

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

---

**REBECCA K. FULLER, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Birchleaf, VA, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 05-604  
Issued: May 23, 2005**

*Appearances:*  
*Rebecca K. Fuller, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chairman  
COLLEEN DUFFY KIKO, Member  
DAVID S. GERSON, Alternate Member

**JURISDICTION**

On January 6, 2005 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated November 26, 2004, denying her claim for leave buy back for the period December 16, 2002 to March 5, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the November 26, 2004 decision as well as merit decisions dated August 11 and May 27, 2004.

**ISSUE**

The issue is whether appellant established that she had employment-related disability between December 16, 2002 and March 5, 2003.

**FACTUAL HISTORY**

On October 24, 2003 appellant, then a 51-year-old postmaster, filed an occupational disease claim alleging that beginning on September 2, 2003 she developed carpal tunnel syndrome due to the repetitive motions involved in her job such as sorting and boxing mail. The Office accepted her claim for aggravation of preexisting bilateral carpal tunnel syndrome.

Appellant underwent surgery on her left hand on April 16, 2004 and right hand surgery on June 16, 2004.

In a Form CA-20, attending physician's report, dated March 25, 2004, Paula Meade, a nurse practitioner, diagnosed carpal tunnel syndrome and indicated that appellant was disabled between December 16, 2002 and March 5, 2003.

On March 26, 2004 appellant filed a claim for compensation (leave buy back) for 306 hours of sick and annual leave used during the period December 16, 2002 to March 5, 2003, indicating that her disability was due to her September 2, 2003 employment injury.

By decision dated May 27, 2004, the Office denied appellant's claim for compensation for the period December 16, 2002 to March 5, 2003 on the grounds that the evidence did not establish that her disability for that period was causally related to her September 2, 2003 work-related aggravation of bilateral carpal tunnel syndrome.

On July 8, 2004 appellant requested reconsideration.

In a January 12, 2004 report, Dr. John L. Holbrook, a Board-certified orthopedic surgeon, stated that electrical tests of appellant's wrists were consistent with bilateral carpal tunnel syndrome. He did not mention the period December 16, 2002 to March 5, 2003.

By decision dated August 11, 2004, the Office denied modification of its May 27, 2004 decision on the grounds that the evidence failed to establish that her disability between December 16, 2002 and March 5, 2003<sup>1</sup> was causally related to her accepted September 2, 2003 employment injury.

Appellant requested reconsideration and submitted additional evidence.

In a report received by the Office on September 24, 2004, Dr. John M. Chandler, a Board-certified orthopedic surgeon, indicated that he examined appellant for pain and numbness in the right shoulder and arm and pain in both thumbs. He stated that she was concerned that her job was causing the pain. Dr. Chandler provided his impression of osteoarthritis with mild thumb arthritis and stated that appellant's work aggravated her symptoms on occasion.

In an undated report received by the Office on November 4, 2004, Jacqueline Peterson, a registered nurse, indicated that, although appellant first reported her condition as occurring on September 2, 2003, her progression of pain began five years previously. She did not mention the claimed period of disability, December 16, 2002 to March 5, 2003.

By decision dated November 26, 2004, the Office denied modification of its prior decisions on the grounds that the evidence did not establish that appellant was disabled between December 16, 2002 and March 5, 2003 due to her work-related aggravation of preexisting bilateral carpal tunnel syndrome.

---

<sup>1</sup> The Board notes that the Office erroneously indicated in its August 11, 2004 decision that appellant claimed compensation through March 16, 2003.

## LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden to establish the essential elements of her claim. When an employee claims that she sustained an injury in the performance of duty, she must submit evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. She must also establish that such event, incident or exposure caused an injury.<sup>3</sup>

Appellant has the burden of proving by the preponderance of the reliable, probative and substantial evidence that she was disabled for work as the result of an employment injury.<sup>4</sup> Monetary compensation benefits are payable to an employee who has sustained wage loss due to disability for employment resulting from the employment injury.<sup>5</sup> Whether a particular employment injury causes disability for employment and the duration of that disability are medical issues which must be proved by a preponderance of reliable, probative and substantial medical evidence.<sup>6</sup>

In situations where compensation is claimed for periods where leave was used, the Office has the authority and the responsibility to determine whether the employee was disabled during the period for which compensation is claimed.<sup>7</sup> The Office determines whether the medical evidence establishes that an employee is disabled by an employment-related condition during the period claimed for leave buy back, after which the employing establishment will determine whether it will allow the employee to buy back the leave used.<sup>8</sup>

## ANALYSIS

In the January 12, 2004 report, Dr. Holbrook stated that testing of appellant's wrists was consistent with bilateral carpal tunnel syndrome. However, he did not mention the claimed period of disability, December 16, 2002 to March 5, 2003. Therefore, his report is not sufficient to discharge appellant's burden of proof.

In her March 25, 2004 report, Ms. Meade, a nurse practitioner, diagnosed carpal tunnel syndrome and indicated that appellant was disabled between December 16, 2002 and

---

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Joseph W. Kripp*, 55 ECAB \_\_\_ (Docket No. 03-1814, issued October 3, 2003); *Walter D. Morehead*, 31 ECAB 188 (1979) (occupational disease or illness).

<sup>4</sup> *David H. Goss*, 32 ECAB 24 (1980).

<sup>5</sup> *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

<sup>6</sup> *Edward H. Horten*, 41 ECAB 301 (1989).

<sup>7</sup> *Laurie S. Swanson*, 53 ECAB 517 (2002); *see also* 20 C.F.R. § 10.425, which provides in part: "The employee may claim compensation for periods of annual and sick leave which are restorable in accordance with the rules of the employing [establishment]. Forms CA-7 and CA-7b are used for this purpose."

<sup>8</sup> *Laurie S. Swanson*, *supra* note 7.

March 5, 2003. In an undated report received by the Office on November 4, 2004, Ms. Peterson, a registered nurse, indicated that appellant's pain began five years previously. Reports from a nurse or nurse practitioner are of no probative value on the issue of causal relationship under the Act. A "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by state law and chiropractors only to the extent that their reimbursable services are limited to treatment of a subluxation as demonstrated by x-ray to exist.<sup>9</sup> Lay individuals such as physician's assistants, nurse practitioners and social workers are not competent to render a medical opinion.<sup>10</sup> Therefore, the reports from the nurse and nurse practitioner in this case are not sufficient to establish that appellant sustained a work-related disability between December 16, 2002 and March 5, 2003.

In the report received by the Office on September 24, 2004, Dr. Chandler diagnosed osteoarthritis and indicated that appellant's work sometimes aggravated her symptoms. However, he did not mention the claimed period of disability, December 16, 2002 to March 5, 2003. Therefore, his report is not sufficient to establish that appellant had a work-related disability during that period.

### **CONCLUSION**

The Board finds that the evidence does not establish that appellant had any employment-related disability between December 16, 2002 and March 5, 2003.

---

<sup>9</sup> 5 U.S.C. § 8101(2).

<sup>10</sup> See *Robert J. Krstyen*, 44 ECAB 227 (1992).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated November 26, August 11 and May 27, 2004 are affirmed.

Issued: May 23, 2005  
Washington, DC

Alec J. Koromilas  
Chairman

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member