United States Department of Labor
Employees' Compensation Appeals Board

Y.A., Appellant	)	
and	)	**Docket No. 07-799**
	)	**Issued: July 19, 2007**
U.S. POSTAL SERVICE, MIAMI MAIL PROCESSING CENTER, Miami, FL, Employer	)	

Appearances:
Appellant, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 31, 2007 appellant filed a timely appeal from a November 2, 2006 merit decision of the Office of Workers' Compensation Programs which denied her claim for wage-loss compensation and leave buy-back. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this case.

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish that she was totally disabled for the period October 17, 2005 to January 23, 2006; and (2) whether the Office properly denied her request for leave buy-back for October 3 and 4, November 18 and December 8, 2005.

FACTUAL HISTORY

On October 30, 2005 appellant, then a 36-year-old mail processing clerk, filed a Form CA-2, occupational disease claim, alleging that pain from her neck down was caused by work activities. She stopped work on October 17, 2005 and returned to limited duty on

November 9, 2005. In support of appellant's claim, she submitted a September 26, 2005 computerized tomography scan of the lumbar spine which demonstrated a possible central herniated disc at L3-4, a bulging annulus at L4-5 and mild associated central stenosis at L3-4. In reports dated October 31, 2005, Dr. Rene J. Garcia, Board-certified in family medicine, diagnosed back pain and lumbar radiculopathy and advised that appellant could return to work that day. He provided restrictions to her physical activity of lifting 0 to 10 pounds with one to two hours of walking, standing, sitting, stooping, kneeling and repeated bending with no climbing. A November 8, 2005 magnetic resonance imaging scan of the lumbar spine demonstrated disc herniations at L3-4 and L5-S1. In a November 14, 2005 report, Dr. Garcia advised that appellant could work from one to two hours, depending on her symptoms.

By letter dated November 21, 2005, Raymond Martin, supervisor of distribution operations, controverted the claim. He noted that appellant had been employed for four years and described the physical requirements of her job, stating that as a clerk in the flats distribution area she was required to sort mail from tubs weighing approximately 10 to 15 pounds containing approximately 15 to 20 pieces of mail. On December 8, 2005 the Office accepted that appellant sustained an employment-related displaced lumbar intervertebral disc.

On July 27, 2006 appellant filed a claim for compensation for the period December 9, 2005 to January 23, 2006 and also requested leave buy-back for this period. On August 3, 2006 she filed a claim for compensation and leave buy-back for the period October 3 to December 8, 2005. Appellant submitted medical evidence including reports from Dr. Garcia dated October 6 and 12, 2005 in which he advised that she had been under his care since October 3, 2005 and could work limited duty beginning October 11, 2005 with no lifting greater than 10 pounds or pulling or pushing heavy objects until after a neurosurgical evaluation. On an Office Form CA-17 dated October 31, 2005, Dr. Garcia provided restrictions that appellant could not lift greater than 10 pounds intermittently and could work between one to two hours of intermittent sitting, standing, walking, kneeling, bending/stooping, twisting, pulling/pushing, simple grasping and reaching above her shoulder with no climbing or fine manipulation. On the CA-17 form, the employing establishment provided information that 70 pounds of frequent lifting was required and that the position was for eight hours a day. In a report dated November 14, 2005, Dr. Garcia advised that appellant could work from one to two hours daily, depending on her symptoms. On February 1, 2006 appellant saw Dr. Luis R. Pagan, a Board-certified neurosurgeon, who noted findings on examination, diagnosed a disc dislocation without radiculopathy and degenerative disease of the lumbosacral spine. Dr. Pagan provided restrictions to her physical activity.[1]

By decision dated November 2, 2006, the Office denied entitlement to wage-loss compensation for the period October 3, 2005 to January 23, 2006 and for leave buy-back for October 3 and 4, November 18 and December 8, 2005.

[1] Dr. Pagan continued to submit reports that are not relevant to the time period of the claimed compensation and leave buy-back in this case.

LEGAL PRECEDENT -- ISSUE 1

Under the Federal Employees' Compensation Act[2] the term "disability" is defined as incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.[3] Disability, is thus not synonymous with physical impairment which may or may not result in an incapacity to earn the wages. An employee who has a physical impairment causally related to a federal employment injury but who nonetheless has the capacity to earn wages he or she was receiving at the time of injury has no disability as that term is used in the Act[4] and whether a particular injury causes an employee disability for employment is a medical issue which must be resolved by competent medical evidence.[5] Whether a particular injury causes an employee to be disabled for work and the duration of that disability, are medical issues that must be proved by a preponderance of the reliable, probative and substantial medical evidence.[6]

The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.[7]

LEGAL PRECEDENT -- ISSUE 2

Office regulation, effective January 4, 1999, stated: "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."[8]

ANALYSIS -- ISSUES 1 & 2

The Board finds this case is not in posture for decision. Appellant filed an occupational disease claim on October 30, 2005 that was accepted by the Office for displaced lumbar disc on December 8, 2005. She subsequently filed claims for compensation and leave buy-back for periods beginning October 3, 2005 through January 23, 2006. Her family physician, Dr. Garcia, advised that she was under his care beginning October 3, 2005 and could return to limited duty on October 11, 2005 for 1 to 2 hours daily work with a lifting restriction of 10 pounds. He continued to advise that appellant should work this restricted schedule until she was seen by a neurosurgeon. Appellant did not begin working limited duty until November 9, 2005.

[2] 5 U.S.C. §§ 8101-8193.

[3] *See Prince E. Wallace*, 52 ECAB 357 (2001).

[4] *Cheryl L. Decavitch*, 50 ECAB 397 (1999); *Maxine J. Sanders*, 46 ECAB 835 (1995).

[5] *Donald E. Ewals*, 51 ECAB 428 (2000).

[6] *Tammy L. Medley*, 55 ECAB 182 (2003); *see Donald E. Ewals, supra* note 5.

[7] *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

[8] 20 C.F.R. 10.425; *see Glen M. Lusco*, 55 ECAB 148 (2003).

Mr. Martin, an employing establishment supervisor, stated that appellant had to lift tubs weighing 10 to 15 pounds. It is unclear, however, if this describes her regular job or the limited duty she began on November 9, 2005. Office CA-17 forms found in the record indicate that appellant was required to lift up to 70 pounds and was to work eight hours a day. Furthermore, the Board has long held that an employee is entitled to disability compensation for any loss of wages incurred during the time he or she receives authorized treatment and for loss of wages for time spent incidental to such treatment.[9] The record does not include a job description of either appellant's regular job as a mail processing clerk or of the light-duty job she began working on November 9, 2005 or when this position became available to appellant. There is, therefore, no way for the Board to determine if appellant was physically capable of performing either position, based on Dr. Garcia's recommendations or if light duty within his recommendations was available. The case must, therefore, be remanded to the Office to obtain the necessary job descriptions and determine if appellant is entitled to either/or wage-loss compensation or leave buy-back for the claimed periods.

CONCLUSION

The Board finds that this case is not in posture for decision regarding whether appellant is entitled to wage-loss compensation or leave buy-back for the period October 3, 2005 through January 23, 2006.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 2, 2006 be vacated and the case remanded to the Office for proceedings consistent with this opinion of the Board.

Issued: July 19, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

[9] *See Lawrence A. Wilson*, 51 ECAB 684 (2000).