

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

C.S., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Auburn, WA, Employer)

**Docket No. 08-736
Issued: September 3, 2008**

Appearances:
Appellant, pro se
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 January 14, 2008 appellant filed a timely appeal from the November 30, 2007 merit decision of the Office of Workers' Compensation Programs, which denied disability compensation for a specific period. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUE

The issue is whether appellant was disabled from April 19 to May 19, 2007 as a result of her accepted employment injury.

FACTUAL HISTORY

On December 4, 2006 appellant, then a 44-year-old rural letter carrier, filed a claim for compensation alleging that the pain in her shoulders, upper back and hands was a result of her federal employment: "Pain started on a heavy mail day and would go away with Tylenol. At first only hurt when I cased mail. Then became worse and I would have pain when I delivered mail also. On 11-29-06 after two days of snow I was ordered to take all the mail and I have not

stopped hurting.” The Office accepted her claim for bilateral shoulder impingement syndrome. Appellant received compensation for temporary total disability through April 18, 2007.

On April 18, 2007 Dr. Richard Martin, the attending orthopedic surgeon, reported that appellant had very good range of right shoulder motion, near full compared to the left. He noted that impingement signs were minimal and that rotator cuff strength was full with minimal discomfort. Dr. Martin stated: “Impingement syndrome improving with physical therapy. At this point, I would recommend a work conditioning and hopefully we can get her back to work after one month of that. We will set that up for her and I will see her back in followup in one month to see how she is doing.”

On the same day that it received Dr. Martin’s April 18, 2007 report, the Office also received an April 20, 2007 report on a different patient, named Diane. About this patient he stated: “Diane is now approximately two months out from her shoulder arthroscopy and subacromial decompression. She is doing remarkably well. She has regained all of her motion and she is working on her strength and endurance and is feeling very well and wants to return to work.” Dr. Martin found full range of motion and negative impingement signs. He noted a lack of endurance compared to the left “but otherwise, she has no pain or any other problems.” Dr. Martin sent his patient Diane back to work full duty but limited her to eight hours a day: “No overtime for the next month or so.” He advised her to continue doing her physical therapy to improve her endurance.

On or about October 18, 2007 appellant filed a claim for disability from April 19 to May 19, 2007. On October 22, 2007 the Office requested additional information to support her claim, including medical evidence establishing disability for work during the entire period. It noted that her orthopedic surgeon, Dr. Martin, had released her to full duty on April 20, 2007.

The Office field nurse obtained documentation that Dr. Martin completed in March and April 2007 keeping appellant off work. This included an April 18, 2007 duty status report indicating that appellant was unable to perform regular work, as well as a physical status report appearing to indicate that appellant was off work for an estimated one month following her last treatment on April 18, 2007.¹ The field nurse sent copies of these documents to the Office in October 2007.

In a decision dated November 30, 2007, the Office denied appellant’s claim for disability compensation for the period April 19 to May 19, 2007. It noted that it had received no new supporting medical documentation from appellant or her physician establishing disability during the period claimed. The Office found that Dr. Martin had released appellant to full duty on April 20, 2007.

¹ The copy of the physical status report is so light, the dates are difficult to read and the physician’s signature is nearly invisible.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.² "Disability" means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total.³

A claimant seeking benefits under the Act has the burden of proof to establish the essential elements of her claim by the weight of the evidence.⁴ For each period of disability claimed, the claimant has the burden of proving that she was disabled for work as a result of her accepted employment injury.⁵ 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 the reliable, probative and substantial evidence.⁶

ANALYSIS

Appellant claimed compensation for disability from April 19 to May 19, 2007. The Office denied her claim on the grounds that it received no medical documentation establishing disability during this period and that Dr. Martin released appellant to full duty on April 20, 2007. The Board finds that the evidence of record does not support the Office's decision.

As for appellant's release to full duty on April 20, 2007, the Office has mistaken the identity of appellant with another patient of Dr. Martin. Dr. Martin examined appellant on April 18, 2007, recommended a work conditioning program and reported that "hopefully we can get her back to work after one month of that." He indicated that she would be off work for about a month, which is consistent with her claim. The April 20, 2007 report that the Office mentions in its November 30, 2007 decision does not pertain to appellant. It relates to another of Dr. Martin's patients, a patient named Diane. The Office overlooked the patient identification and the fact that appellant had not yet undergone shoulder surgery. It did not question why Dr. Martin would reexamine appellant after only two days or why he would abandon his recommendation for work hardening. Due to this oversight, the Board finds that Dr. Martin's April 20, 2007 report provides no basis for denying appellant's claim.

As for receiving no supporting documentation, the Office field nurse reported in October 2007 that she forwarded medical reports Dr. Martin had completed in March and April 2007 keeping appellant off work. This included a duty status report dated April 18, 2007 indicating, consistent with his April 18, 2007 narrative report, that appellant was unable to perform regular work. This also included a physical status report that appears to keep appellant

² 5 U.S.C. § 8102(a).

³ 20 C.F.R. § 10.5(f).

⁴ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

⁵ *David H. Goss*, 32 ECAB 24 (1980).

⁶ *Edward H. Horton*, 41 ECAB 301 (1989).

off work for one month following her April 18, 2007 examination, again, consistent with Dr. Martin's April 18, 2007 narrative stating he would follow up with appellant in one month to see how she was doing. The Office did not address this evidence when it denied appellant's claim for compensation.

The Board will set aside the Office's November 30, 2007 decision and remand the case for a proper adjudication of the evidence submitted. Following such further development of the medical evidence as may be necessary, the Office shall issue an appropriate final decision on appellant's claim for compensation from April 19 to May 19, 2007.

CONCLUSION

The Board finds that this case is not in posture for decision. The Office did not properly consider the evidence submitted. Further action is therefore warranted.

ORDER

IT IS HEREBY ORDERED THAT the November 30, 2007 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Issued: September 3, 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