



claim was adjudicated by the Office under file number 012007850 and in a decision dated April 23, 2002, the Office denied the claim. Appellant came under the care of Dr. Murray I. Wellner, a Board-certified internist, who, in a May 7, 2002 report, advised that appellant had been treated for the February 2002 back injury for diagnoses of aggravated lumbosacral sprain and left flank contusion. He described her treatment regimen and advised that on April 9, 2002 she had recovered from the injury.

On December 13, 2002 appellant filed a Form CA-2, occupational disease claim, alleging that her work duties resulted in right upper extremity and back pain. She stopped work that day and in an attached statement noted that she had been performing her regular duties as a rural carrier when she suffered severe pain in her right arm, shoulder and back. The Office adjudicated this claim under file number 012013072.

On December 20, 2002 appellant requested reconsideration of the April 23, 2002 decision and submitted a statement in which she described her job duties as a rural carrier which she summarized as standing, bending, lifting, stretching and twisting an average of five to six hours a day while casing mail and then delivering for two hours where she would reach and stretch at each mailbox. Appellant stated that she was required to lift up to 70 pounds. She also submitted a report dated December 13, 2002 in which Dr. Harlan J. Barber, an attending Board-certified internist, noted appellant's multiple complaints including back and right arm pain. On physical examination he noted findings of discomfort with shoulder motion and flexion and lateral bending of the back. The physician provided back restrictions of no bending or lifting greater than two pounds with two hours standing, further advising that she was to sit or stand as comfortable and stated that these restrictions were for the February 2002 back injury. Regarding appellant's right upper extremity, the physician advised that appellant had a possible median nerve compression syndrome and could not use her right hand at work due to a right shoulder and arm strain.

By letter dated January 16, 2003, the Office advised appellant of the type of evidence needed to support her December 20, 2002 claim. In response, she submitted unsigned treatment notes from Dr. Barber dated December 19 and 26, 2002 and January 2, 10 and 24, 2003 in which he continued to provide restrictions to appellant's physical activity for her back and right upper extremity.

In a decision dated February 3, 2003, the Office modified the April 23, 2002 decision and accepted that appellant sustained a left flank contusion and lumbosacral strain on February 14, 2002. On March 25, 2003 appellant accepted a modified rural carrier position but worked only one hour. Occupational and physical therapy were authorized.

Dr. Barber continued to submit reports including a duty status report dated March 10, 2003 in which he advised that appellant could lift and carry zero to seven pounds, sit for three hours, stand for four hours, walk one-half hour, bend and stoop for one and one-half hour, twice for three hours, pull and push for one-half hour, perform simple grasping for six hours and drive for four hours.

Under file number 012007850, the back claim, appellant submitted a series of Form CA-7 claims seeking compensation for the period December 13, 2002 through April 18, 2003.

In a decision dated April 4, 2003, the Office denied that appellant sustained an arm or shoulder injury causally related to employment. Appellant returned to an essentially sedentary position on April 14, 2003.

On April 15, 2003 the Office denied appellant's claims for wage-loss compensation. By letter dated April 21, 2003, appellant stated that she was told to go home by the postmaster when she reported for work on December 16, 2002.

On May 3, 2003 she requested reconsideration of the April 4, 2003 decision and resubmitted the statement in which she described her job duties as a rural carrier. She also submitted an April 24, 2003 report in which Dr. Barber advised that her upper extremity injury was caused by frequent and repetitive arm and wrist movements at work. He again provided restrictions to use of her physical activity. Appellant also submitted magnetic resonance imaging (MRI) scan reports dated March 2, 2003. An MRI scan of the thoracic spine demonstrated multilevel degenerative changes with small disc protrusions and marginal spurs. A lumbar spine MRI scan demonstrated multilevel degenerative disc/endplate changes with disc bulging at L2-3 and no nerve root impingement.

By letter dated May 6, 2003, the Office informed appellant that the evidence of record did not establish that she was totally disabled due to the accepted lumbosacral strain and informed her of the type evidence needed to establish entitlement to wage-loss compensation for the periods claimed. In response she submitted a form report dated May 12, 2003 in which Dr. Barber reiterated his findings and conclusions. In letters dated March 14, May 2 and 20, 2003, the employing establishment challenged appellant's claim for wage-loss compensation. By decision dated June 13, 2003, the Office found the medical evidence insufficient to establish that appellant was entitled to wage-loss compensation for the claimed periods. On June 27, 2003 appellant requested reconsideration and submitted a form report dated January 16, 2003 in which George O'Mara, officer in charge at the employing establishment, noted that no light duty was available for rural carriers and stated that appellant was unable to perform the duties of her position based on the restrictions provided by her doctor.

In a decision dated July 30, 2003, under file number 012013072, the Office accepted that appellant sustained employment-related right shoulder and arm strains. Electromyography was authorized and appellant was advised that she should submit Form CA-7 claims for compensation for wage loss under that claim. She thereafter submitted CA-7 forms for the period December 3, 2002 to February 21, 2003. She also resubmitted the January 16, 2003 form report signed by Mr. O'Mara. In a letter dated August 27, 2003, the Office advised her that wage-loss compensation for the claimed periods had previously been denied under file number 012007850 and, therefore, submission under file number 012013072 was improper.

In letters also dated August 27, 2003, the Office again informed appellant of the type evidence needed to support her claims for wage-loss compensation under claim number 012007850 and requested that the employing establishment respond to appellant's reconsideration request. She submitted a Form CA-7 claim for the period December 14 to 27,

2002 under this claim<sup>1</sup> and the record contains a memorandum of to file dated September 26, 2003, indicating that the injury compensation specialist at the employing establishment advised that full-time light-duty employment was available to appellant. By decision dated October 1, 2003, the Office denied modification of the June 13, 2003 decision, finding the medical evidence insufficient to support any claimed disability or evidence that light duty was not available at the employing establishment.<sup>2</sup>

### **LEGAL PRECEDENT**

Where appellant claims a recurrence of disability due to an accepted employment-related injury, or suitable work is unavailable due to her medical restrictions, he or she has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury. This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury. Sound medical reasoning must support the physician's conclusion.<sup>3</sup>

Under the Federal Employees' Compensation Act,<sup>4</sup> the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in the Act.<sup>5</sup> Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.<sup>6</sup> The test for disability under the Act is whether an employment-related impairment prevents the employee from engaging in the kind of work he or she was doing when injured.<sup>7</sup>

---

<sup>1</sup> Appellant also submitted Form CA-7 claims for compensation for the period July 28 to August 8, 2003 and August 11 to 22, 2003. In a letter dated October 1, 2003, the Office informed appellant of the type of evidence needed to support these claims and she was given an additional 30 days to comply. As the Office has not rendered a final decision regarding these claims, they are not before the Board in the instant case. 20 C.F.R. § 501.2(c).

<sup>2</sup> The Board notes that this decision contains language found in 5 U.S.C. § 8106. It does not appear, however, that this penalty provision was applied in the instant case. On December 9, 2003 appellant filed her appeal with the Board. By order dated May 24, 2004, the Board remanded the case to the Office because it appeared that the record before the Board was incomplete in that the June 13, 2003 decision was not contained in the case record. In a petition for reconsideration dated June 17, 2004, the Office advised that a June 13, 2003 letter contained in the record was the June 13, 2003 decision in its entirety. On June 24, 2004 the petition for reconsideration was granted with the instant appeal going forward.

<sup>3</sup> *Ricky S. Storms*, 52 ECAB 349 (2001).

<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

<sup>6</sup> *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>7</sup> *Corlisa Sims*, 46 ECAB 963 (1995).

## ANALYSIS

In this case, on February 3, 2003 the Office accepted that appellant sustained a left flank contusion and lumbosacral strain and in a separate claim, on July 30, 2003 accepted that her right shoulder and right arm strains were employment related. Under both claims appellant submitted a number of Form CA-7 claims for wage-loss compensation covering the period December 14, 2002 through April 13, 2003, when she returned to limited duty. These claims were denied by the Office and the Board finds this case is not in posture for decision regarding whether appellant is entitled to wage-loss compensation for the periods claimed.

The record indicates that appellant was working full duty when she stopped work on December 14, 2002 and she submitted a number of medical reports from her attending internist, Dr. Barber, who provided restrictions regarding her back until the time she returned to work on April 14, 2003, advising that these work restrictions were due to the February 2002 employment injury. Regarding her shoulder and arm injuries, he provided restrictions until February 7, 2003, again advising that these were due to her accepted injury caused by employment factors of frequent and repetitive arm and wrist movements at work. Specifically, by report dated December 13, 2002, Dr. Barber advised that appellant should not bend or lift greater than two pounds with standing limited to two hours and that she was not use her right hand at work. In a January 2, 2003 report, back restrictions included standing and walking of 6 to 8 hours, bending and squatting to 4 to 6 hours, with a 15-pound lifting restriction and on January 10, 2003 the physician provided a 5-pound right upper extremity lifting restriction with no repetitive pulling or pushing. By report dated January 24, 2003, Dr. Barber advised that appellant could return to full duty on February 7, 2003 regarding her right upper extremity injury. In reports dated January 30, February 10 and March 10, 2003, he reiterated his back restrictions, with the lifting restriction increased to 20 pounds on March 21, 2003. By report dated April 4, 2003, Dr. Barber advised that appellant could work only sedentary duty with little to no standing, walking, bending or squatting and a five-pound lifting restriction. Functional capacity evaluation was recommended.<sup>8</sup>

Regarding the claimed recurrence of her back injury, Office procedures provide that to establish a recurrence of disability after a return to full duty, the evidence must establish that the recurrence of disability is directly related to the original injury.<sup>9</sup> Beginning in December 2002, Dr. Barber provided restrictions regarding appellant's back, which he advised were related to the February 2002 employment injury. While appellant described her job duties as a rural carrier, the case record before the Board does not contain a copy of appellant's job description. Without the necessary description of appellant's job duties, the Board has no way of determining if the

---

<sup>8</sup> An April 22, 2003 functional capacity evaluation indicated that appellant did not have the muscle endurance to perform her regular job duties.

<sup>9</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrent Disability for Work After 90 Days of Return to Duty*, Chapter 2.1500.7(b) (May 1997).

medical evidence submitted by Dr. Barber is sufficient to establish that she suffered a recurrence due to her accepted back condition such that she could not perform her regular job duties.<sup>10</sup>

The Board further notes that, in a letter dated August 27, 2003, the Office informed appellant that she could not claim wage-loss compensation under her upper extremity claim as it had been previously denied under her back claim. The denial of disability benefits based on one accepted condition does not preclude a claimant from establishing entitlement due to a separate accepted condition.<sup>11</sup> The record is replete with reports from Dr. Barber, who continually provided restrictions due to appellant's accepted upper extremity condition. As stated earlier, the test for disability under the Act is whether an employment-related impairment prevents the employee from engaging in the kind of work he or she was doing when injured.<sup>12</sup> Proceedings under the Act are not adversarial in nature, nor is the Office a disinterested arbiter. The Office shares responsibility in the development of the evidence to see that justice is done.<sup>13</sup> As it is not clear from the record whether the restrictions provided by Dr. Barber kept appellant from performing her job,<sup>14</sup> the case must be remanded to the Office. On remand the Office should obtain a description of the job appellant was performing on December 14, 2002 and review the medical evidence of record to determine if any of her accepted conditions prevented her from performing this work for any of the period claimed. In addition, the Office should resolve the discrepancy between Mr. O'Mara, who stated in a January 16, 2003 report that light duty was not available based on the medical restrictions provided by her doctor and the injury compensation specialist, who stated that light-duty work would be found regardless of the employee's position. The resolution of this issue has a bearing on appellant meeting her burden of establishing a recurrence of disability based on the job being no longer available. After such development as the Office deems necessary, a *de novo* decision shall be issued due to medical restriction causally related to the accepted employment injuries.

### CONCLUSION

The Board finds that this case is not in posture for decision regarding whether appellant has established entitlement to wage-loss compensation for the period December 14, 2002 through April 13, 2003.

---

<sup>10</sup> The Board notes that, while the record contains a memorandum indicating light duty was available, Mr. O'Mara, officer in charge at the employing establishment, provided a January 16, 2003 report in which he stated that light duty was not available and appellant was unable to perform her usual duties, based on restrictions provided by her doctor.

<sup>11</sup> See 5 U.S.C. § 8102(a).

<sup>12</sup> *Corlisia Sims*, *supra* note 7.

<sup>13</sup> *Jimmy A. Hammons*, 51 ECAB 219 (1999).

<sup>14</sup> See *Robert Kirby*, 51 ECAB 474 (2000).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated October 1 and June 13, 2003 be vacated and the case remanded to the Office for proceedings consistent with this opinion of the Board.

Issued: November 4, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member