

**United States Department of Labor
Employees' Compensation Appeals Board**

BARBARA J. MURPHY, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Memphis, TN, Employer**

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**Docket No. 04-1115
Issued: August 27, 2004**

Appearances:
Barbara J. Murphy, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On March 22, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated January 7, 2004 that denied wage-loss benefits for intermittent periods between October 18, 2000 and June 3, 2002. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3 the Board has jurisdiction to review the merits of this decision.

ISSUE

The issue is whether appellant has met her burden of proof to establish entitlement to wage-loss disability for intermittent periods between October 18, 2000 and June 3, 2002.

FACTUAL HISTORY

On May 30, 2000 appellant, then a 32-year-old postal clerk, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that the dust in her work environment aggravated her sinuses. On July 18, 2001 the Office accepted the claim for allergic rhinitis. On September 5, 2001 appellant was reassigned to a new location. Over the next several months

appellant missed work on several occasions, took leave without pay and later claimed wage-loss benefits for those periods.

The claim has been before the Board on a previous appeal.¹ In an October 17, 2003 decision, the Board remanded the case finding that, while not all the time appellant missed from work was compensable, some short periods of wage loss could be compensable since the medical reports of record were generally supportive of several periods of disability. The Board directed the Office to develop the record to determine whether there were compensable periods of wage loss.

In a November 6, 2003 letter, the Office advised appellant that medical evidence was needed to support her wage-loss claim for the following periods: October 18, 2000 to November 23, 2001; November 24, 2001, 4 hours; November 27 to November 29, 2001; November 27, 2001, 7 hours; December 1 to December 21, 2001; March 16, 2002, 4 hours; March 19 to March 23, 2002; March 30 to April 20, 2002 and April 25 to June 3, 2002.

On December 8, 2003 appellant submitted medical evidence to support her claim for a November 26, 2001 duty status report (Form CA-17) with an illegible physician's signature that indicated she could return to her regular employment. A November 30, 2001 emergency room admission form indicated that appellant sought treatment that day for dizziness and chest pain. A November 30, 2001 duty status form indicated that appellant could not work that day. Appellant also submitted a December 12, 2001 report from Dr. George Treadwell, Board-certified in allergy and immunology, who stated:

“This is one of several letters I have written in reference to [appellant's] problems with her rhinitis and cough that she develops when she was at work. It seems to me that it was pretty clear that it was felt to be in her best interest not to be exposed to irritants, strong scents or fumes, dust etc., and it did not have to be mandated that she be removed from those environments. Clearly [appellant] feels that exposures to work exacerbate her problems. She is well when she is at home and has troubles when she is at work. Our experience has been on two recent occasions that she has returned to work and has gotten acutely ill and has had to go to the emergency room. Thus it would appear to me that it would be in the best interest of the [employing establishment], [appellant] and all involved with her care that she not be exposed to the extremes of temperatures, fumes, irritants and dust. Thus it is mandated on behalf of all of us that she not return to work until those conditions can be met.”

The record also contains a December 5, 2001 duty status form report that indicated appellant should avoid high temperatures and humidity, chemicals and solvents and fumes. On a February 13, 2002 form report, Dr. Treadwell stated that appellant was admitted to the hospital on February 9, 2002 for allergic exposures of unknown origin. Appellant also submitted a May 20, 2002 return-to-work form signed by Dr. Treadwell noting that she was under his care from April 24, 2002 until further notice and contained the comment “discussions of health.” In an April 11, 2002 return-to-work form, Dr. Tammy Hetivy, a specialist in treating allergies,

¹ Docket No. 03-1742 (issued October 17, 2003).

stated that appellant was to remain off work from March 26 to April 21, 2002 due to reactive airways disease.

In a January 7, 2004 decision, the Office denied wage-loss benefits except for four hours on November 24, 2001 and seven hours on November 30, 2001, finding the medical evidence was insufficient to establish disability for the other claimed periods.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of her claim including that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. Whether a particular injury causes an employee disability for employment is a medical issue which must be resolved by competent medical evidence.³ A claimant's burden includes the necessity of submitting rationalized medical opinion evidence which is based on a complete factual and medical background and establishes causal relation.⁴

Fear of future injury is not a compensable factor of employment. This is true even if the employee were to be found medically disqualified to continue in the employment because of the effect which employment factors might have on the underlying condition.⁵

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability for the specific dates in questions. The medical evidence submitted lacks references to specific dates or sufficient explanations of why she could not work on the dates denied by the Office.

The November 26, 2001 duty status form, with an illegible physician's signature, does not support disability as it indicated that appellant could in fact work.

The December 5, 2001 and the May 20, 2002 form reports from Dr. Treadwell do not mention any specific dates or hours of disability or explain why appellant could not work in her duty station. While the December 12, 2001 narrative report generally suggests that appellant should not return to work if she was exposed to irritants, the report does not appear to be based upon an accurate history of the case. Dr. Treadwell's opinion does not address the fact that appellant was transferred from her original work site on September 5, 2001, prior to any of the claimed dates of disability. Furthermore, he noted that appellant should not work if she could sustain further injury. Fear of future injury, however, does not establish disability. Disability is only established if appellant is in fact physically unable to work because of a medical condition.

² 5 U.S.C. § 8101 *et seq.*

³ *Maxine J. Sanders*, 46 ECAB 835 (1995).

⁴ *See Neal C. Evans*, 48 ECAB 252 (1996).

⁵ *Joseph G. Cutufello*, 46 ECAB 285 (1994).

In the February 13, 2002 report, Dr. Treadwell stated that appellant was admitted to the hospital for allergic exposures of unknown origin. He did not offer any medical opinion to establish that the allergic exposures were work related or caused any specific period of disability.

The April 11, 2002 return to work form signed by Dr. Hetivy indicated that appellant could not work from March 26 to April 21, 2002 due to reactive airway disease. That is not an accepted diagnosis. Dr. Hetivy did not explain the relationship between the diagnosis and the accepted condition of rhinitis; nor did he explain, with medical rationale, how the accepted condition would cause or contribute to reactive airway disease. Dr. Hetivy offered no explanation as to why appellant's accepted condition caused disability for work during that period.

CONCLUSION

The Board finds that appellant has not submitted sufficient medical evidence to meet her burden of proof to establish entitlement to wage-loss benefits for the periods in question.

ORDER

IT IS HEREBY ORDERED THAT the January 7, 2004 decision by the Office of Workers' Compensation Programs is affirmed.

Issued: August 27, 2004
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member