Appellant did not appeal this decision and the matter is not before the Board.

The Board finds that appellant is not entitled to receive disability compensation benefits commencing February 3, 1997 and continuing.

Section 8102(a) of the Federal Employees' Compensation Act² sets forth the basis upon which an employee is eligible for compensation benefits. That section provides:

“The United States shall pay compensation as specified by this subchapter for the disability or death of an employee resulting from personal injury sustained while in the performance of duty.”

In general the term “disability” under the Act means “incapacity because of injury in employment to earn the wage which the employee was receiving at the time of such injury.”³ This meaning, for brevity, is expressed as “disability for work.”⁴

In this case, the employing establishment provided limited-duty work for appellant within the work restrictions outlined by Dr. Sockolov, her attending physician. The record contains medical reports, dated in early 1997, in which Dr. Wladislaw Ellis, an attending Board-certified neurologist, provided work restrictions which show that appellant continued to have the capacity to perform her limited-duty position at the employing establishment. Appellant was terminated for cause from the employing establishment effective February 3, 1997.⁵ Employment within appellant's work restrictions would still be available to her if she had not been terminated for cause.

There is no evidence in the record that appellant was terminated due to her physical inability to perform her assigned duties, nor is there evidence that appellant stopped work due to her physical condition. As there is no evidence in the record that appellant was not capable of performing her assigned duties after February 3, 1997, she had no disability within the meaning of the Act and thus is not entitled to compensation.⁶

² 5 U.S.C. § 8102(a).

³ *Gene Collins*, 35 ECAB 544, 548 (1984).

⁴ *Clarence D. Glenn*, 29 ECAB 779, 781 (1978).

⁵ In its December 30, 1996 notice of removal, the employing establishment explained that the violations which led to appellant's termination related to her working 30 hours per week as a certified occupational therapy assistant for a private employer while she worked 40 hours per week for the employing establishment. The employing establishment determined that appellant improperly exceeded her limited-duty work restrictions and failed to fully advise it of her activities. The record contains a November 27, 1996 investigative memorandum with numerous attachments including witness statements regarding appellant's activities.

⁶ See *John W. Normand*, 39 ECAB 1378 (1988). In *Normand*, the employee was terminated for “unofficial use of government property” and “menacing behavior toward a supervisor” rather than for inability to perform his light-duty work at the employing establishment; see also *Lester Covington*, 47 ECAB 539 (1996); *Major W. Jefferson, III*, 47 ECAB 295 (1996).

The decision of the Office of Workers' Compensation Programs dated March 11, 1998 and finalized March 12, 1998 is affirmed.

Dated, Washington, DC
October 17, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member