

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

C.F., Appellant)

and)

DEPARTMENT OF THE ARMY, TANK)
AUTOMOTIVE & ARMAMENTS COMMAND,)
Warren, MI, Employer)

**Docket No. 08-2291
Issued: June 23, 2009**

Appearances:

*Paul H. Kullen, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 19, 2008 appellant, through her attorney, filed a timely appeal from November 8, 2007 and June 27, 2008 merit decisions of the Office of Workers' Compensation Programs denying her claim for disability compensation. 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 that she sustained intermittent periods of disability from January 13 through September 17, 2003 causally related to her accepted employment injury.

FACTUAL HISTORY

On September 26, 2003 appellant, then a 47-year-old supply management specialist, filed an occupational disease claim alleging that she sustained bilateral carpal tunnel syndrome due to

factors of her federal employment. The Office accepted her claim for bilateral carpal tunnel syndrome.¹

In a report dated May 22, 2003, Dr. Peter Janevski, a Board-certified surgeon, noted that appellant used a computer in her work for the employing establishment. He diagnosed bilateral carpal tunnel syndrome and indicated that she wanted workers' compensation due to her 27 years of computer use.

In a form report dated August 22, 2003, Dr. Janevski diagnosed bilateral carpal tunnel syndrome. He indicated that the section of the form relevant to disability was not applicable. Dr. Janevski listed the dates he treated appellant as February 15 and April 5, 1999 and May 22, 2003.²

On January 23, 2004 Dr. Janevski related that appellant had symptoms of carpal tunnel syndrome and required a carpal tunnel release. He discussed her history of computer work at the employing establishment for 27 years and also noted that she had congenital abnormalities of the hands.

On August 8, 2005 appellant filed a claim for compensation (Form CA-7) for intermittent disability from January to September 2003. The employing establishment noted that she retired with incentive pay on April 30, 2004 and submitted an incomplete time analysis form.

By letter dated September 22, 2005, the Office requested that the employing establishment provide appellant's leave usage for the period covered by the Form CA-7. In a separate letter of the same date, the Office requested that appellant submit medical evidence showing that she was disabled from employment for the period claimed.

In a report dated October 13, 2005, Dr. Janevski related that appellant had suspected carpal tunnel syndrome but that the diagnosis could not be documented due to congenital abnormalities of the hands. He asserted that she was unable "to work from January 12 to September 20, 2003 due to chronic pain."

In a decision dated June 13, 2006, the Office denied appellant's claim on the grounds that the medical evidence did not show that she was totally disabled during the period January 13 through September 17, 2003.

On July 11, 2006 appellant requested an oral hearing. Following a preliminary review, on August 18, 2006 the hearing representative found that the case was not in posture for a hearing. The hearing representative vacated the June 13, 2006 decision and remanded the case

¹ By decision dated January 9, 2004, the Office denied appellant's claim on the grounds that she did not establish that she sustained bilateral carpal tunnel syndrome due to factors of her federal employment. By decision dated March 25, 2005, a hearing representative reversed the January 9, 2004 decision and accepted the claim for bilateral carpal tunnel syndrome.

² On October 13, 2003 Dr. Janevski recommended a carpal tunnel release. On November 3, 2003 he opined that appellant should limit typing to four hours per day.

for the Office to obtain complete information from the employing establishment regarding appellant's leave usage between January 12 and September 20, 2003.

On June 8, 2007 appellant, through her attorney, requested reconsideration. On September 28, 2007 the employing establishment provided the dates that appellant used leave and leave without pay from January 12 to September 20, 2003.³

On October 1, 2007 the Office notified appellant that it had insufficient medical evidence to support that she was disabled for any claimed date except for May 22, 2003. It requested that she obtained clarification from Dr. Janevski regarding whether she was unable to work due to carpal tunnel syndrome.

By decision dated November 8, 2007, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to support her claim for intermittent wage loss between January 13 and September 17, 2003.

On November 28, 2007 appellant requested an oral hearing. In a report dated February 5, 2008, Dr. Jerry A. Taylor, an osteopathic hand surgeon, certified by the American Osteopathic Association, discussed her work history of extensive typewriter and computer use and her symptoms of hand pain and numbness beginning in 1995. In discussing appellant's medical history, Dr. Taylor related, "[Appellant] missed work at a rate of approximately [one to two] days per week from Jan[uary] 2003 thr[ough] her last day of work which was April 30, 2004. She stopped working at that time because she was no longer able to work due to the severe pain and numbness of the hands." He diagnosed bilateral carpal tunnel syndrome on the left more than right, a history of congenital absence and hypoplasia of the digits of both hands and pain and tenderness at the base of both palms of unknown etiology but possibly due to carpal tunnel syndrome. Dr. Taylor opined that appellant was totally disabled from her employment due to her bilateral carpal tunnel syndrome.

A hearing was held on April 30, 2008. In a decision dated June 27, 2008, the hearing representative affirmed the November 8, 2007 decision as modified to show that appellant was entitled to four hours of compensation for medical treatment on May 22, 2003. She determined that there was no other medical evidence supporting either that appellant was disabled from work or sought medical treatment for her accepted work injury from January 13 to September 17, 2003.

LEGAL PRECEDENT

The term disability as used in the Federal Employees' Compensation Act⁴ means the incapacity because of an employment injury to earn the wages that the employee was receiving at the time of injury.⁵ Whether a particular injury caused an employee disability for employment

³ The leave analysis indicates that appellant missed periodic time from work and used a combination of annual leave and leave without pay.

⁴ 5 U.S.C. §§ 8101-8193; 20 C.F.R. § 10.5(f).

⁵ *Paul E. Thams*, 56 ECAB 503 (2005).

is a medical issue which must be resolved by competent medical evidence.⁶ When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in the employment held when injured, the employee is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.⁷ The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employee's to self-certify their disability and entitlement to compensation.⁸

ANALYSIS

The Office accepted that appellant sustained bilateral carpal tunnel syndrome causally related to factors of her federal employment. Appellant filed a claim for compensation for intermittent periods of disability between January 13 and September 17, 2003.

On May 22, 2003 Dr. Janevski diagnosed symptoms of carpal tunnel syndrome bilaterally. He did not address whether appellant was disabled from employment. The Office found that she was entitled to four hours of wage-loss compensation on this date as she obtained medical treatment for her work injury.

In an August 22, 2003 form report, Dr. Janevski diagnosed carpal tunnel syndrome and recommended a carpal tunnel release. He indicated on the form that the questions regarding total or partial disability were not applicable and there is no evidence that he treated appellant on this date. Consequently, Dr. Janevski's report does not support her claim for disability compensation.

On January 23, 2004 Dr. Janevski noted appellant's history of work at the employing establishment for 27 years and diagnosed carpal tunnel syndrome. He did not, however, address the relevant issue of whether she had any disability between January 13 and September 17, 2003. The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.⁹

In a report dated October 13, 2005, Dr. Janevski noted that appellant's suspected diagnosis of carpal tunnel syndrome could not be verified due to her congenital hand abnormalities bilaterally. He opined that she was unable "to work from January 12, 2003 to September 20, 2003 due to chronic pain." Dr. Janevski did not, however, provide any rationale

⁶ *Id.*

⁷ *Id.*

⁸ *William A. Archer, 55 ECAB 674 (2004); Fereidoon Kharabi, 52 ECAB 291 (2001).*

⁹ *Id.*

for his finding. Medical conclusions unsupported by rationale are of diminished probative value.¹⁰

On February 5, 2008 Dr. Taylor reviewed appellant's work history and noted that she began experiencing pain and numbness in her hands in 1995. He noted that she had missed one or two days of work weekly between January 2003 and April 2004. Dr. Taylor diagnosed bilateral carpal tunnel syndrome probably due to appellant's work for the employing establishment, congenital absence of hypoplasia of the digits of the hands and tenderness of both palms, etiology unknown. He found that she was totally disabled from employment due to her carpal tunnel syndrome beginning in April 2004. While Dr. Taylor noted appellant's history of missing one or two days of work each week from January 2003 until April 2004 due to hand pain and numbness, he did not provide an independent opinion that she was disabled from work on specific dates between January and September 2003 due to her carpal tunnel syndrome. Consequently, his opinion is insufficient to meet her burden of proof.

On appeal, appellant's attorney advised that the employing establishment accepted her work absences without requiring further documentation. As discussed, however, disability under the Act is a medical issue and must be supported by competent medical evidence.¹¹

CONCLUSION

The Board finds that appellant has not established that she sustained intermittent periods of disability from January 13 through September 17, 2003 causally related to her accepted employment injury.

¹⁰ *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

¹¹ *See Paul E. Thams*, *supra* note 5.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 27, 2008 and November 8, 2007 are affirmed.

Issued: June 23, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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