

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

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I.M., Appellant)	
)	
and)	Docket No. 07-1174
)	Issued: October 9, 2007
U.S. POSTAL SERVICE, SACRAMENTO)	
PERFORMANCE CLUSTER,)	
West Sacramento, CA, Employer)	
_____)	

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
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 27, 2007 appellant filed a timely appeal from a December 26, 2006 merit decision of the Office of Workers' Compensation Programs which denied her claim for wage-loss compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she was totally disabled for the period October 18 to November 24, 2006.

FACTUAL HISTORY

On May 24, 2006 appellant, then a 43-year-old part-time flexible (PTF) clerk, sustained an injury when the "U" cart she was pushing, which contained five feet of flats, fell down jerking her hands and arms. She stopped work May 24, 2006 and returned to modified duty May 25, 2006. The Office accepted the claim for cervical strain and bilateral shoulder sprains.

Appellant under went physical therapy. A June 14, 2006 cervical spine x-ray revealed limited disc degeneration and spondylosis at C5-6 and C6-7. A July 19, 2006 magnetic resonance imaging (MRI) scan revealed mild degenerative disc disease at C4-5, C5-6 and C6-7 with no lateralizing disc disease or clear-cut effect on the nerve roots. On September 1, 2006 appellant accepted a modified assignment working six hours a day. The modified assignment consisted of three hours of work as a distribution clerk which involved distributing letters and casing box letters and three hours of work as a sales service associate which involved retail, transactions, window service and account mail duties.

In a September 26, 2006 report, Dr. David Hilburn, a Board-certified family practitioner, advised that appellant continued to experience pain. He diagnosed chronic neck pain, secondary to cervical degenerative disc disease, along with neck strain and arm strain at work. In a September 26, 2006 duty status report, Dr. Hilburn advised that appellant had pain in her neck, shoulders and right arm and was able to work six hours six days a week with restrictions. He advised that appellant was partially disabled from May 24 to November 6, 2006.

In an October 16, 2006 note, Mayra Calzada, an employee of Dr. Hilburn, noted that appellant was seen by Dr. Hilburn and should be excused from work from October 3 to 18, 2006.

In an October 18, 2006 operative report, Dr. Joseph Kenneth Fluence, a Board-certified anesthesiologist, advised that appellant was seen for a cervical epidural steroid injection. He noted diffuse neck pain radiating bilaterally occipital regions, extending to both shoulders, more intense on the right than the left side and extending all the way down the right arm. Dr. Fluence found no evidence of muscle wasting and advised that an MRI scan showed herniated disc at C4-5 and C5-6 with some degenerative changes.

In an October 23, 2006 report, Dr. Hilburn noted that appellant reported that her pain was worse following the epidural. He noted that her neck continued to show spasm in the upper trigger point areas laterally which radiates to her arms. Dr. Hilburn further noted that there was weakness in both arms; however, he stated that the arms can function normally. An assessment of chronic upper back and neck pain was provided.

Occupational medicine work status forms dated October 23 and November 1, 2006 from Dr. Hilburn's office advised that appellant had neck/shoulder strain and that she was unable to return to work until November 6 and December 4, 2006, respectively. In a November 1, 2006 report, Dr. Hilburn noted that the epidural had worn off and appellant's pain level returned to her original state. Examination showed pain to palpation in the upper trigger point area radiating down to her arm. Decreased motor strength in the right arm was noted. An assessment of chronic pain, right shoulder, arm and up into the neck was provided. Dr. Hilburn recommended

that appellant be off work until December 4, 2006. He advised that she was probably permanent and stationary and might seek a second opinion.

On November 6, 2006 appellant filed a claim for compensation, Form CA-7, for the period October 18 to November 6, 2006. In a November 6, 2006 time analysis form, the employing establishment indicated that appellant was claiming compensation for 96 hours of leave without pay (LWOP). This was comprised of six hours LWOP for 14 days and four hours of LWOP for 3 days during the period October 18 to November 6, 2006.

In a November 13, 2006 letter, the Office advised appellant that her CA-7 was not payable as there was insufficient medical evidence to support that the period of disability claimed was causally related to her May 24, 2006 work injury. It requested that appellant provide a detailed report describing the basis of her total disability beginning October 18, 2006 and how it was due to the work injury.

On November 24, 2006 appellant filed a Form CA-7 claim for compensation for the period November 11 to 24, 2006. In a November 24, 2006 time analysis form, the employing establishment indicated that appellant was claiming compensation for 58 hours of LWOP. This was comprised of six hours LWOP for nine days and four hours of LWOP for one day during the period November 13 to 24, 2006.

The Office received duplicate copies of medical evidence as well as medical evidence prior to the claimed periods of disability. In a December 4, 2006 report, Dr. Hilburn noted that examination showed pain to palpation in the upper trigger point area with pain radiating into the right arm. No distal loss of function or obvious bone deformity was noted. An assessment of chronic upper back, neck and shoulder strain was provided. Dr. Hilburn advised that appellant was permanent and stationary and that she would be unable to work until December 26, 2006 because of pain.

By decision dated December 26, 2006, the Office denied appellant's claim for wage-loss compensation for the periods October 18 to November 24, 2006 on the basis that the medical evidence failed to establish that she was totally disabled or attending medical appointments on those dates.

LEGAL PRECEDENT

Under the Federal Employees' Compensation Act¹ 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.² 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

¹ 5 U.S.C. §§ 8101-8193.

² See *Prince E. Wallace*, 52 ECAB 357 (2001).

Act³ and whether a particular injury causes an employee disability for employment is a medical issue which must be resolved by competent medical evidence.⁴ 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.⁵

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.⁶

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.⁷ Appellant would be entitled to compensation for any time missed from work due to medical treatment for an employment-related condition.⁸ 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.⁹

ANALYSIS

Appellant filed claims for wage-loss compensation alleging that she was disabled for work from October 18 to November 24, 2006. However, she did not submit adequate medical evidence demonstrating total or partial disability for this period of time due to her accepted conditions of cervical strain and bilateral shoulder sprains.

In a September 26, 2006 duty status report, Dr. Hilburn advised that appellant was able to work six hours six days a week with restrictions. He stated that appellant was partially disabled or unable to return to work from May 24 to December 4, 2006. However, Dr. Hilburn did not address whether appellant was totally or partially disabled due to her accepted conditions or whether the medical services rendered on those dates were due to her accepted conditions. The Board notes that, while the June 14, 2006 cervical spine x-ray and the July 19, 2006 cervical MRI scan revealed signs of degenerative disc disease and spondylosis at C4-5, C5-6 and C6-7 and Dr. Fluence found evidence of herniated disc at C4-5 and C5-6 with some degenerative

³ *Cheryl L. Decavitch*, 50 ECAB 397 (1999); *Maxine J. Sanders*, 46 ECAB 835 (1995).

⁴ *Donald E. Ewals*, 51 ECAB 428 (2000).

⁵ *Tammy L. Medley*, 55 ECAB 182 (2003); see *Donald E. Ewals*, *id.*

⁶ *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁷ 5 U.S.C. § 8103(a).

⁸ *Vincent E. Washington*, 40 ECAB 1242 (1989).

⁹ *Dorothy J. Bell*, 47 ECAB 624 (1996); *Zane H. Cassell*, 32 ECAB 1537 (1981).

changes, these are not conditions accepted by the Office. Dr. Hilburn reported on appellant's pain to her neck and arms but failed to offer an opinion on whether she was disabled due to her accepted conditions. Therefore, his reports lack probative value.¹⁰ There is also no clear indication if any time was lost from work due to treatment for the accepted conditions. In an October 23, 2006 report, Dr. Hilburn noted that appellant's pain was worse following an epidural shot and that there was weakness in both arms; however, he advised that the arms could function normally. In his November 1, 2006 report, Dr. Hilburn advised that appellant's pain level was permanent and stationary. While he recommended that she be off work until December 4, 2006, he did not address whether appellant was disabled due to the accepted conditions. Therefore, this report is of diminished probative value.¹¹ 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.¹² 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 days claimed. Appellant has not established her claim for wage-loss compensation during the period October 18 to November 24, 2006.

CONCLUSION

The Board finds that appellant has not established entitlement to wage-loss benefits for periods of disability from October 18 to November 24, 2006.

¹⁰ *Sandra D. Pruitt*, 57 ECAB ____ (Docket No. 05-739, issued October 12, 2005).

¹¹ *Id.*

¹² While there is a note from Ms. Calzada advising that appellant was seen by Dr. Hilburn on October 16, 2006 this is outside the period claimed and, thus, is not relevant to appellant's claim.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated December 26, 2006 is affirmed.

Issued: October 9, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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