

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

GWENDOLYN SIMMONS, Appellant)	
)	
and)	Docket No. 04-475
)	Issued: May 11, 2004
U.S. POSTAL SERVICE, POST OFFICE, Arlington, TX, Employer)	
)	

Appearances:
Gwendolyn Simmons, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On December 15, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated November 24, 2003 denying wage-loss compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she was entitled to wage-loss compensation for the period May 25 to August 23, 2002.

FACTUAL HISTORY

On May 8, 2002 appellant, then a 49-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that her federal employment caused pain in her right arm and thumb. In support her claim, appellant submitted a May 7, 2002 report signed by Angelo Carter, a physician's assistant, who stated that appellant was experiencing an overuse syndrome caused by

continued stress on the grasping muscles of the right forearm and lateral epicondylitis. He noted that any activity that hurts in extending or pronating the wrist should be avoided for six weeks and that the condition was most likely an aggravation of a right forearm injury sustained in 1997. Mr. Carter stated that appellant's restrictions included no twisting, reaching, lifting or keyboarding with her right arm/hand for six weeks; noting that the restrictions will expire on June 18, 2002. In a May 16, 2002 form report, Mr. Carter stated that appellant could work eight hours a day of light duty and would return to unrestricted duty on June 19, 2002.

In a June 3, 2002 letter, the Office advised appellant that she needed to submit medical evidence from a physician as reports from a physician's assistant are not considered medical evidence under the Federal Employees' Compensation Act.

In a June 20, 2003 report, Dr. James Yarmchuk, an orthopedic surgeon, stated that he had treated appellant since April for pain in her right elbow extending down the right arm to her hand. She had been diagnosed with lateral epicondylitis in the past and her current symptoms indicated that she had a recurrence of this disorder. Dr. Yarmchuk noted that appellant was a letter carrier, a position that involved sorting, carrying, lifting, pushing and pulling and he opined that her symptoms were related to her duties as a letter carrier. In a July 3, 2002 form report, Dr. Yarmchuk stated that appellant could work two to four hours a day of light duty and would return to full-time unrestricted duty on August 19, 2002.

In an August 13, 2002 decision, the Office accepted appellant's claim for right lateral epicondylitis.

On August 13 and 16, 2002 appellant requested wage-loss compensation for a total of 345 hours of leave without pay (LWOP) for the period May 25 through July 26, 2002. In letters dated August 30 and September 23, 2002, the Office requested medical evidence establishing disability for the hours she was requesting wage-loss compensation.

In an October 9, 2002 letter, appellant noted that for the period May 25 to July 27, 2002 she had requested light duty but was told none was available and during the period August 12 to 23, 2002 she missed work to attend physical therapy. In a November 15, 2002 letter, Jeff Woodard, the manager of customer service, stated that appellant requested but was denied light duty for injuries that were not, at that time, considered to be work related.

In a November 15, 2002 decision, the Office denied appellant's request for wage loss finding the medical evidence insufficient to establish disability for the hours claimed.

In a January 11, 2003 letter, appellant requested reconsideration and submitted medical evidence as to physical therapy she attended on August 12, 16, 19 and 22, 2002.

In a March 10, 2003 decision, the Office accepted 144 hours of wage loss and expanded the claim to include right cervical radiculopathy and right carpal tunnel syndrome. The remaining hours of wage loss were denied due to insufficient medical evidence.

In a March 31, 2003 letter, appellant requested reconsideration and resubmitted the May 7 and 16, 2002 reports of Mr. Carter that were now cosigned by Dr. Yarmchuk.

In a May 28, 2003 decision, the Office denied appellant's claim, finding the medical evidence insufficient as Dr. Yarmchuk attributed appellant's condition to an aggravation of a prior injury, not the injury of May 7, 2002, and the medical reports did not cover the entire period that LWOP was taken.

Appellant requested reconsideration and submitted medical evidence for treatments received in 2003.

In a September 15, 2003 decision, the Office denied modification finding the medical evidence insufficient to support wage loss for the period requested in 2002.

Appellant again requested reconsideration and submitted medical reports related to her condition in 2003.

In a November 24, 2003 decision, the Office again denied modification finding the medical evidence insufficient.

LEGAL PRECEDENT

An employee seeking benefits under the 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 period of the Act, that an injury was sustained in the performance of duty as alleged, and that any disability for which compensation is claimed is causally related to the employment injury.²

ANALYSIS

In the present case, the Office accepted a right lateral epicondylitis. It is appellant's burden, however, to establish specific periods of disability for intermittent hours of wage loss attributed to the employment injury. The only medical evidence of record that addresses appellant's condition for which wage loss is sought are the May 7 and 16, 2002 reports of Mr. Carter that were cosigned by Dr. Yarmchuk and the physician's June 20, 2002 report. In the May 7, 2002 report, Dr. Yarmchuk stated that appellant was suffering from an overuse syndrome caused by continued stress on the grasping muscles of the right forearm and lateral epicondylitis. He noted that appellant should avoid such activity for six weeks and that the condition is most likely an aggravation of a right forearm injury sustained in 1997. In the May 16, 2002 form report, Dr. Yarmchuk stated that appellant could work eight hours a day of light duty and would return to unrestricted duty on June 19, 2002. In his June 20, 2002 report, Dr. Yarmchuk noted

¹ 5 U.S.C. §§ 8101-8193.

² *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

that appellant had been diagnosed with lateral epicondylitis in the past and that her current symptoms indicated that she had a recurrence of this disorder. Dr. Yarmchuk further noted that appellant's symptoms were related to her duties as a letter carrier. In none of these reports does Dr. Yarmchuk provide a reasoned opinion addressing the specific times at which appellant was totally disabled due to the accepted employment injury. Dr. Yarmchuk attributed appellant's condition to a 1997 injury. There is no medical evidence that explains how an injury in 1997 would be related to her employment in 2002 or cause disability for the claimed period. Absent this explanation, appellant has not met her burden of proof to establish entitlement to wage loss for the period in question.

CONCLUSION

Appellant has not met her burden of proof to establish that she was entitled to wage-loss compensation for the period May 25 to August 23, 2002.

ORDER

IT IS HEREBY ORDERED THAT the decisions by the Office of Workers' Compensation Programs dated November 24, September 15, May 28 and March 10, 2003 are affirmed.

Issued: May 11, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member