United States Department of Labor
Employees' Compensation Appeals Board

M.N., Appellant	)	
and	)	**Docket No. 07-671**
	)	**Issued: April 17, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Oklahoma City, OK, 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 16, 2007 appellant timely appealed the October 10, 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(d), the Board has jurisdiction over the merits of the claim.[1]

ISSUE

The issue is whether appellant is entitled to wage-loss compensation for intermittent employment-related disability during the period March 19, 1994 through December 22, 1995.

[1] The record also includes a March 8, 2006 schedule award for 10 percent impairment of the right upper extremity. Appellant did not specifically identify this decision as a subject of her current appeal. Two months prior to her January 16, 2007 filing, she pursued an additional schedule award with the Office. As this is in an interlocutory posture, the Board will not exercise jurisdiction over the Office's March 8, 2006 schedule award. 20 C.F.R. § 501.2(c).

FACTUAL HISTORY

Appellant, a 48-year-old letter carrier, has an accepted occupational disease claim for right wrist and right shoulder strains, which arose on or about February 1, 1993, claim number 16-0237810.[2] She stopped work February 18, 1994. Appellant returned to work in a full time, limited-duty capacity on May 15, 1994.

In July 1994, appellant filed a claim for compensation (Form CA-8) for lost wages through May 14, 1994. The employing establishment advised that appellant was released to return to work on April 27, 1994, but she had chosen to remain off work. Light-duty work was available and the employing establishment reportedly made appellant aware of this.

By letter dated August 4, 1994, the Office acknowledged receipt of appellant's claim for compensation through May 15, 1994. The Office noted that appellant's physician indicated that she was capable of performing duties with restrictions.[3] Appellant was apprised of her responsibility to return to work as soon as she recovered from her employment-related injury or as soon as her employer identified a job suitable for her medical restrictions. The Office informed appellant that she was not entitled to compensation for the claimed period because her employer had limited-duty work available.

In a September 1, 1994 letter, appellant advised the Office that, while there were discussions about her returning to work in late-April 1994, she had not received written notice or a description of the specific duties or physical requirements of any alternative positions that may have been available during her absence from February 18 to May 14, 1994. When asked to respond to appellant's September 1, 1994 letter, the employing establishment did not refute her statement about not being provided written notification regarding available limited-duty work.

After returning to limited duty in May 1994, appellant continued to work in this capacity until late-November 1994. She stopped work when she gave birth to her third child on November 24, 1994. Afterwards, appellant took approximately 12 weeks' maternity leave. She resumed limited-duty work on February 21, 1995 and continued working limited duty through the end of 1995. Appellant would later claim wage-loss compensation for the three months she was on maternity leave.

In June 1999 and February 2000, appellant wrote the Office inquiring about the status of her claim for approximately 700 hours of lost wages in 1994 and 1995. However, the matter went unresolved for several more years. On October 25, 2004 appellant filed a claim (Form CA-7) for wage-loss compensation for the period March 19, 1994 to December 22, 1995. The 21-month time frame included periods of temporary total disability that spanned several months. Appellant also claimed shorter periods of intermittent disability as well as lost wages incident to various medical appointments she attended.

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[2] Under a separate claim number 16-2013350, the Office accepted bilateral carpal tunnel syndrome with a November 1, 2000 date of injury. The case records for both the 1993 and 2000 injuries were combined under claim number 16-0237810.

[3] At the time, appellant was being treated by Dr. Kyle W. Fanning, a Board-certified family practitioner.

On November 4, 2004 the Office wrote appellant requesting that she provide medical evidence supporting her disability for work during the entire period claimed. In response, the Office received two reports from appellant's obstetrician, Dr. Robert S. Ryan. On November 2, 1994 Dr. Ryan imposed work restrictions due to appellant's pregnancy. He limited appellant to six hours of standing and walking during an eight-hour workday. Dr. Ryan also indicated that appellant should not stand for more than two hours at a time. Appellant's due date was listed as November 20, 1994 and the work restrictions were to remain in effect until after the delivery. On February 6, 1995 Dr. Ryan advised that appellant would be able to resume work on February 21, 1995.

The Office denied appellant's claim for wage-loss compensation in a decision dated January 3, 2005. It found that Dr. Ryan's reports did not establish that the claimed wage loss was a result of the accepted employment injury. Pursuant to appellant's request, the Branch of Hearings & Review considered the written record and issued a July 25, 2005 decision affirming the denial of wage-loss compensation.

On July 23, 2006 appellant requested reconsideration. She submitted numerous documents covering the period February 1994 to December 1995. On February 24, 1994 Dr. Fanning advised that appellant could not perform her regular duties. He precluded lifting, simple grasping, pushing, pulling, fine manipulation and reaching or working above the shoulder. Dr. Fanning continued those same work restrictions when he saw appellant on March 18, 1994.[4] He amended appellant's work restrictions on April 27, 1994, noting that she could stand, walk and sit for eight hours a day. The previously identified right upper extremity restrictions remained in effect. When Dr. Fanning saw appellant on May 11 and 16, 1994, he indicated that she was not totally disabled. He referred appellant to an orthopedic specialist and reiterated that she was only partially disabled and capable of working with restrictions.

On May 17, 1994 appellant saw Dr. Robert E. Terrell, a Board-certified family practitioner, with a subspecialty in sports medicine. Dr. Terrell diagnosed right shoulder impingement syndrome, traumatic right ulnar neuritis and right wrist pain, which he noted was probably due to a chronic scaphoid lunate ligament sprain. He imposed work restrictions that included limitations on lifting, pushing, pulling and performing work above shoulder level. According to Dr. Terrell, appellant could not case or carry mail. Thereafter, he saw appellant approximately every month and continued to impose similar work restrictions through December 1994. Due to appellant's pregnancy, Dr. Terrell modified her medications and postponed physical therapy until after her November 24, 1994 delivery. On January 13, 1995 he referred appellant to an orthopedic specialist for further evaluation of her ongoing right upper extremity complaints.

Dr. Ghazi M. Rayan, a Board-certified orthopedic surgeon, initially examined appellant on January 26, 1995. He diagnosed cubital tunnel syndrome and scapulocostal syndrome. Dr. Rayan indicated that appellant would be returning to work in a month after her maternity leave. Upon returning to work, she would be restricted to lifting between 10 and 15 pounds. When he saw appellant on March 9, 1995, Dr. Rayan indicated that she could occasionally lift up

[4] Dr. Fanning's March 18, 1994 treatment notes also reflect that appellant had just learned she was pregnant.

to 10 pounds and could occasionally use her arms to reach or work above shoulder level. On April 20, 1995 he precluded appellant from casing or delivering of mail. Dr. Rayan also noted that appellant could not use her hands for repetitive simple grasping, pushing, pulling and fine manipulation. However, appellant could occasionally use her arms in reaching or working above shoulder level. These restrictions remained in effect through July 1995. On August 2, 1995 Dr. Rayan discharged appellant from his care. He noted that her cubital tunnel symptoms had resolved, but that she still complained of occasional posterior shoulder discomfort. Because of the occasional shoulder discomfort, Dr. Rayan continued the prior work restrictions. He anticipated that these restrictions would remain in effect for the next few months and afterwards appellant would be able to return to her regular duties.

Dr. Terrell provided a September 27, 1995 attending physician's report (Form CA-20). He diagnosed right carpal tunnel syndrome and right shoulder impingement syndrome. Dr. Terrell last examined appellant on January 13, 1995 and he discharged her from his care. The September 27, 1995 report also indicated that appellant was partially disabled and was limited from doing any letter carrying, casing or working above mid-chest height.

In a report dated November 6, 1995, Dr. Rayan noted that appellant was expected to have returned to full duty by then, but she recently developed some increasing symptoms. According to him, appellant believed she was unable to return to full duty. Appellant was concerned that a return to full duty might aggravate her symptoms. On examination, Dr. Rayan had not detected any obvious physical findings. He believed that appellant might have had some residual mild tendinitis and generalized weakness. Dr. Rayan explained that appellant's current symptoms were not caused by the work she was doing because the work was not physically demanding. He stated that her complaints were probably related to excessive house work and possible underlying diabetes. Dr. Rayan continued to impose work restrictions with respect to the use of appellant's right upper extremity. But unlike his prior restrictions, appellant was no longer specifically precluded from casing and carrying mail.

Dr. Johnaqa A. Saidi, a Board-certified family practitioner, examined appellant on December 4, 1995. At the time, appellant complained of pain in the neck and right shoulder that radiated to her right arm and into her fingers. Dr. Saidi diagnosed cervicalgia and noted that appellant should not lift more than 10 pounds. He also indicated that appellant had difficulty extending her right arm.

The Office reviewed the merits of appellant's claim, but denied modification in a decision dated October 10, 2006. The Office found that appellant did not establish that she was disabled from performing modified work during the claimed period. As to appellant's claim for lost wages incident to receiving medical treatment, the Office indicated that it would separately process payments for those dates that were supported by the medical evidence.

LEGAL PRECEDENT

A claimant has the burden of establishing the essential elements of her claim, including that the medical condition for which compensation is claimed is causally related to the claimed

employment injury.[5] For wage-loss benefits, the claimant must submit medical evidence showing that the condition claimed is disabling.[6] The evidence submitted must be reliable, probative and substantial.[7]

If an employee can resume regular federal employment, she must do so.[8] However, if she cannot return to the job held at the time of injury, but has recovered enough to perform some type of work, the employee must seek work.[9] Where the employer has specific alternative positions available for partially disabled employees, the employer should advise the employee in writing of the specific duties and physical requirements of those positions.[10]

ANALYSIS

Appellant's October 25, 2004 claim for wage-loss compensation covered a 21-month period from March 19, 1994 to December 22, 1995. For the period March 19 to May 14, 1994, the record indicates that she was unable to perform her regular duties as a letter carrier. However, Dr. Fanning explained that she was not totally disabled. During this time frame, appellant's then treating physician imposed specific work restrictions, which she timely submitted to the employing establishment. According to the employing establishment, limited-duty work was available for appellant, but she chose to remain off work. Appellant eventually returned to work in a limited-duty capacity on May 15, 1994.

In its October 10, 2006 decision, the Office denied wage-loss compensation for the two-month period that preceded appellant's May 15, 1994 return to work because there was no proof that she was unable to perform modified work. The issue, however, is not whether appellant was unable to perform modified work, but whether the employing establishment properly identified any available limited-duty work. The regulations require that she be provided a written description of the type of limited-duty work available. However, there is no evidence that the employing establishment provided appellant a written description of the specific duties and physical requirements of the limited-duty position it claimed was available. Appellant raised this particular point in her September 1, 1994 letter to the Office. The employing establishment responded to appellant's September 1, 1994 letter and did not deny her allegation. It did not otherwise present evidence that a written job offer had been provided to appellant prior to her May 15, 1994 return to work.[11] The Board finds that appellant is entitled to wage-loss compensation for the period March 19 to May 14, 1994. The record establishes that appellant

[5] 20 C.F.R. § 10.115 (e) (2007); *see Tammy L. Medley*, 55 ECAB 182, 184 (2003).

[6] *Id*. at § 10.115(f).

[7] *Id*. at § 10.115.

[8] *Id*. at § 10.515(a).

[9] *Id*. at § 10.515(b).

[10] *Id*. at § 10.505(a). A similar written requirement is imposed with respect to offers of suitable work. *See* 20 C.F.R. § 10.507(c) and (d).

[11] The earliest written limited-duty job offer of record is dated April 15, 1996.

was unable to perform her regular letter carrier duties at the time and there is no indication that the employing establishment provided her with a written limited-duty job offer in accordance with the applicable regulations.[12]

Appellant also claimed 48 hours of wage-loss compensation from August 1 to 6, 1994 and another 8 hours of lost wages on August 16, 1994. However, the contemporaneous medical records do not support her claim of temporary total disability. Dr. Terrell saw appellant on July 26 and August 24, 1994 and on both dates he indicated that she was capable of performing limited duty. There was no mention of appellant being disabled from all work during the claimed period. She reported another 32 hours of wage loss from October 17 to 20, 1994. However, when Dr. Terrell saw appellant on November 10, 1994 he did not indicate that she had been disabled during the claimed period in October 1994.

Appellant took maternity leave from November 24, 1994 to February 21, 1995. She also claimed work-related temporary total disability for the same 12-week period. There is no medical evidence to support appellant's claim that she was disabled due to her accepted employment injury during this particular timeframe. Dr. Terrell and Dr. Rayan both treated appellant at the time and neither doctor indicated that she was disabled from work due to her accepted employment injury. The evidence indicates that appellant voluntarily stopped working to care for her newborn child. As such, she is not entitled to wage-loss compensation for the period November 24, 1994 to February 21, 1995.

After returning from maternity leave, appellant claimed 8 hours of wage-loss compensation on March 18, 20, 21 and April 3, 1995, for a total of 32 hours. Dr. Rayan saw appellant on March 9 and April 20, 1995. He did not indicate that appellant was disabled from all work at any time during March and April 1995. Appellant also claimed eight hours of wage-loss compensation on April 29, May 1, 2 and 6, 1995. Dr. Rayan saw appellant twice in early-June 1995 and on neither occasion did he indicate that she was disabled for work at any time during the preceding six-week period.

When Dr. Rayan saw appellant on August 2, 1995, he continued her on limited duty, but anticipated a return to full duty in the next few months. He also discharged her from his care at that time. Appellant, however, claimed eight hours of wage-loss compensation on August 10, 1995. The record does not include any medical evidence to support this claimed period. The same is true with respect to the 32 hours appellant claimed from October 30 to November 2, 1995. Dr. Rayan examined appellant on November 6, 1995 and had not detected any obvious physical findings to support her symptoms. He stated that appellant's complaints were probably attributable to excessive house work and possible underlying diabetes. According to Dr. Rayan, appellant was capable of performing limited-duty work. Therefore, Dr. Rayan's November 6, 1995 report does not support appellant's claim of temporary total disability from October 30 to November 2, 1995. Appellant did not claim any additional periods of temporary total disability between November 3 and December 22, 1995.

[12] 20 C.F.R. § 10.505(a). The regulations in effect at the time similarly required that the proposed limited-duty assignment be reduced to writing and a copy provided to the injured employee. 20 C.F.R. §§ 10.123, 10.124 (1994).

While appellant is entitled to wage-loss compensation for the period March 19 to May 14, 1995, she has not established entitlement to disability compensation for any additional periods through December 22, 1995. With respect to her entitlement to wage-loss incident to attending various medical appointments, the Office stated its intention to process those claims separately. Accordingly, that particular issue is not currently before the Board.

CONCLUSION

Appellant established entitlement to wage-loss compensation for the period March 19 to May 14, 1994 and the Office's decision is modified to reflect her entitlement to said benefits. In all other respects, the Office's October 10, 2006 decision is affirmed.

ORDER

IT IS HEREBY ORDERED THAT the October 10, 2006 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: April 17, 2008
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