

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

A.V., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
St. Louis, MO, Employer**

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**Docket No. 08-1523
Issued: December 3, 2008**

Appearances:

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 24, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' June 28, 2007 and March 5, 2008 merit decisions denying compensation for wage loss. Under 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 has met his burden of proof in establishing that he was entitled to wage-loss compensation for intermittent periods between May 12 and December 23, 2006.

FACTUAL HISTORY

Appellant, a 50-year-old letter carrier, filed a Form CA-2 claim for benefits on June 8, 2006, alleging that he developed degenerative disc disease causally related to factors of employment. The Office accepted the claim for lumbosacral spondylosis. It paid appropriate compensation for periods of temporary total disability. Appellant stopped work in

February 2006, returned to intermittent part-time light duties in June 2006 and stopped work on March 26, 2007. He returned to full-time light duties on August 3, 2007.

On February 26, 2007 appellant submitted CA-7 forms requesting wage loss from May 8, 2006 to January 5, 2007. He also submitted time analysis sheets indicating that he was entitled to intermittent disability compensation from May 11 through June 1, July 21, July 31 through August 3, August 11 through 14 and August 21 through October 13, 2006. Appellant also claimed partial disability for intermittent dates when light-duty work was not provided on June 19 through July 15; July 2, August 10; August 17; October 17 through November 10; November 30, 2006 and December 6, 2006 through January 5, 2007. He submitted payroll records indicating the hours he worked from May 2006 to January 2007.

By letter dated April 30, 2007, the Office advised appellant that compensation was payable for 163.93 intermittent hours claimed from June 10, 2006 through January 5, 2007 because limited-duty work was not available. It found that the medical evidence of record was sufficient to support disability claimed from May 8 through 11, 2006. The Office stated:

“Compensation for the remaining time periods of disability is not currently payable because the medical evidence of file does not support that you were unable to perform any work at all. The medical evidence of file supports you were able to work with restrictions.”

The Office informed appellant that additional medical documentation was necessary to support wage-loss compensation for the remaining periods of disability requested.

Appellant submitted disability slips, e-mails and treatment notes indicating that he had intermittent periods of wage loss from May 12 through December 2006. In a report dated May 11, 2006, Dr. Anthony M. Wayne, Board-certified in orthopedic surgery and appellant's treating physician, noted appellant's complaints of low back pain and pain in the left lower extremity. He related that appellant believed his pain developed over a period of time due to the physical demands and repetitive work requirements of his letter carrier job. Dr. Wayne opined that appellant's chronic preexisting condition of spondylosis was attributable to the natural aging process but was aggravated by his job activities. He recommended that appellant limit his lifting to no more than 25 pounds and avoid performing overtime work. In reports dated August 11 and 31, 2006, Dr. Wayne reiterated his findings and conclusions and that appellant was capable of working with restrictions. On February 7, 2007 he stated:

“[Appellant] has been under my care ever since April 21, 2006 regarding his lower back condition. He has degenerative disc disease (lumbar spondylosis). This is a condition that was aggravated by his job activities over a period of some years. [Appellant] was unable to work from March 15 through June 6, 2006 due to his condition and he was also unable to work from August 21 through September 13, 2006 due to the same condition.

In a June 22, 2007 letter, the Office requested additional medical evidence to support compensation for total disability from May 24 to June 8, 2006.

By decision dated June 28, 2007, the Office denied appellant's claim for wage-loss compensation. It accepted appellant's claims for wage loss for temporary total disability from May 8 through 11, 2006, plus a total of 163.93 intermittent hours due to the unavailability of limited duty for the following dates: June 10, 19, 20, 21, 23, 27 and 29, July 15 and 26, August 10, and 17, October 17, 18, 19, 23 to 28 and 31, November 1 to 2, 9 to 10 and 30, December 6, 13 to 16, 18, 20 to 22, 26, 28 and 30, 2006; and January 3 and 5, 2007. The Office found appellant had submitted documentation establishing that he attended medical appointments on June 1 and August 1, 2006, for which he was awarded four hours of compensation on each date. It stated that there was insufficient medical evidence to establish entitlement to temporary total disability for the remaining four hours on those dates or for the remaining 56 intermittent dates claimed from May 12 through December 23, 2006. The Office further noted that the reports from Dr. Wayne advised that he was capable of working with restrictions. It concluded that the medical evidence did not establish that he was either disabled or attending a medical examination for the dates claimed.

By letter dated July 5, 2007, appellant's attorney requested an oral hearing, which was held on December 20, 2007. Appellant did not submit any new medical evidence disability.

By decision dated March 5, 2008, an Office hearing representative affirmed the June 28, 2007 decision, finding appellant failed to submit medical evidence establishing.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing that the essential elements of his or her claim by the weight of the evidence.² Under the Act, the term disability is defined as an inability, due to an employment injury, to earn the wages the employee was receiving at the time of injury, *i.e.*, an impairment resulting in loss of wage-earning capacity.³ For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.⁴ 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 probative and reliable medical opinion evidence.⁵ The fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁶ The Board will not require the Office to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989).

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

⁴ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁵ *Gary L. Watling*, 52 ECAB 278 (2001).

⁶ *Manual Garcia*, 37 ECAB 767 (1986).

for which compensation is claimed. To do so would essentially allow an employee to self-certify his disability and entitlement to compensation.⁷

ANALYSIS

In support of his claim, appellant submitted CA-7 forms for intermittent periods from May 2006 to January 2007. The Office paid wage-loss compensation for May 8 through 11, 2006, plus a total of 163.93 intermittent hours due to the unavailability of limited duty from May 2006 through January 2007. The Office denied four hours of compensation on several days for which he had claimed eight hours of leave without pay, noting that he was entitled to no more than four hours of compensation for routine medical appointments. It noted that, while longer periods of time were allowed when required by the nature of the medical procedure and/or the need to travel a substantial distance to obtain the medical care, appellant failed to provide sufficient medical evidence to support that he was disabled or attending a medical examination on the dates claimed.

The medical reports of record do not establish that he was disabled beyond the periods for which the Office awarded him compensation. Appellant did submit a February 7, 2007 report from Dr. Wayne, who indicated that he was unable to work from March 15 through June 6, 2006 and from August 21 through September 13, 2006 due to his accepted degenerative disc, lumbar spondylosis condition. However, this opinion contradicted three prior reports Dr. Wayne submitted from May 11 to August 31, 2006 in which he stated that appellant was able to work within restrictions. Dr. Wayne's opinion on causal relationship is of diminished probative value in that he did not provide adequate medical rationale in support of his conclusions.⁸ Moreover, his opinion was generalized in nature and equivocal. Dr. Wayne's February 2007 report contradicted his May and August 2006 opinions regarding appellant's work capacity, suggesting that he lacked an accurate history of appellant's condition.⁹ Appellant has failed to provide sufficient medical evidence to establish disability as claimed. The Board finds that the Office properly determined in its June 28, 2007 decision that he did not establish disability for wage loss beyond that paid.

Following the June 28, 2007 decision, appellant requested an oral hearing but did not submit any additional medical evidence. He resubmitted medical reports and documents of record. By decision dated March 5, 2008, the Office hearing representative affirmed the June 28, 2007 decision, finding that appellant had failed to submit medical evidence establishing beyond that for which he had received compensation. The Office hearing representative properly denied appellant compensation for wage loss.

⁷ *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁸ *William C. Thomas*, 45 ECAB 591 (1994).

⁹ *See Geraldine H. Johnson*, 44 ECAB 745 (1993).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he was disabled and had wage loss for intermittent periods from May 12 and December 23, 2006 causally related to his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the March 5, 2008 and June 28, 2007 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: December 3, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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