

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

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M.H., Appellant )  
and ) Docket No. 08-1171  
U.S. POSTAL SERVICE, POST OFFICE, ) Issued: September 25, 2008  
Fremont, CA, Employer )  
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)

*Appearances:*

*Leonard J. Baldizan*, for the appellant  
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On March 10, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated February 1 and March 4, 2008 denying her claims for wage-loss benefits. 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 was entitled to wage-loss compensation between July 29 and December 13, 2006 for total disability causally related to her accepted employment injury.

**FACTUAL HISTORY**

This is the second appeal in this case to the Board. On January 25, 2008 the Board found that the Office had not properly issued its June 11, 2007 decision, in that a copy of the decision

was not sent to appellant's representative. The case was remanded to the Office for proper issuance of the decision.<sup>1</sup>

On July 26, 2006 appellant, a 46-year-old mail carrier, filed an occupational disease claim alleging that she had developed pain and numbness in her right arm and hand as a result of employment activities. The Office accepted her claim for right carpal tunnel syndrome and other afflictions of the right shoulder region, not elsewhere classified.

In a July 20, 2006 report, Dr. Rebecca O'Brien, a Board-certified internist, diagnosed right shoulder strain and recommended that appellant avoid carrying her mailbag on her shoulder. On July 27, 2006 Dr. Lawrence Quan, a treating physician, diagnosed carpal tunnel syndrome and right shoulder impingement. He stated that appellant could work full time, provided that she was restricted from: lifting, pushing or pulling more than five pounds; performing right handed activities for more than 5 to 10 minutes per hour; reaching above shoulder level; or working more than 8 hours per day.

The record contains a July 25, 2006 employee evaluation and/or probationary report reflecting that appellant was appointed to her position on May 28, 2006, and that the probationary period would end on August 25, 2006. On June 25, 2006 appellant received a rating at the end of the 30-day period indicating unsatisfactory performance levels in the areas of work quality and quantity. The 60-day rating reflected unsatisfactory performance levels in the above areas, as well as in the area of dependability and recommended that she be separated from service.

In a July 28, 2006 letter entitled "Notice of Separation During Probation," the employing establishment informed appellant that she was being terminated for unacceptable work performance/failure to follow instructions. Specifically, it found that her work methods were deficient, in that she failed to meet the delivery time commitments in "3<sup>rd</sup> bundled mail" on a daily basis, and that she failed to properly scan MSP points on route 3804. Noting that these deficiencies were unsatisfactory, the employing establishment informed appellant that she was being terminated effective the close of business on July 28, 2006. A notification of personnel action dated July 28, 2006 reflected that appellant was separated effective that date for unacceptable work performance and failure to follow instructions.

Medical evidence of record includes an August 17, 2006 report from Dr. R.K. Wong, a treating physician, who opined that appellant was able to work 8 hours per day, but was restricted from lifting more than 5 pounds, and could not perform right-handed activities for more than 5 to 10 minutes per hour.

On September 1, 2006 appellant filed a claim for wage-loss compensation for the period July 29 through September 1, 2006.

In a September 22, 2006 letter, the Office informed appellant that the evidence submitted was insufficient to establish that she was entitled to wage-loss compensation for the period commencing July 29, 2006. It noted that light-duty work was provided by the employing

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<sup>1</sup> Docket No. 07-2205 (issued January 25, 2008).

establishment in accordance with her physician's restrictions and would have continued to be available if she had not been terminated for cause. The Office provided appellant 30 days to submit evidence establishing total disability due to her work injury during the period in question or evidence that her termination was related to her physical inability to perform her assigned duties.

The record contains reports from Dr. Quan dated September 12, October 10, 16 and 30, 2006, reflecting his opinion that appellant was able to work eight hours per day. He recommended that she be restricted from lifting more than five pounds and from repetitive hand activity.

In a letter dated October 9, 2006, appellant stated that she began working light duty on July 19, 2006. She contended that the evaluations, upon which her termination was based, were "done all wrong." Appellant alleged that she could not be properly evaluated if she was on light duty and that she was not properly instructed by the employing establishment regarding her route. She alleged that she was terminated due to her injuries, rather than for poor performance, claiming that she was told by supervisor, Pat Bagley, that she would be fired if she filed a claim for workers' compensation.

By decision dated November 13, 2006, the Office denied appellant's claim, finding that the medical evidence was insufficient to establish that the claimed period of wage-loss compensation was due to disability causally related to the accepted work injury.

On November 21, 2006 appellant requested an oral hearing.

In a December 15, 2006 attending physician's report, Dr. Quan diagnosed carpal tunnel syndrome and right shoulder trapezius strain. He stated that appellant was partially disabled from July 20 through December 14, 2006. Noting that appellant was scheduled for carpal tunnel release surgery on December 14, 2006, he opined that she would be totally disabled from December 15, 2006 through January 30, 2007. On December 15, 2006 Dr. Quan stated that appellant was able to work modified duty from December 5 through 14, 2006. He reiterated his recommended restrictions, including occasional use of the right hand, no lifting above five pounds and no repetitive hand activity.

At the March 21, 2007 hearing, appellant's representative contended that she was not terminated from the employing establishment for cause. He stated that there was no evidence that appellant was "doing anything wrong," and that "they were looking for a reason to fire her" because she filed a claim for an employment-related injury. Acknowledging that the establishment put appellant on light duty and that she was on light duty when she was terminated, the representative stated that it was "inconceivable that the agency would continue to accommodate a probationary employee on light duty." He noted that she had no contractual rights while on probation, and alleged that she was told that she would be terminated if she filed a claim. The hearing representative provided appellant an additional 30 days to submit additional evidence of disability.

In a letter dated April 18, 2007, the employing establishment stated that the reason for appellant's termination was poor performance, which had nothing to do with her injury. The

establishment noted that there were positions available which would allow appellant to work with a headset to eliminate extensive use of her hands.

By decision dated June 11, 2007, the Office hearing representative affirmed the November 13, 2006 decision. He found that the employing establishment provided appellant with a light-duty assignment which conformed to her physician's restrictions, and that light duty would have been available had she not been terminated for cause. The Office hearing representative further found that the medical evidence did not establish that appellant was totally disabled during the period in question.

Appellant disagreed with the hearing representative's decision and appealed to the Board. On January 25, 2008 the Board found that the Office had not properly issued its June 11, 2007 decision, in that a copy of the decision was not sent to appellant's representative. The case was remanded to the Office for proper issuance of the decision.<sup>2</sup> On February 1, 2008 the Office reissued the June 11, 2007 decision denying appellant's claim for wage-loss compensation for the period July 29 through September 1, 2006. A copy of the decision was sent to appellant's representative.

On February 22, 2008 appellant filed a claim for wage-loss compensation for the period September 2 through December 13, 2006. She submitted a February 28, 2008 attending physician's report from Dr. Quan reflecting that appellant was partially disabled from September 2 through December 13, 2006. Dr. Quan opined that appellant could continue working a modified-duty position, provided that she worked within the restrictions previously provided.

By decision dated March 4, 2008, the Office denied appellant's claim for wage-loss compensation for the period September 2 through December 13, 2006. It found that the medical evidence failed to establish that she was disabled due to residuals of her accepted injury, but rather showed that she was terminated for cause.

#### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>3</sup> has the burden of establishing that the essential elements of his or her claim by the weight of the evidence.<sup>4</sup> 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.<sup>5</sup> For each period of disability claimed, the employee

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<sup>2</sup> *Id.*

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *See Prince E. Wallace*, 52 ECAB 357 (2001).

has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.<sup>6</sup>

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.<sup>7</sup> 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.<sup>8</sup>

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 his disability and entitlement to compensation.<sup>9</sup>

### ANALYSIS

Appellant submitted claims for compensation for the period from July 29 to December 13, 2006. She has the burden of establishing by the weight of the substantial, reliable and probative evidence, that she was totally disabled as a result of her accepted employment-related injury during the alleged period. This burden includes providing medical evidence from a physician who concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.<sup>10</sup> The Office properly denied compensation because appellant failed to provide sufficient medical evidence to support that she was disabled due to residuals of her accepted condition.

The medical evidence does not establish that appellant was disabled during the period in question. On the contrary, Dr. Quan repeatedly and consistently opined that she was capable of working an eight-hour day in a position that did not require lifting more than five pounds or engaging in repetitive hand activity. There is no medical evidence of record finding that appellant was totally disabled during the period July 29 to December 13, 2006.

Appellant does not contend that she was disabled or that the employing establishment failed to provide a light-duty job which accommodated her restrictions. Rather, she contends that she is entitled to wage-loss compensation because she was unfairly terminated from her light-duty position; that she was not terminated for cause; and that she was terminated because she filed a claim for injury. Acknowledging that the establishment put appellant on light duty, and that she was on light duty when she was terminated, her representative stated that it was “inconceivable that the agency would continue to accommodate a probationary employee on

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<sup>6</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>7</sup> *Gary L. Watling*, 52 ECAB 278 (2001).

<sup>8</sup> *Manual Garcia*, 37 ECAB 767 (1986).

<sup>9</sup> *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>10</sup> See *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

light duty.” The record, however, reflects that appellant was terminated from her position with the employing establishment on July 28, 2006 for “unacceptable work performance/failure to follow instructions.” The record reveals that the light-duty position would have remained available to her had she not been terminated for cause.

The Board has held that an employee is not disabled within the meaning of the Act where she has been provided appropriate light duty by an employing establishment and the light duty is terminated for reasons unrelated to her physical impairment.<sup>11</sup> There is no evidence that appellant was terminated due to her physical inability to perform her assigned duties or that she stopped work due to residuals of her accepted conditions. As there is no evidence in the record that appellant was not capable of performing her assigned duties during the period in question, she had no disability within the meaning of the Act.<sup>12</sup>

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish that she was entitled to compensation for wage loss from July 29 to December 13, 2006, as she failed to show that she was disabled within the meaning of the Act.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the March 4 and February 1, 2008 decisions of the Office of Workers’ Compensation Programs are affirmed.

Issued: September 25, 2008  
Washington, DC

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

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

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

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<sup>11</sup> *Major W. Jefferson, III*, 47 ECAB 295 (1996).

<sup>12</sup> See *John W. Normand*, 38 ECAB 1378 (1988) (finding that a claimant cannot be considered to have compensable disability when he has been provided appropriate light duty by the employing establishment and the light duty is terminated as a result of conduct he engaged in for reasons unrelated to his physical impairment).