

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SHERRY L. HURSEY and U.S. POSTAL SERVICE,  
FRIENDSHIP HEIGHTS STATION, Washington, DC

*Docket No. 02-334; Oral Argument Held February 11, 2003;  
Issued April 1, 2003*

Appearances: *Sherry Hursey, pro se; Jim C. Gordon, Jr.,*  
for the Director, Office of Workers' Compensation Programs.

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant was totally disabled from February 25 to April 27, 1999 and March 30 to April 22, 2000, periods for which she elected to buy back leave.

On August 4, 2000 appellant, then a 36-year-old clerk/carrier, filed a claim for an occupational disease for two surgeries on her feet that she attributed to wear and tear due to long hours of standing and walking in her employment.

In a report dated July 26, 2000, Dr. Hallie A. Shuler, a podiatrist, stated that appellant underwent bilateral bunion surgery on February 25, 1999 and that she "went through postoperative course basically unremarkable and on May 12, 1999 patient related that both surgical sites felt better than before surgery. Patient soon after returned to all normal activities including work." Dr. Shuler stated that appellant underwent a revisional cheilectomy at her right first metatarsal on March 30, 2000 and "had an unremarkable postoperative course and has returned to work."

By letter dated September 5, 2000, the Office of Workers' Compensation Programs advised appellant that it had accepted that her bilateral bunionectomies were related to her employment.

On September 13, 2000 appellant filed a claim for compensation for wage loss from February 25, 1999 to April 22, 2000. On February 12, 2001 appellant elected to receive compensation from the Office to repurchase the leave she used from February 24 to April 27, 1999 and from March 30 to April 22, 2000.

By letter dated March 8, 2001, the Office advised appellant, regarding her claim to repurchase leave: "Although there is medical evidence on file to support the period of leave

usage, the [Office] cannot process the claim and pay the employing [establishment] for the leave that you used because the [p]ostal [d]ata [c]enter in Eagan, MN has to certify the claim.”

By letter dated October 24, 2001, the Office advised appellant that additional medical information was needed regarding her claim for leave buy back, as there was no medical evidence to support her absence from work for the periods claimed. The Office requested that appellant submit the surgery reports, the recovery periods for these procedures and reports of physical therapy following the surgeries.

By decision dated November 30, 2001, the Office denied appellant’s claim to repurchase leave from February 25, 1999 to April 27, 2000, on the basis that the evidence was insufficient to establish that she was totally disabled for work.

The Board finds that further development of the evidence by the Office is necessary.

Proceedings under the Federal Employees’ Compensation Act are not adversarial in nature nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation benefits, the Office shares responsibility in the development of the evidence. It has the obligation to see that justice is done.<sup>1</sup>

Appellant underwent surgery on both her feet on February 25, 1999 and a revisional surgery on her right foot on March 30, 2000. These surgeries were approved by the Office as related to appellant’s employment. She claimed compensation for two months following the first surgery and for three weeks following the second surgery.

It is obvious that some period of disability for appellant’s position of carrier/clerk would follow each surgery on her feet. The reports from Dr. Shuler, the podiatrist who performed the surgeries, did not state how long appellant was disabled from work following each surgery. Although the Office advised appellant of the evidence needed, it should have written to Dr. Shuler to request a report addressing the period of disability associated with each surgery.<sup>2</sup> The case will be remanded to the Office for this purpose, other appropriate development it deems necessary and a decision on the periods of disability following appellant’s surgeries.

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<sup>1</sup> *Isidore J. Gennino*, 35 ECAB 442 (1983).

<sup>2</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.5b (April 1993) states: “The quality of attending physicians’ reports will vary greatly. Sometimes reports are lacking in detail because the physician is unaware of the type of information required to meet our needs in a given case. If reports from the claimant’s physician lack needed details and opinion, the CE [claims examiner] should always write back to the [physician], clearly state what is needed and request a supplemental report.” See *Joseph R. Guay*, 35 ECAB 455 (1983) (The Board stated that the Office could not completely disregard reports that lacked sufficient medical rationale and other detail to discharge appellant’s burden of proof and remanded the case to the Office to obtain additional medical evidence).

The November 30, 2001 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to the Office for action consistent with this decision of the Board.

Dated, Washington, DC  
April 1, 2003

Colleen Duffy Kiko  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member