United States Department of Labor
Employees' Compensation Appeals Board

A.G, Appellant	)	
and	)	**Docket No. 08-449**
	)	**Issued: November 21, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Youngstown, OH, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On December 5, 2006 appellant, through counsel, filed a timely appeal from a November 13, 2007 decision of an Office of Workers' Compensation Programs' hearing representative who affirmed an April 12, 2007 decision denying her claim for intermittent wage loss. 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 has established entitlement to intermittent wage-loss compensation for more than two hours a day from December 5, 2003 through July 27, 2006 due to her accepted carpal tunnel syndrome.

FACTUAL HISTORY

This case has previously been on appeal before the Board.[1] In a December 8, 2005 decision, the Board found that the Office did not meet its burden of proof to terminate

[1] Docket No. 05-1335 (issued December 8, 2005).

appellant's compensation benefits effective November 12, 2003.[2] The Board reversed the Office hearing representative's decision dated May 9, 2005. The facts and the history contained in the prior appeal are incorporated by reference.

Following the Board's decision, the Office requested appellant to file claims for compensation (Form CA-7) for wage loss on and after November 12, 2003. On March 4, 2006 she submitted the requested Form CA-7 claims for compensation for the period November 1, 2003 through January 20, 2006;[3] time analysis forms for the relevant period; a breakdown of the hours she did not work due to her carpal tunnel syndrome and medical evidence. A February 8, 2006 duty status report limited appellant to six hours per day with restrictions. The undated reports of Dr. John G. Wassil, III, a treating Board-certified physiatrist, found that appellant was unable to work a full eight-hour day. [4]

Dr. Wassil stated that appellant left work on specified dates, took medication and applied hot compresses for her condition. He listed the dates she left early as December 5, 2003 to January 20, 2006.

Appellant stated that she was unable to work a full 8-hour day during the period November 13, 2003 through January 20, 2006 and that she was claiming 1,238.75 hours of compensation. She claimed 2.50 hours for April 22, 2004; 2.75 hours for March 26, July 9, September 10, 2004; 3.00 hours for April 8, 2004; 3.00 hours for May 22, 28 and 29, June 8, 23 and 24, July 2, August 11 to 13, 20, 26 and 31, September 24 and 29, 2004; 3.50 hours of compensation for January 31, March 16 and 31, April 10 and 14, May 20, June 10, 21 and 30, July 30, 2004; 3.75 hours for March 23 and 30, 2004; 4.00 hours for July 14, 2004; 4.50 hours for April 1 and June 16, August 23, 2004; 8.00 hours for December 5 and 6, 2003, February 2, July 31, August 27, September 4, November 13 and December 4, 2004, January 25, 2005, February 3 and 19, April 9 and 30, July 29 and October 31, 2005.[5]

On March 16, 2006 the Office approved two hours of wage-loss for December 5, 6 and 13, 2005, February 2 and 28, March 2, April 9, July 12, 14 and 31, August 27, September 4, November 13 and December 4, 2004, February 3 and 19,[6] April 30, July 14, 15 and 29, October 31 and December 3, 2005. It disallowed eight hours of compensation for January 25,

[2] On March 21, 1990 appellant, a 37-year-old letter sorting machine clerk, filed an occupational disease claim alleging that on March 6, 1990 she first realized her carpal tunnel syndrome was employment related. The Office accepted her claim for bilateral carpal tunnel syndrome and paid compensation for intermittent periods of disability. On November 22, 2002 appellant accepted limited-duty position working six hours per day and the Office paid compensation for two hours a day of disability.

[3] The employing establishment certified 1,305.72 hours of leave without pay for this period.

[4] On February 14, 2006 appellant accepted the employing establishment's limited-duty job offer. The duties of the position included 2.5 hours of casing letters, 0.5 hours of casing flats, 20 minutes of collecting mail and as needed for camera security room. The physical requirements of the job were listed as 3.00 hours of repetitive motion, 0.5 hours of pulling/pushing, 6.00 hours of bending/twisting/stooping and simple grasping, 6.00 hour of walking/standing/sitting and reaching above shoulders.

[5] For all other dates noted appellant claimed two hours of compensation.

[6] The Office noted the year as "2004." This appears to be a typographical error as the year should be "2005."

2005 as it was not authorized to attend hearings as requested by appellant. The Office found the medical evidence insufficient to support disability for more than two hours on the dates claimed between September 12 and October 18, 2005.[7]

In an April 3, 2006 report, Dr. Wassil noted that appellant could only work six hours a day due to her accepted carpal tunnel syndrome. As to the dates she claimed more than two hours, Dr. Wassil stated:

> "[Appellant] has provided me a list of dates over the past two years that she has had to leave work earlier than six hours. It seems to me that the number of times that she has had to leave work early is completely and appropriately compatible with her diagnosis of carpal tunnel syndrome and is based objectively on the results of the EMG/NCV (electromyogram/nerve conduction velocity) test performed most recently, approximately one to one and one-half years ago which shows severe nerve damage both wrists. It is completely compatible with this condition that on these occasions, it is very reasonable to assume that the patient could develop more significant problems related to carpal tunnel, which includes pain, numbness and tingling. These are subjective findings. The more objective findings I [a]m concerned with is the fact the patient develops weakness and lack of endurance and inability to feel or control the mail that she has to pitch and the fact the patient develops swelling in the hands and wrists, which further impairs function."

Dr. Wassil stated that he had reviewed the dates claimed noting that if appellant awoke with problems in her hand it was reasonable for her to take an entire day off if she did not obtain relief by medication. Appellant claimed eight hours for fourteen times over the prior two years, which Dr. Wassil advised was "completely, normal, reasonable and compatible" with her condition and the objective evidence.

On April 6, 2006 appellant filed an additional claim for compensation for lost wages for the period January 21 to March 31, 2006 for 120.5 hours, together with appropriate time analysis forms.

On April 28, 2006 the Office received appellant's letter addressing the days she was unable to work a six-hour day due to numbing pain from her accepted carpal tunnel syndrome. She claimed 10.5 hours of additional compensation for the period January 21 to March 31, 2006.

In a letter dated May 2, 2006, the Office noted receipt of appellant's claim for wage-loss compensation. It authorized payment for 98 hours of intermittent wage loss based upon Dr. Wassil's report that she could only work six hours per day. The Office found that the medical evidence was insufficient to support payment for more than two hours of wage-loss a day on the remaining days.

[7] On Mach 17, 2006 the Office paid appellant $15,434.03 for wage-loss compensation for the period November 13, 2003 through January 20, 2006.

In a report dated May 8, 2006, Dr. Wassil diagnosed bilateral carpal tunnel syndrome. He discussed appellant's condition and situation with her and concluded:

> "[T]he objective clinical findings, which I find justify her on occasional taking off before her six[-]hour shift is up, her call offs for the full shift and the fact that her routine schedule involves six hours of work with two hours off with pay. It was basically based upon results of the EMG/NCV test, which shows substantial and significant nerve damage at her wrists and the fact that this situation flares upon a regular basis, causing her to be less physically functional and most importantly, causing weakness and loss of endurance, which are objective clinical findings, as well as swelling in the hands and inability to feel mail to do her job."

On June 17, 2006 Dr. Wassil noted that appellant "needs to be seen on any day that she stays home or has to leave work early for her work-related condition of carpal tunnel." He stated that he reviewed appellant's "forms and paperwork that show the dates from 2003 to 2006 that she had to miss work or leave work early." Dr. Wassil "verified that she takes a fairly consistent number of days off, or leaves work early on a consistent number of days per month and these have not been increasing to any significant degree."

On September 26, 2006, Dr. Alan H. Wilde, a second opinion Board-certified orthopedic surgeon, diagnosed bilateral carpal tunnel syndrome. He advised that appellant had residuals of her accepted condition. Dr. Wilde opined that appellant was capable of working a modified job with restrictions including no wrist repetitive movement and no pushing or lifting more than 10 pounds. He recommended carpal tunnel surgery.

On January 31, 2007[8] Dr. Wassil again listed specific dates that appellant was unable to complete a full days work between December 27, 2003 to January 20, 2006. He stated that she had severe pain, swelling, numbness and stiffening of her hands and fingers, which required her to take medication and place hot compresses on her hands. Dr. Wassil stated that appellant was totally disabled due to residuals of her carpal tunnel condition.

By decision dated April 12, 2007, the Office denied appellant's claim for intermittent wage loss for more than two hours a day from December 5, 2003 through July 27, 2006.[9] It found the medical evidence was insufficient to establish disability for intermittent wage loss for more than two hours.

In a letter dated April 14, 2007, appellant's counsel requested an oral hearing, which was held on September 18, 2007.

On May 2, 2007 the Office determined a conflict in the medical opinion arose between Dr. Wassil, appellant's treating physician, who advised that appellant was capable of working six

[8] Dr. Wassil noted the year as "2006," but this appears to be a typographical error as the year should be "2007."

[9] The Office noted the dates on which appellant claimed more than two hours of wage-loss compensation were December 5, 6 and 13, 2003; February 28, March 2, April 9, July 12, 14 and 31, August 27, September 4, November 13 and December 4, 2004; February 2 and 19, April 30, July 14, 15 and 29, October 31 and December 3, 2005; January 21 and 25, February 15, March 2, 3, 4, 11 and 14, July 26 and 27, 2007.

hours with restrictions, and Dr. Wilde, a second opinion physician, who opined that she was capable of working eight hours a day with restrictions. It referred appellant to Dr. James A. Shaer, a Board-certified orthopedic surgeon, to resolve this conflict. In a May 14, 2007 report, Dr. Shaer opined that appellant was capable of working eight hours per day with restrictions. He also recommended carpal tunnel surgery.

By decision dated November 13, 2007, the Office hearing representative affirmed the denial of appellant's claim for two hours of intermittent disability a day from December 5, 2003 through July 27, 2006. He found that appellant actually only worked three hours per day casing mail as she alternated between casing mail and resting for a half hour. The hearing representative found that the medical evidence was insufficient to establish that she was unable to perform her duties of casing mail for three hours per day or that her condition had worsened such that she was unable to perform her duties.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[10] has the burden of proof to establish the essential elements of her claim by the weight of the evidence.[11] For each period of disability claimed, the employee has the burden of establishing that she was disabled for work as a result of the accepted employment injury.[12] 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.[13]

Under the Act the term "disability" means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.[14] Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.[15] An employee who has a physical impairment causally related to her federal employment, but who nonetheless has the capacity to earn the wages she was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.[16] When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in her employment, she is entitled to compensation for any loss of wages.

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[10] 5 U.S.C. §§ 8101-8193

[11] *See Amelia S. Jefferson*, 57 ECAB 183 (2005); *see also Nathaniel Milton*, 37 ECAB 712 (1986)*; Joseph M. Whelan*, 20 ECAB 55 (1968).

[12] *See Amelia S. Jefferson*, *supra* note 11; *see also David H. Goss*, 32 ECAB 24 (1980).

[13] *See Edward H. Horton*, 41 ECAB 301 (1989).

[14] *S.M.*, 58 ECAB ___ (Docket No. 06-536, issued November 24, 2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Conard Hightower*, 54 ECAB 796 (2003); 20 C.F.R. § 10.5(f).

[15] *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

[16] *Merle J. Marceau*, 53 ECAB 197 (2001).

To meet this burden, a claimant must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factor(s).[17] The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[18]

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 for which compensation is claimed. To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.[19]

ANALYSIS

The Office accepted appellant's claim for bilateral carpal tunnel syndrome on June 26, 1990. On March 16, 2006 the Office authorized wage-loss compensation for two hours per day commencing November 12, 2003. The issue is whether appellant established that she was disable on the days she worked less than six hours during December 5, 2003 through July 27, 2006.

Appellant's attending physician, Dr. Wassil a Board-certified physiatrist, concluded that appellant was disable for more than six hours during the period 2003 to 2006. He stated that appellant was unable to work her six-hour limited-duty job on specified dates and issued the dates she worked less than six hours. Dr. Wassil noted that appellant was unable to work a six-hour day due to her carpal tunnel syndrome. He stated that her inability to work was due to numbness, control or feel the mail, swelling, lack of endurance, weakness and swelling in her hands. However, Dr. Wassil did not state whether he treated appellant on these dates for her accepted condition.[20] He relied upon appellant's statements that she was unable to work a six-hour shift on the specified dates as no examination had been performed. Dr. Wassil provided no objective findings on examination for the dates claimed. 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, for which compensation is claimed.[21] To do so would essentially

[17] *A.D.*, 58 ECAB ___ (Docket No. 06-1183, issued November 14, 2006).

[18] *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

[19] *See William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

[20] *See Amelia S. Jefferson*, *supra* note 11 (a claimant who has returned to work following an accepted injury or illness may need to undergo examination or treatment and such employee may be paid compensation for wage loss while obtaining medical services and for a reasonable time spent traveling to and from the medical provider's location).

[21] *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008). (When a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that she hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation).

allow employees to self-certify their disability.[22] Accordingly, the Board finds that the medical evidence of record is not sufficient to establish that appellant was disabled for more than six hours during December 5, 2003 to July 27, 2006.

Appellant presented insufficient medical evidence to establish her disability on the dates claimed. She did not provide treatment notes from Dr. Wassil or any other physician verifying that she was examined and treated for her accepted condition on the dates claimed. Appellant did not submit medical reports explaining, with rationale, why her absence from work for more than two hours on the dates claimed was related to her accepted bilateral carpal tunnel syndrome. She has not provided medical evidence sufficient to meet her burden of proof.[23]

CONCLUSION

The Board finds that appellant did not meet her burden of proof in establishing entitlement to intermittent disability for the period December 5, 2003 to July 27, 2006.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 13 and April 12, 2007 are affirmed.

Issued: November 21, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[22] *Fereidoon Kharabi, supra* note 19.

[23] *See id*; *see also Alfredo Rodriguez*, 47 ECAB 437 (1996).