

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

D.G., Appellant

and

**U.S. POSTAL SERVICE, OAKLAND POSTAL
& DISTRIBUTION CENTER, Oakland, CA,
Employer**

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**Docket No. 07-1944
Issued: January 18, 2008**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 17, 2007 appellant filed a timely appeal from a May 3, 2007 decision of the Office of Workers' Compensation Programs that denied her claim for disability compensation for the period December 11, 2006 to January 29, 2007. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant met her burden of proof in establishing that she was entitled to compensation for temporary total disability from December 11, 2006 to January 29, 2007, as a result of her April 18, 2006 employment injury.

FACTUAL HISTORY

On July 12, 2006 appellant, then a 59-year-old registry clerk, filed a traumatic injury claim stating that she sustained left leg pain and back pain and spasms on April 18, 2006, when a coworker lost his balance and fell against the back of her chair. She did not initially stop work.

On May 25, 2006 Dr. David Wren, a Board-certified orthopedic surgeon, noted appellant's complaints of low back pain. He found that appellant had neck and back muscle spasms and reduced motion. In an August 1, 2006 report, Dr. Susan Lambert, a Board-certified occupational medicine specialist, explained that appellant related that a coworker fell against the back of her chair, pushing her into her desk. She diagnosed lumbosacral strain and noted that appellant had a history of disc disease. On August 15, 2006 Dr. Jeffrey Lee Gao, a general practitioner, diagnosed lumbosacral strain and noted that appellant was advised to work modified duty.

On February 4, 2007 the employing establishment offered appellant a modified-duty assignment. Appellant accepted the assignment on February 13, 2007.

In a February 12, 2007 duty status report, Dr. Wren noted magnetic resonance imaging (MRI) "scan findings, surgical findings, abnormal physical findings" and diagnosed lumbar disc disease, carpal tunnel syndrome and bursitis tendinitis. He advised that appellant was able to work with restrictions.

On March 11, 2007 appellant filed a claim for compensation for leave without pay and other wage loss from December 11, 2006 to January 29, 2007.

On March 29, 2007 the Office accepted appellant's claim for lumbosacral strain. By correspondence dated the same day, the Office requested additional information concerning appellant's claim for disability compensation.

Appellant provided a January 19, 2007 note from Dr. Wren stating that appellant was seen in his office on the same day "for her job injury." Dr. Wren stated that appellant was released to work with restrictions effective January 20, 2007.

By decision dated May 3, 2007, the Office denied appellant's claim for disability compensation for the period December 11, 2006 to January 29, 2007 on the grounds that she did not submit medical evidence in support of her claim for wage loss.

LEGAL PRECEDENT

A claimant seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of her claim, including that any specific condition or disability for which she claims wage-loss compensation is causally related to the employment injury.² Compensation for wage loss is available only for periods during which an employee's accepted condition prevents her from earning his wages.³ Even if the Office has accepted that appellant sustained an injury in the performance of duty, appellant still has the burden of establishing that her accepted condition resulted in disability during the specific periods for

¹ 5 U.S.C. § 8101 *et seq.*

² *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

³ *Judith A Cariddo*, 55 ECAB 348 (2004); *see also* 20 C.F.R. § 10.500(a).

which she is claiming compensation.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 proven by a preponderance of the reliable, probative and substantial medical evidence.⁵

ANALYSIS

The Board finds that appellant did not meet her burden of proof in establishing that she was entitled to compensation for total disability from December 11, 2006 to January 29, 2007. The record reflects that the Office accepted her claim for lumbosacral strain. However, appellant did not provide medical evidence supporting that she was totally disabled from work from December 11, 2006 to January 29, 2007 due to her accepted injury.⁶

Appellant submitted several medical reports in support of her claim. Dr. Wren's May 25, 2006 report, Dr. Lambert's August 1, 2006 report and Dr. Gao's August 15, 2006 report all supported appellant's claim for lumbosacral strain, which the Office accordingly accepted. However, these reports predated appellant's claimed disability from December 11, 2006 to January 29, 2007 and therefore do not apply to the instant issue.

On January 19, 2007 Dr. Wren stated that appellant was seen in his office on that date in relation to her "job injury." However, he did not detail whether a physical examination was performed and what treatment, if any, was administered. He did not explain if work restrictions were due to the employment injury. Moreover, Dr. Wren's statement that he saw appellant on January 19, 2007 is not sufficient to establish that she was totally disabled from work either on that date or on any other date between December 11, 2006 and January 29, 2007. He did not state unequivocally that appellant was totally disabled during the time period claimed and did not provide a full explanation of how her disability, if any, related to her April 18, 2006 employment injury.

Appellant also provided a February 12, 2007 duty status report from Dr. Wren, who diagnosed lumbar disc disease, carpal tunnel syndrome and bursitis tendinitis. However, Dr. Wren did not address appellant's disability, if any, between December 11, 2006 and January 29, 2007. He neither stated that appellant was totally incapacitated during that time nor explained why she was unable to work, if indeed she was disabled. Because Dr. Wren's February 12, 2007 duty status report does not offer an opinion on appellant's claimed disability and the causes thereof, it is not probative on the issue of whether she is entitled to compensation for total disability from work between December 11, 2006 and January 29, 2007.

⁴ *Dorothy J. Bell*, 47 ECAB 624 (1996).

⁵ *Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

⁶ On appeal, appellant submitted additional medical evidence. The Board, however, notes that it cannot consider this evidence for the first time on appeal because the Office did not consider this evidence in reaching its final decision. The Board's review is limited to the evidence in the case record at the time the Office made its final decision. 20 C.F.R. § 501.2(c).

CONCLUSION

The Board finds that appellant did not meet her burden of proof in establishing that she was entitled to compensation for temporary total disability from December 11, 2006 to January 29, 2007.

ORDER

IT IS HEREBY ORDERED THAT the May 3, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 18, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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