

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

A.D., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Cleveland, OH, Employer**

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**Docket No. 07-1125
Issued: November 14, 2007**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 19, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' hearing representative's decision dated January 4, 2007 affirming a May 24, 2006 decision which denied his claim for compensation for intermittent periods 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 had intermittent disability for the periods March 21 and 22, April 4 and 7, May 23, September 3, 11, 12, 18, 23, 24 and 25 and October 1, 3 and 22, 2005.

FACTUAL HISTORY

This case was previously on appeal.¹ In an August 12, 2005 decision, the Board found that appellant failed to establish that he sustained a change in the nature and extent of the injury-related condition or in his light-duty job requirements on October 14, 2003. The Board found that appellant did not establish intermittent disability due to his accepted carpal tunnel syndrome. It also found that he had not submitted medical evidence which established a recurrence of disability as of that date. The facts of the case, as set forth in the prior decision, are incorporated by reference.

Appellant subsequently filed several Form CA-7, claims for compensation for intermittent dates of disability on March 21, 22, April 4, 7, May 23, September 3, 11, 12, 18, 23, 24, 25, October 1, 3 and 22, 2005.

In a March 7, 2005 treatment note, Dr. Timothy Morley, an osteopath, noted that he was going to request a bilateral carpal tunnel release for appellant. He discussed appellant's work restrictions."

Appellant underwent a right carpal tunnel release on April 15, 2005 which was performed by Dr. Robert Anschuetz, a Board-certified orthopedic surgeon, who submitted treatment notes from April 21 to June 2, 2005. Dr. Anschuetz advised that appellant was given a "letter for the time that he has been off work." In his May 17, 2005 treatment notes, Dr. Anschuetz indicated that appellant was working using "only his left hand."

In a May 12, 2005 report, Dr. Morley indicated that appellant had swelling and pain in his right hand and conducted a physical examination which revealed a decreased grip strength. He noted that he had discussed appellant's work situation and updated his restrictions. In a treatment note dated May 26, 2005, Dr. Morley advised that appellant had headaches and neck pain. In an accompanying May 26, 2005 work slip he indicated that appellant was seen in the office on May 26, 2005 and should remain off work on March 22, April 2, May 20 and 23, 2005. Dr. Morley advised that appellant was incapacitated on these dates due to his bilateral carpal tunnel syndrome.

By letter dated May 31, 2005, the Office advised appellant that additional documentation was needed to support his claim for intermittent periods of disability from March 21 to April 7, 2005.

In a June 9, 2005 report, Dr. Morley indicated that appellant complained of pain, swelling and numbness and tingling of the right hand. He noted that appellant had a "previous surgery" for which he were seeking "approval."

By letters dated June 15, 2005, the Office advised appellant and his physician, that a disability slip was not sufficient to support wage-loss compensation. It requested a rationalized opinion to support disability for the dates claimed.

¹ Docket No. 04-1814 (issued August 12, 2005).

In an August 4, 2005 treatment note, Dr. Morley noted that appellant was “still having all kinds of problems with the hands.” He discussed appellant’s work situation” and that he had “updated the restrictions.” In a September 26, 2005 report, Dr. Morley indicated that appellant was continuing to work with restrictions.

In an October 4, 2005 report, Dr. Morley indicated that appellant complained of severe pain of both hands radiating up his arms. On October 18, 2005 he advised that appellant returned and had moderate amounts of pain. In a disability certificate also dated October 18, 2005, Dr. Morley indicated that appellant was incapacitated due to bilateral carpal tunnel syndrome and should be off work on October 17, 2005. In an October 18, 2005 duty status report, he provided restrictions for appellant and indicated that he was able to work as his condition allows.

The record reflects that appellant returned to a modified mail handler position on October 24, 2005.

By letter dated October 26, 2005, the Office advised appellant that additional evidence was needed to support his request for compensation from September 3 to October 22, 2005.

By decision dated May 24, 2006, the Office denied appellant’s claim for intermittent compensation for the period March 21 to 22, April 4, 7, May 23, 2005 and from September 3 to October 22, 2005. The Office found that the medical evidence was insufficient to support that appellant was disabled or that he was examined by a physician on the dates claimed.

By letter dated May 29, 2006, appellant’s representative requested a hearing which was held on November 6, 2006.

In a January 4, 2007 decision, an Office hearing representative affirmed the May 24, 2006 decision and denied wage-loss compensation on March 21, 22, April 4, 7, May 23, September 3, 11, 12, 18, 23, 24 and 25 and October 1, 3 and 22, 2005.

LEGAL PRECEDENT

A claimant seeking benefits under the Federal Employees’ Compensation Act² has the burden of proof to establish the essential elements of his claim by the weight of the evidence,³ including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.⁴

² 5 U.S.C. §§ 8101-8193.

³ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

⁴ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

As used in the Act, the term “disability” means incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury.⁵ When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in her employment, he is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.⁶ 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.⁷

Whether a particular injury causes an employee to become 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 evidence.⁸ Generally, findings on examination are needed to justify a physician’s opinion that an employee is disabled for work.⁹ The Board has held that when a physician’s statements regarding an employee’s ability to work consist only of a repetition of the employee’s complaints that he or she hurt too much to work, without objective signs of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.¹⁰ While there must be a proven basis for the pain, pain due to an employment-related condition can be the basis for the payment of compensation.¹¹ The Board, however, 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.¹²

ANALYSIS

The Office accepted that appellant sustained carpal tunnel syndrome due to the repetitive use of his hands and wrists in the performance of his mail handling duties. Appellant filed a claim for compensation alleging that he was disabled on March 21, 22, April 4, 7, May 23, September 3, 11, 12, 18, 23, 24, 25 and October 1, 3 and 22, 2005. He has the burden of proof to establish his disability on the dates claimed.

⁵ *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.5(f).

⁶ *Bobby W. Hornbuckle*, 38 ECAB 626 (1987).

⁷ *See Lawrence A. Wilson*, 51 ECAB 684 (2000).

⁸ *Edward H. Horton*, 41 ECAB 301 (1989).

⁹ *See Dean E. Pierce*, 40 ECAB 1249 (1989); *Paul D. Weiss*, 36 ECAB 720 (1985).

¹⁰ *John L. Clark*, 32 ECAB 1618 (1981).

¹¹ *Barry C. Peterson*, 52 ECAB 120 (2000).

¹² *Fereidoon Kharabi*, 52 ECAB 291 (2001).

In letters dated May 31, June 15 and October 26, 2005, the Office advised appellant that the medical documentation submitted failed to establish that he was totally disabled for work during and requested medical evidence to establish his disability for work. Appellant submitted several reports from Dr. Morley. In a May 26, 2005 disability certificate, Dr. Morley indicated that appellant should remain off work on March 22, April 2, May 20 and May 23, 2005. He advised that he was incapacitated on these dates due to his bilateral carpal tunnel syndrome. However, Dr. Morley did not provide any medical rationale to explain why such disability was necessitated by the accepted injury.¹³ He did not fully address whether he had examined appellant on those dates. The Board notes that appellant underwent surgery on April 15, 2005. In reports dated March 7, May 12, 26 and June 9, 2005, Dr. Morley noted that appellant experienced pain as well as swelling, numbness and tingling of the right hand. He recommended a bilateral carpal tunnel release and updated appellant's work restrictions. In reports dated October 4 and 18, 2005, Dr. Morley indicated that appellant complained of severe pain of both hands radiating up his arms and that he could work as his condition allowed. The Board finds that these reports are of limited probative value on the issue of disability as Dr. Morley did not indicate that appellant was disabled from work due to his employment injury.

Dr. Morley also provided treatment notes dated August 4 and September 26, 2005. However, these reports do not support disability as he noted that appellant was "continuing to work with restrictions." In a disability certificate dated October 18, 2005, Dr. Morley indicated that appellant was incapacitated due to bilateral carpal tunnel syndrome and should remain off work on October 17, 2005. However, appellant did not claim compensation for this date. Furthermore, he did not provide any rationale as to the cause of appellant's disability. This is especially important in light of his report of October 18, 2005 advising that appellant could work as his condition allowed.

Appellant also submitted reports from Dr. Anschuetz, which included his April 15, 2005 operative report and treatment notes from April 21 to June 2, 2005. Although Dr. Anschuetz noted that appellant was given a letter for the time that he had been off from work, the Board finds that he did not provide a rationalized opinion addressing whether appellant was disabled on the dates claimed. Furthermore, he noted that on May 17, 2005 appellant was working using only his left hand. Dr. Anschuetz has not presented medical rationale supporting a basis for payment of compensation.

The record contains other reports; however, they do not address whether the periods of disability that appellant claims are due to the accepted employment injury. There also is no evidence that appellant received authorized medical treatment on any of the claimed dates of disability and that he incurred wage-loss incidental to undergoing such treatment.¹⁴ The record also contains reports from physical therapists. However, health care providers such as physical

¹³ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

¹⁴ See *supra* note 8.

therapists are not physicians under the Act. Thus, their opinions on causal relationship do not constitute rationalized medical opinions and have no weight or probative value.¹⁵

As appellant has submitted no other evidence supporting disability during the period claimed, he has not met his burden of proof to establish entitlement to compensation.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish his claim for intermittent disability for the periods March 21, 22, April 4, 7, May 23, September 3, 11, 12, 18, 23, 24, 25, October 1, 3 and 22, 2005.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs' hearing representative dated January 4, 2007 is affirmed.

Issued: November 14, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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

¹⁵ *Jan A. White*, 34 ECAB 515, 518 (1983).