

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

A.G., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Birmingham, AL, Employer)

Docket No. 06-882

Issued: September 15, 2006

Appearances:

A.G., pro se

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge

MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 8, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated July 26 and December 21, 2005, denying her claim for wage-loss compensation for intermittent dates of disability. 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 established that her disability on intermittent dates between April 8, 1991 and September 6, 2001 was causally related to her April 6, 1991 employment injury.

FACTUAL HISTORY

This case was previously before the Board. By decision dated May 6, 2005, the Board remanded the case for further development.¹ The May 6, 2005 Board decision is incorporated by reference herein. On November 16, 2001 appellant, then a 42-year-old mail processor, filed an occupational disease claim alleging that on April 6, 1991 she developed asthma, bronchitis and

¹ Docket No. 04-777 (issued May 6, 2005).

sinusitis due to her job. The Office accepted appellant's claim for bronchitis, aggravation of asthma and a nasal infection.

On September 9, 2002 appellant filed a claim for compensation for intermittent dates of disability between April 8, 1991 and August 4, 2001.

By decision dated July 11, 2003, the Office denied appellant's claim for compensation for disability on intermittent dates between April 8, 1991 and July 5, 2001. It stated that a total of 682 hours of lost pay had been accepted for certain dates between April 8, 1991 and August 1, 2001 because those dates were supported by medical evidence that reflected the time lost from work was the direct result of her accepted respiratory conditions. The remainder of the dates claimed were not accepted by the Office because the medical evidence did not support that those disability dates were a direct result of her accepted medical conditions. By decision dated December 11, 2003, the Office denied appellant's request for reconsideration.

By letter dated June 16, 2005, the Office advised appellant that, in response to the Board's May 6, 2005 decision, it had issued a check for \$1,810.55 which represented payment for 152 intermittent hours of lost wages on the following dates: June 27, 1995, August 8 to 9, 1996, April 24 and June 22 to 25, 1998, November 16, 2000, February 2 to 8, 20 and 22, and August 21 and September 5 to 6, 2001. It noted that, although the July 11, 2003 decision indicated that payment had not been paid for March 31 and July 26, 2001, a review of the record revealed that payment had been issued to appellant for those dates, resolving the discrepancy noted in the Board's May 6, 2005 decision. The Office asked appellant to provide medical evidence for all remaining unpaid dates listed in a copy provided of its July 11, 2003 decision. It also requested that she provide medical documentation for 72 hours of compensation received for the following dates: April 16, 1996, February 15, 1997, December 28, 1998, March 1 to 4, April 2 and June 17, 1999.² The Office indicated that it had erred in issuing payment for these dates because appellant had not submitted adequate medical documentation. The Office noted that her accepted work-related conditions included bronchitis, aggravation of asthma and a nonspecific nasal infection.

In reports dated January 30 and August 22, 2002, Dr. Calvin R. Shaffer, an attending Board-certified family practitioner, stated that he had treated appellant for asthma and numerous other medical conditions. He described appellant's 14-year history of respiratory problems which had necessitated many medical office visits. Dr. Shaffer indicated that he was writing to confirm dates of disability presented to him in a list by appellant. However, he did not mention any specific dates of disability, nor did he indicate on the list of dates provided by appellant the specific dates on which she was disabled due to her accepted respiratory conditions.³

By decision dated July 26, 2005, the Office noted that it paid appellant \$1,810.55 for 152 intermittent hours of lost wages on the following dates: June 27, 1995, August 8 to 9, 1996, March 24⁴ and June 22 to 25, 1998, November 16, 2000, February 2 to 8, 20 and 22, and

² The Office indicated a date of June 27, 1999 but the correct date is June 17, 1999.

³ The Board notes that Dr. Shaffer's reports were previously of record.

⁴ The record indicates that the date should be April 24, 1998, not March 24, 1998.

August 21 and September 5 to 6, 2001. The Office denied payment for the remaining claimed dates of disability on the grounds that the medical evidence did not establish that her disability was causally related to her accepted respiratory conditions.

Appellant requested a review of the written record. By decision dated December 21, 2005, an Office hearing representative affirmed the July 26, 2005 decision.

LEGAL PRECEDENT

To establish a causal relationship between appellant's condition and any attendant disability claimed and the employment event or incident, she must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such causal relationship. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁵

Appellant has the burden of proof to establish her disability for each period claimed. The Board will not require the Office to pay compensation for disability in the absence of medical evidence directly addressing the particular period of disability. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.⁶

ANALYSIS

Appellant claimed compensation for intermittent dates between April 8, 1991 and September 6, 2001 as causally related to her April 6, 1991 employment injury. In the May 6, 2005 decision, the Board remanded the case for the Office to address certain discrepancies in the July 11, 2003 decision regarding dates of disability claimed.

The Board finds that the Office has addressed the discrepancies noted in the May 6, 2005 decision regarding the dates of disability claimed by appellant.⁷ The Office stated that on June 16, 2005, although its July 11, 2003 decision indicated that payment had not been paid for March 31 and July 26, 2001, a review of the record revealed that payment had, in fact, been issued to appellant for those dates.

The Office paid appellant for dates previously denied for which the medical evidence indicated that she was seen for rhinitis and sinusitis, June 27, 1995, April 24 and June 22 and 25, 1998, and February 2 to 8 and August 21, 2001. The Board had noted a discrepancy in that the Office had accepted certain other dates when appellant was seen for these two conditions.

⁵ *Gloria J. McPherson*, 51 ECAB 441 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

⁶ *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁷ As noted, the Board's May 6, 2005 decision is incorporated by reference herein.

Regarding the discrepancy, the Office asked appellant to provide medical documentation for the previously accepted dates, April 16, 1996, February 15, 1997, December 28, 1998, March 1 to 4, April 2 and June 17, 1999. Appellant provided no medical documentation for the remaining dates of claimed disability listed in the Board's May 6, 2005 decision for which the medical documentation was the same as for April 16, 1996, February 15, 1997, December 28, 1998, March 1 to 4, April 2 and June 17, 1999.

CONCLUSION

The Board finds that appellant has not established her disability for intermittent dates was causally related to her accepted respiratory conditions.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated December 21 and July 26, 2005 are affirmed.

Issued: September 15, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board