

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

HEIDI L. WYLIE, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Mount Vernon, WA, Employer**

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**Docket No. 04-1669
Issued: November 26, 2004**

Appearances:
Heidi L. Wylie, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On June 21, 2004 appellant filed a timely appeal of the April 9, 2004 nonmerit decision of the Office of Workers' Compensation Programs, which denied her request for reconsideration. Appellant also timely appealed the Office's November 6, 2003 and February 2, 2004 merit decisions. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of appellant's claim.

ISSUES

The issues are: (1) whether appellant sustained a recurrence of disability on April 24, 2003 causally related to her February 10, 2003 employment injury; and (2) whether the Office properly denied appellant's request for a review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On February 24, 2003 appellant, a 35-year-old rural letter carrier, filed an occupational disease claim for injuries to her neck and right shoulder. She identified February 10, 2003 as the

date she first realized her condition was employment related. Appellant did not stop working because the employing establishment provided her light-duty work beginning February 11, 2003. On April 11, 2003 the Office accepted appellant's claim for cervical strain.

On June 30, 2003 appellant filed several claims for compensation (Form CA-7) for wage loss during the period April 19 to June 27, 2003. The employing establishment verified that appellant was off work from April 24 to 30, May 12 to June 16 and June 24 to 26, 2003.

A May 21, 2003 note from appellant's treating physician, Dr. Mark C. Holland, a Board-certified family practitioner, indicated that appellant had cervical radiculopathy and was being considered for surgery by a neurosurgeon. Dr. Holland stated that appellant should stay off work until her June 9, 2003 appointment.

In a June 12, 2003 note, Dr. Holland stated that appellant continued to have right-sided neck and body pain due to pinched nerves. He also indicated that appellant was awaiting further evaluation and she could only perform light clerical work and specifically, no delivery, no mail casing and no repetitive pushing or pulling.

Dr. Holland released appellant to return to limited duty effective June 17, 2003. (R 205). The record indicates that the employing establishment offered appellant a light-duty assignment on June 17, 2003, which she accepted.

Dr. Holland also submitted a July 22, 2003 report wherein he stated that he had referred appellant for a neurological consultation in April 2003 and it was determined that she had definite radiculopathy and foraminal narrowing in the cervical region. He reported that surgery was not a consideration at that time. Instead, appellant was recommended to undergo physical therapy and consult with a physiatrist. Dr. Holland further stated that the May 2003 physical therapy and cervical traction provided minimal improvement. He noted that appellant was off work for a period of time in May and as long as she did not work her symptoms improved.

On August 22, 2003 the Office denied appellant's claim for compensation for the period April 19 to June 27, 2003.

Appellant requested reconsideration and she submitted an August 27, 2003 report from Dr. Holland, who explained that appellant participated in a charity function on May 10, 2003, which was a very long day for her. He further stated that on May 12, 2003 appellant was referred for physical therapy and she began traction and treatments and she remained off work until June 17, 2003. Dr. Holland explained that appellant was unable to work because of her underlying condition and also the pain and discomfort associated with the traction treatments.

By decision dated November 6, 2003, the Office denied modification of the August 22, 2003 decision. Although the Office denied compensation for total disability for the period April 19 to June 27, 2003, it paid wage-loss compensation for medical treatment appellant received on April 29 and 30, May 21, June 9, 16 and 24, 2003.¹

¹ The Office also paid wage-loss compensation for additional dates after June 24, 2003.

On October 31, 2003 appellant filed another Form CA-7 for a total of 14.2 hours of lost wages on October 22 and 23, 2003. And on December 15, 2003 appellant filed a Form CA-7 for 21.3 hours of lost wages from December 8 to 10, 2003.

In support of her claim, appellant submitted an October 22, 2003 report of examination from Dr. Stacia A. Smith, an orthopedic surgeon. Appellant also submitted December 9, 2003 treatment notes from Dr. Smith. Additionally, in a December 10, 2003 note, Dr. Holland stated that appellant was unable to work from December 8 to 10, 2003 due to her cervical condition.

In a decision dated February 2, 2004, the Office denied appellant's claim for compensation for October 22 and 23 and December 8 to 10, 2003. Appellant requested reconsideration and, by decision dated April 9, 2004, the Office denied appellant's request for reconsideration.

LEGAL PRECEDENT

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.² This term also means an inability to work when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.³

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position, or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden of establishing by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the employment-related condition or a change in the nature and extent of the light-duty job requirements.⁴

ANALYSIS

Appellant stopped work on April 24, 2003 due to pain, noting that she had a pending doctor's appointment on April 29, 2003. While appellant received medical treatment on April 29 and 30, 2003, for which she was compensated by the Office, there is no medical evidence supporting appellant's absence from April 24 to 28, 2003. She returned to work on May 1, 2003 performing limited duty and she continued to work in that capacity through May 10, 2003.

² 20 C.F.R. § 10.5(x) (1999).

³ *Id.*

⁴ *Barry C. Peterson*, 52 ECAB 120, 125 (2000); *Terry R. Hedman*, 38 ECAB 222 (1986).

Appellant claimed 7.1 hours of wage-loss compensation on May 12, 2003 to attend a doctor's appointment and from May 13 to June 16, 2003 she claimed temporary total disability based on her doctor's orders to remain off work.

In his August 27, 2003 report, Dr. Holland stated that on May 10, 2003 appellant had a very long day participating in a charity function. He also indicated that on May 12, 2003 she was referred for physical therapy and began traction and treatments and remained off work until June 17, 2003. According to Dr. Holland, appellant was unable to work because of her underlying condition and also due to the pain and discomfort associated with the traction treatments.

There is evidence that appellant participated in physical therapy on May 5 and 7, 2003; however, there is nothing to support Dr. Holland's assertion that appellant participated in physical therapy and received traction treatments on May 12, 2003. Dr. Holland stated that appellant was unable to work because of her underlying condition, but he did not adequately explain how appellant's condition changed such that she was no longer able to perform her light-duty assignment. In his May 21, 2003 note, he stated that appellant had cervical radiculopathy and was being considered for surgery and that she should remain off work until the June 9, 2003 neurosurgical consult. Despite the fact that the May 2003 physical therapy and cervical traction reportedly provided minimal improvement, Dr. Holland returned appellant to limited-duty work effective June 17, 2003. Again, Dr. Holland neglected to explain how appellant's reported cervical condition precluded her from performing her light-duty assignment from May 13 to June 16, 2003. Medical reports that lack adequate rationale are entitled to little probative value.⁵

Appellant also claimed wage-loss compensation for June 25 and 26, 2003. She received medical treatment on June 24, 2003, for which she was compensated; however, there is no medical evidence to justify appellant's absence on June 25 and 26, 2003.

Appellant has not alleged a change in the nature and extent of her light-duty assignment and the medical evidence does not establish a change in the nature and extent of her accepted condition. Accordingly, appellant failed to establish that she sustained a recurrence of disability beginning April 24, 2003.

With respect to appellant's claimed wage loss for October 22 and 23 and December 8 to 10, 2003, the Board finds that appellant is entitled to compensation for October 22 and December 9, 2003. The record establishes that Dr. Smith treated appellant for her accepted condition on October 22 and December 9, 2003. An employee is entitled to disability compensation for loss of wages incidental to treatment for an employment injury.⁶ There is no evidence that appellant was either disabled or received medical treatment for her employment injury on October 23, 2003. Additionally, while Dr. Holland's December 10, 2003 note indicated that appellant was unable to work from December 8 to 10, 2003 due to her cervical

⁵ *Jimmie H. Duckett*, 52 ECAB 332, 336 (2001).

⁶ *Daniel Hollars*, 51 ECAB 355, 356-57 (2002); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computing Compensation*, Chapter 2.901.16(a) (December 1995).

condition, he did not provide an explanation for his disability finding. Consequently, the December 10, 2003 disability note is of limited probative value.⁷

CONCLUSION

The Board finds that appellant failed to establish that he sustained a recurrence of disability on April 24, 2003 causally related to her February 10, 2003 employment injury. The Board further finds that appellant is entitled to wage-loss compensation for medical treatment she received on October 22 and December 9, 2003. The Office's February 2, 2004 decision is modified to reflect appellant's entitlement for the above-noted dates. In all other respects, the February 2, 2004 decision is affirmed as modified.⁸

ORDER

IT IS HEREBY ORDERED THAT the November 6, 2003 decision of the Office of Workers' Compensation Programs is affirmed. The Office's February 2, 2004 decision is affirmed as modified.

Issued: November 26, 2004
Washington, DC

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ *Jimmie H. Duckett, supra* note 5.

⁸ Given the Board's disposition with respect to the Office's February 2, 2004 decision, the issue of whether the Office properly denied reconsideration of that decision on April 9, 2004 is moot.