

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CLYDE HOLLISTER, SR. and U.S. POSTAL SERVICE,  
MORGAN PARK STATION, Chicago, IL

*Docket No. 02-2387; Submitted on the Record;  
Issued June 17, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether appellant established his entitlement to wage-loss compensation from August 11 to November 16, 2001.

On September 16, 1997 appellant, then a 52-year-old carrier, filed an occupational disease injury claim alleging that he had developed a torn cartilage in his left knee from delivering the mail.<sup>1</sup> After advising appellant of the need to submit further factual and medical evidence in support of his claim, the Office of Workers' Compensation Programs denied it on December 23, 1997.

Appellant requested reconsideration and submitted medical evidence.<sup>2</sup> On June 24, 1998 the Office accepted the claim for a temporary aggravation of preexisting degenerative joint disease and a torn medial meniscus in the left knee, which required arthroscopic repair. On October 24, 1998 appellant was terminated from his employment for failure to meet the requirements of his position.<sup>3</sup>

On April 25, 2001 the Office referred appellant for a second opinion evaluation to Dr. Julie M. Wehner, a Board-certified orthopedic surgeon. Subsequently, appellant submitted a Form CA-7 requesting wage-loss compensation from August 10 to November 16, 2001.

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<sup>1</sup> Appellant's previous claim filed on January 1, 1990 was accepted for right elbow and back contusions and a right knee medial meniscus tear after he slipped on a snow covered porch and fell down some steps. His physician imposed permanent job restrictions on March 12, 1997.

<sup>2</sup> Appellant also filed a recurrence of disability claim on May 18, 1998, alleging disability from October 29, 1996 until January 8, 1997, which the Office accepted.

<sup>3</sup> The Office paid compensation from October 21, 1997 until October 30, 2000 in the amount of \$78,115.32. Appellant claimed further compensation from October 2000 to August 10, 2001. The Office paid \$12,549.95 for this period.

On December 4, 2001 the Office informed appellant that he needed to submit medical documentation to support his disability for work from August 11 to November 16, 2001 and provided him 30 days to submit such evidence.

On July 15, 2002 the Office informed appellant that it had attempted to return his telephone call but had been unable to reach him. On July 18, 2002 appellant stated that he had called to check on the status of his case, that he had submitted a compensation claim form in November 2001 and had heard nothing further.

On September 9, 2002 the Office denied appellant's claim on the grounds that appellant had submitted no medical evidence to establish work-related disability during the period claimed.

The Board finds that appellant has failed to meet his burden of proof to establish that his disability from August 11 to November 16, 2001 was causally related to his accepted work injuries.

In this case, the Office accepted appellant's claims for work-related injuries to his left knee and paid wage-loss compensation through August 10, 2001. Upon receipt of his Form CA-7 requesting further disability compensation, the Office asked appellant to submit medical evidence supporting his disability for work from August 11 to November 16, 2001. Appellant submitted no medical evidence addressing his disability during this period. The latest medical evidence of record was the May 21, 2001 report of the second opinion physician, Dr. Wehner, who concluded that appellant's morbid obesity was the major contributor of his degenerative arthritis in both knees, which was not related to his work duties.

Simply because the Office accepts a claim and pays compensation for a set period does not establish that appellant is thereafter disabled for work. It is appellant's burden of proof to establish that he was disabled during the periods for which he claims wage-loss benefits.<sup>4</sup> The Office paid wage-loss benefits until August 10, 2001, but appellant submitted no medical evidence establishing employment-related disability during the period claimed. Therefore, appellant has failed to meet his burden of proof.<sup>5</sup>

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<sup>4</sup> See *Donald E. Ewals*, 51 ECAB 428, 434 (2000) (finding that, with a finite period of disability in question, appellant has the burden of proof to establish through medical evidence that the accepted injury prevented him or her from working).

<sup>5</sup> See *Cathy Jo Fossen*, 49 ECAB 654, 656 (1998) (finding that appellant was not entitled to wage-loss compensation after voluntarily changing from a full time to a part-time position because she submitted no evidence showing that she was unable to perform the duties of the former job).

The September 9, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
June 17, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member