

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

C.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Coppell, TX, Employer**

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**Docket No. 07-117
Issued: June 18, 2007**

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 October 17, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated July 20, 2006 denying her wage-loss claim and an August 21, 2006 nonmerit decision denying her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant is entitled to wage-loss benefits for intermittent disability from April 1 to June 4, 2006; and (2) whether the Office properly denied her request for merit review under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On August 10, 2002 appellant, then a 47-year-old clerk, filed an occupational disease claim alleging that the repetitive keying of 8 to 10 hours per day over a six-year period caused pain to radiate down her arms to her fingers. The Office assigned the case File Number 162043040. It accepted the conditions of bilateral carpal tunnel syndrome and bilateral lesion of

the ulnar nerve. Appellant underwent right carpal tunnel release on April 22, 2003; right cubital tunnel release on June 17, 2003; left carpal tunnel release on October 3, 2004 and left cubital tunnel release on December 23, 2003. She received compensation benefits for all appropriate periods of disability. Appellant returned to limited-duty work on December 29, 2005. By decision dated October 20, 2004, the Office issued schedule awards for 10 percent left arm impairment and 2 percent right arm impairment.

On June 5, 2006 appellant filed a Form CA-7, claim for compensation for intermittent periods from January 22 to June 4, 2006. In a June 15, 2006 time analysis form, the employing establishment indicated that appellant was claiming compensation for 64.19 hours of leave without pay (LWOP). This was comprised of eight hours LWOP for January 22, 24, 26, April 1 and May 9, 2006; 4.09 hours LWOP for May 12, 2006; 4.10 hours LWOP for May 25, 2006; and 16 hours total LWOP for the period June 1 and 4, 2006.

Medical records forms were received from appellant's attending physician, Dr. Olayinka Ogunro, a Board-certified orthopedic hand surgeon, dated April 19 and May 10, 2006, diagnosed bilateral de Quervain's disease, left worse than right. In a March 31, 2006 certificate, Dr. Ogunro advised that appellant was to continue with her current restrictions but noted that she might need to occasionally take time off from work due to severe wrist pain and motion loss. In a May 10, 2006 certificate, Dr. Ogunro requested that appellant be excused from May 5 and 8, 2006 due to pain. He advised that appellant was scheduled for left wrist surgery June 30, 2006.

In a letter dated June 20, 2006, the Office informed appellant that it was unable to process her claim for compensation as medical evidence establishing her disability for work during the period claimed was required.¹ Appellant was accorded 30 days to submit the requested information for the claimed dates of disability.

Appellant submitted reports dated May 31 and June 27, 2006 from Dr. Ogunro. On the June 27, 2006 Dr. Ogunro advised that appellant was seen on April 1, 22, 24 and 2 and May 9, 2 and 25 and June 1 through 4, 2006. He also advised that surgery was pending.

By decision dated July 20, 2006, the Office denied appellant's claim for wage-loss compensation for the period of April 1, 22, 24 and 26; May 9, 12, and 25; and June 1 to 4, 2006 on the basis that the medical evidence failed to establish that she was totally disabled on these dates. The Office noted that appellant was receiving compensation for total disability under a different claim.²

On July 25, 2006 appellant requested reconsideration of the Office's July 20, 2006 decision. In an undated letter, received on October 16, 2006 appellant advised the Office that her wage-loss claim was for her de Quervain's disease. A duplicate copy of Dr. Ogunro's June 27,

¹ The Office noted that Dr. Ogunro indicated a work stoppage for May 5 and 8, 2006. However, as appellant did not claim such dates on her CA-7/7a forms, it was unable to pay those dates.

² Claim No.162103125 was accepted for bilateral radial styloid tenosynovitis. While the record contains some indication that the Office sought to double claim No. 162103125 into claim No. 162043040, the record before the Board does not contain claim No. 162103125.

2006 certificate for work form was provided. Physical therapy notes and chart notes from Dr. Ogunro which postdate the dates claimed for wage-loss compensation, were also received.

By decision dated August 21, 2006, the Office denied appellant's request for reconsideration.

LEGAL PRECEDENT -- ISSUE 1

For each period of disability claimed, the employee has the burden of proving that he or she was disabled for work as a result of the accepted employment injury.³ As used in the Federal Employees' Compensation Act, the term "disability" means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁴ Disability is thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.⁵ 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.⁶ The Board will not require the Office to pay compensation in the absence of medical evidence directly addressing the particular period of disability for which compensation is sought. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.⁷

With respect to claimed disability for medical treatment, section 8103 of the Act provides for medical expenses, along with transportation and other expenses incidental to securing medical care for injuries.⁸ Appellant would be entitled to compensation for any time missed from work due to medical treatment for an employment-related condition.⁹ However, the Office's obligation to pay for medical expenses and expenses incidental to obtaining medical care, such as loss of wages extends only to expenses incurred for treatment of the effects of any employment-related condition. Appellant has the burden of proof which includes the necessity to submit supporting rationalized medical evidence.¹⁰

³ *William A. Archer*, 55 ECAB 674 (2004).

⁴ *Patricia A. Keller*, 45 ECAB 278 (1993); 20 C.F.R. § 10.5(f).

⁵ See *Fred Foster*, 1 ECAB 21 (1947).

⁶ *Fereidoon Kharabi*, 52 ECAB 291 (2001); see also *Edward H. Horton*, 41 ECAB 301 (1989).

⁷ *Sandra D. Pruitt*, 57 ECAB ____ (Docket No. 05-739, issued October 12, 2005); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, *supra* note 10.

⁸ 5 U.S.C § 8103(a).

⁹ *Vincent E. Washington*, 40 ECAB 1242 (1989).

¹⁰ *Dorothy J. Bell*, 47 ECAB 624 (1996); *Zane H. Cassell*, 32 ECAB 1537 (1981).

ANALYSIS -- ISSUE 1

Appellant filed claims for wage-loss compensation alleging that she was intermittently disabled for work from April 1 through June 4, 2006. However, she did not submit any probative medical evidence demonstrating total or partial disability for this period of time due to her accepted conditions.

In a June 27, 2006 certificate, Dr. Ogunro indicated that appellant was seen on the dates she claimed. However, he did not address whether she was totally or partially disabled due to her accepted conditions or what medical services were rendered on these dates. Dr. Ogunro failed to offer an opinion on whether appellant was disabled due to her accepted conditions. Therefore, his report lacks probative value.¹¹ There also is no clear indication if any time was lost from work due to treatment for the accepted conditions and the record does not contain progress reports from examinations on the dates claimed. Dr. Ogunro's chart note of May 31, 2006 did not address whether appellant was disabled. Therefore, this report is of diminished probative value.¹² There is no other probative medical evidence of record which addresses whether appellant was disabled on the dates claimed or explaining that she lost time from work due to treatment for her accepted conditions. Appellant has failed to submit sufficient rationalized medical opinion evidence to establish that she was unable to work on the days claimed. She has failed to establish that she was disabled and, thus, is not entitled to wage-loss compensation for the intermittent days claimed. Appellant has not established her claim for intermittent wage-loss compensation during the period April 1 to June 4, 2006.

LEGAL PRECEDENT -- ISSUE 2

The Act¹³ provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision. The employee may obtain this relief through a request to the district Office. The request, along with the supporting statements and evidence, is called the application for reconsideration.¹⁴

The application for reconsideration must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.¹⁵

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meet at least one of these standards. If

¹¹ See Sandra D. Pruitt, *supra* note 7.

¹² *Id.*

¹³ 5 U.S.C. § 8101 *et seq.*

¹⁴ 20 C.F.R. § 10.605.

¹⁵ 20 C.F.R. § 10.606.

reconsideration is granted, the case is reopened and the case is reviewed on its merits.¹⁶ Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.¹⁷

ANALYSIS -- ISSUE 2

In her request for reconsideration, appellant did not allege or demonstrate that the Office erroneously applied or interpreted a specific point of law, nor advance a relevant legal argument not previously considered by the Office. The Board finds that appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).¹⁸

Appellant also failed to satisfy the third requirement under section 10.606(b)(2). She did not submit any relevant and pertinent new evidence not previously considered by the Office. Appellant resubmitted the June 27, 2006 certificate of Dr. Ogunro. However, this evidence was previously of record and considered by the Office. It is well established that evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.¹⁹

The Board finds that the Office properly determined that appellant was not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied her request for reconsideration.

CONCLUSION

The Board finds that appellant has not established entitlement to wage-loss benefits for intermittent periods of disability from April 1 to June 4, 2006. The Board further finds that the Office properly denied appellant's request for merit review.

¹⁶ *Donna L. Shahin*, 55 ECAB 192 (2003).

¹⁷ 20 C.F.R. § 10.608.

¹⁸ 20 C.F.R. § 10.606(b)(2).

¹⁹ See *Helen E. Paglinawan*, 51 ECAB 591 (2000).

ORDER

IT IS HEREBY ORDERED THAT the August 21 and July 20, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 18, 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