

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

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**B.O., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
San Diego, CA, Employer**

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**Docket No. 08-2493  
Issued: August 25, 2009**

*Appearances:*  
*Appellant, pro se*  
*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 September 19, 2008 appellant filed a timely appeal from a July 29, 2008 Office of Workers' Compensation Programs' decision denying her claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

**ISSUE**

The issue is whether appellant established that she is entitled to 31.95 hours of disability compensation from April 26 to July 3, 2008 causally related to her accepted employment conditions.

**FACTUAL HISTORY**

On May 26, 2000 appellant, then a 40-year-old distribution clerk filed an occupational disease claim alleging that she developed acute tendinitis by casing flats at work. She returned to work in a limited-duty position on June 21, 2000. The Office accepted appellant's claim for unclassified affections of the right shoulder region not elsewhere classified, traumatic arthropathy of the right shoulder region, right carpal tunnel syndrome, reflex sympathetic

dystrophy of the right arm and right lateral epicondylitis. It authorized arthroscopic surgery of the right shoulder on January 15, 2002 and right carpal tunnel release on May 29, 2007.

Appellant was also treated for right acute tendinitis of right elbow, wrist and shoulder, chronic lateral epicondylitis of the right elbow, radial nerve entrapment and reactive ulnar neuritis of the right elbow and early adhesive capsulitis of the right shoulder, chronic cervical myofascial strain and possible degenerative joint disease of the right wrist. On September 25, 2003 the Office granted her a schedule award for 25 percent permanent impairment of the right arm. A June 28, 2006 electromyogram (EMG) report revealed medial nerve pathology at the right wrist affecting primarily median sensory fibers in the carpal tunnel segment.

Appellant came under the treatment of Dr. Richard M. Braun, a Board-certified orthopedist, from April 10, 2006 to October 12, 2007, for pain in the hands and right shoulder. Dr. Braun diagnosed bilateral carpal tunnel syndrome, ulnar neuritis along the elbow, lateral epicondylitis and shoulder cuff tendinitis requiring surgical treatment. He opined that the neuropathy in the wrist and hand area was due to repetitive activities performed as a clerk. On May 25, 2007 Dr. Braun performed a right carpal tunnel release. On January 14, 2008 he returned appellant to light-duty work with restrictions on the right side, lifting limited to one pound with no grasping, lifting, pushing, pulling, gripping activities and twisting.

On February 7, 2008 the employing establishment offered appellant a modified limited-duty position as a full-time sales service distribution associate, which she accepted on February 19, 2008. The job duties included sorting undeliverable bulk business mail with the left hand only for three hours a day, working at the carrier call desk with left hand only for two hours a day and sorting station markups with left hand only for three hours a day. The physical requirements of the modified job were sorting mail weighing up to one pound, minimal writing with the left hand, lifting up to five pounds with the left hand and writing and stamping on mail with the left hand only up to one pound.

In a duty status report dated March 3, 2008, Dr. Braun noted that appellant had pain in both hands and at the incision site and reduced her work hours to four hours a day with no lifting over two pounds, no use of the right hand and no writing with the left hand.

On March 3, 2008 the Office requested that Dr. Braun address why appellant was restricted to four hours a day when she was previously capable of working eight hours, why she was incapable of using her right hand and why use of her left hand was restricted. In reports dated March 3 and 14, 2008, Dr. Braun noted that, despite restricted work of four hours a day, appellant showed symptomatic deterioration and increased swelling in her hands. He continued appellant's work restrictions of four hours.

The employing establishment submitted a postal inspector's report dated March 24, 2008, which documented appellant's activities and determined that they exceeded her medical restrictions. The investigation obtained videotaped footage of appellant which was viewed by Dr. Braun. A subsequent interview with Dr. Braun revealed that appellant had the ability to work more than four hours daily with a greater lifting limit as she misrepresented her physical capabilities to him. The investigation also noted that appellant held a second job as a security guard for four different security companies from 1999 to 2007.

On March 25, 2008 Dr. Braun viewed the videotaped surveillance of appellant and prepared a questionnaire provided by the postal inspector. He noted that appellant was restricted from lifting over two pounds on March 3, 2008; however, her activities as shown in the videotape exceeded the prescribed limits. Dr. Braun noted that appellant reported not being able to perform the activities depicted in the surveillance video. He noted that the activities depicted on the videotape suggested that she could return to work for six hours a day, with restrictions on lifting up to five pounds. Dr. Braun opined that appellant exaggerated her symptoms and subsequent disability and misrepresented her physical capabilities and her ability to return to reasonable modified work.

Appellant submitted several CA-7 forms claiming compensation for partial disability from March 29 to April 24, 2008, for four hours of leave without pay per day. On May 8, 2008 the Office advised her that she was returned to work for six hours per day by Dr. Braun on March 25, 2008 and would be compensated for two hours per day for the period in question.

Appellant submitted an April 25, 2008 work capacity evaluation and report from Dr. Braun. He noted that she presented with pain in both hands and diagnosed status post carpal tunnel syndrome. Dr. Braun returned appellant to work for four hours a day for two weeks. In a report dated April 30, 2008, he increased appellant's workday to six hours a day with a lifting restriction of eight pounds.

In a letter dated May 7, 2008, the Office requested that Dr. Braun clarify appellant's work status as of March 25, 2008. It noted that, on March 25, 2008, he opined that appellant was capable of working six hours a day with a five-pound lifting restriction; however, on April 25, 2008, he opined that appellant was limited to working four hours a day without restriction. The Office noted that, on April 30, 2008, Dr. Braun released appellant to six hours a day with an eight-pound lifting restriction.

Appellant submitted a duty status report from Dr. Braun dated May 9, 2008, who determined she was permanent and stationary. Dr. Braun diagnosed right shoulder tendinitis, lateral epicondylitis in the right elbow, possible ulnar neuritis, right carpal tunnel syndrome requiring surgery, contracture of the right hand with impaired range of motion and repetitive episodes of swelling. He opined that appellant could return to modified work on May 9, 2008 for six hours a day with lifting restricted to eight pounds.

In a letter dated May 13, 2008, the Office again requested that Dr. Braun clarify appellant's work. Dr. Braun did not respond.

On June 4, 2008 the Office referred appellant for a second opinion to Dr. Thomas J. Sabourn, a Board-certified orthopedic surgeon, for determination of her work capacity. In a June 26, 2008 report, Dr. Sabourn reviewed the records provided to him and examined appellant on June 25, 2008. He noted the history of appellant's right arm conditions and diagnosed right shoulder acromioclavicular joint arthritis, impingement syndrome, carpal tunnel syndrome, residual stiffness of right hand fingers after carpal tunnel surgery, lateral epicondylitis of the right elbow, chronic cervical strain and sprain, left shoulder acromioclavicular (AC) joint arthritis with rotator cuff tendinitis and pain syndrome. Dr. Sabourn noted an obvious disproportion between appellant's symptomology and her objective findings. He advised that

she could not work as a distribution clerk due to overuse of her extremities. However, appellant could work eight hours a day with permanent limitations of two hours of reaching, no reaching above the shoulders with the right arm, reach two hours cumulatively over an eight-hour day with the left arm, repetitive motions with the wrists and elbow cumulatively for three hours of an eight-hour workday, push, pull and lift for four hours per day with an eight-pound limitation, five-minute break each hour and repetitive fingering no more than two hours bilaterally. Dr. Sabourn reviewed the February 7, 2008 job offer and noted that she could easily perform the job as a sales service distribution associate if she were to use both hands.

In letters dated July 7 and 21, 2008, the Office requested that Dr. Braun review and comment on Dr. Sabourn's report. No additional evidence was received.

Appellant submitted several CA-7 forms, claims for compensation, for intermittent periods of partial disability for 117.61 hours for the period April 26 to July 3, 2008. The employer submitted several CA-7, time analysis forms, for April 26 to July 3, 2008.

On July 10, 2008 the employing establishment issued a notice of removal indicating that appellant made a misrepresentation on a CA-7 form dated November 29, 2000 noting that she had not received pay for the period January 10 to May 18, 2000, when there was evidence she worked as a security guard from May 7, 1999 to January 14, 2000.

In a decision dated July 29, 2008, the Office denied appellant's claim for compensation for intermittent partial disability for 31.95 hours from April 26 to July 3, 2008. It found that Dr. Braun returned her to work for six hours a day effective March 25, 2008 and therefore she was entitled to wage-loss compensation for two hours per day from April 26 to June 24, 2008 or a total of 85.66 hours of leave. The Office denied compensation beginning June 25, 2008 the date of Dr. Sabourn's examination which found she was capable of working eight hours a day.

### **LEGAL PRECEDENT**

A claimant has the burden of proving by a preponderance of the evidence that he or she is disabled for work as a result of an accepted employment injury and submit medical evidence for each period of disability claimed.<sup>1</sup> Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues.<sup>2</sup> The issue of whether a particular injury causes disability for work must be resolved by competent medical evidence.<sup>3</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 or her disability and entitlement to compensation. For each period of disability claimed, the employee has the burden

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<sup>1</sup> See *Fereidoon Kharabi*, 52 ECAB 291 (2001).

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

<sup>3</sup> See *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

of establishing that he or she was disabled for work as a result of the accepted employment injury.<sup>4</sup>

### ANALYSIS

The Office accepted appellant's claim for a right shoulder injury not elsewhere classified, traumatic arthropathy of the right shoulder region, right carpal tunnel syndrome, reflex sympathetic dystrophy of the upper right limb and right lateral epicondylitis. It accepted that she was partially disabled for two hours per day from April 26 to June 24, 2008 for a total of 85.66 hours of leave. The Board notes that the medical evidence supports that appellant was partially disabled due to the accepted injury during this period. In reports dated March 25 and May 9, 2008, Dr. Braun opined that she could work six hours a day with restrictions. For this reason, appellant was properly granted wage-loss compensation for the hours she did not work.

However, the commencing June 25, 2008, the Office denied wage-loss compensation as the medical evidence noted appellant's capacity to work full time. On appeal, appellant asserts that Dr. Braun's reports support the hours of disability claimed.

On March 25, 2008 Dr. Braun viewed a videotaped surveillance of appellant and noted that her activities exceeded the physical limitations set for her. He opined that she exaggerated her symptoms and subsequent disability and misrepresented her physical capabilities and her ability to return to reasonable modified work. Dr. Braun opined that the activities depicted on the videotape revealed that appellant could work for six hours per day with restrictions on lifting up to five pounds. In his work capacity evaluation and report dated April 25, 2008, he noted appellant's complaints of pain in both hands and reduced her work hours to four per day. Although Dr. Braun noted that appellant had symptoms of bilateral hand pain, he did not specifically address whether she had any employment-related disability beginning April 25, 2008 causally related to her accepted conditions. He did not fully address why appellant was restricted to working four hours per day instead of six hours and why these restrictions would be attributable to the 2000 employment injury. Furthermore, Dr. Braun's April 25, 2008 opinion that appellant could work four hours daily within restrictions is at odds with his April 30, 2008 report, which again found that she could work six hours daily within restrictions. On May 7, 2008 the Office requested that Dr. Braun clarify his opinion on appellant's capacity for work. In a May 9, 2008 report, Dr. Braun opined that appellant could work six hours a day with restrictions. He did not address the limitations regarding appellant's work capacity. The Board has found that vague medical opinions which do not explain causal relationship are of diminished probative value.<sup>5</sup> Therefore, these reports are insufficient to meet appellant's burden of proof that she was disabled for more than two hours a day from April 26 to June 24, 2008.

The Office referred appellant to Dr. Sabourn, who in a June 26, 2008 report, noted her history of injury and diagnoses. On examination, Dr. Sabourn noted a discrepancy between objective findings and appellant's symptomatology. He opined that appellant could not return to work as a distribution clerk because she would be required to overuse her upper extremities.

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<sup>4</sup> *Sandra D. Pruitt*, 57 ECAB 126 (2005).

<sup>5</sup> *See A.D.*, 58 ECAB \_\_\_\_ (Docket No. 06-1183, issued November 14, 2006).

However, Dr. Sabourn opined that appellant was capable of work eight hours a day in a light-duty position with permanent restrictions. He reviewed the February 7, 2008 job offer as a sales service distribution associate and noted that appellant could easily perform the job if she were to use her right and left hand when sorting undeliverable bulk business mail for three hours per day and sorting mail pieces weighing up to one pound for three hours a day. The Office twice requested that Dr. Braun comment on Dr. Sabourn's report but no response was received. The Board finds that there is no probative medical evidence supporting entitlement to disability compensation beginning June 25, 2008, the date Dr. Sabourn examined appellant and found her capable of full-time limited duty.

Consequently, the medical evidence does not establish that appellant is entitled to 31.95 hours of disability compensation for the claimed period.

### **CONCLUSION**

The Board finds that appellant has failed to establish that she was disabled for 31.95 hours from April 26 to July 2, 2008 causally related to the accepted employment injury.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 29, 2008 is affirmed.

Issued: August 25, 2009  
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