

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

C.V., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Patterson, LA, Employer)

Docket No. 09-178
Issued: March 24, 2009

Appearances:

R. Scott Ramsey, Jr., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On October 23, 2008 appellant, through counsel, filed a timely appeal from a September 24, 2008 decision of the Office of Workers' Compensation Programs which denied his compensation claim. 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 the Office properly denied appellant's claim for wage-loss benefits for the period September 1, 2006 through July 3, 2008.

FACTUAL HISTORY

On February 7, 1990 appellant, a rural carrier associate, filed a traumatic injury claim (Form CA-1) which the Office accepted for lumbar strain on March 19, 1990. On February 23, 2006 she filed a claim for recurrence, which the Office denied on May 15, 2006. By application dated May 31, 2006, appellant requested an oral hearing which was held on April 3, 2007. She testified that she had not worked since January 2006 as the employing establishment would not

allow her to return to her regular position, given her medical restrictions. By decision dated May 8, 2007, the hearing representative reversed the Office's decision and by letter dated May 15, 2007 notified appellant that her claim for recurrence had been accepted. The hearing representative specifically found that appellant had established that the accepted injury accelerated her degenerative disc condition and was the cause of her current disability. Appellant received benefits for the period April 1 through August 31, 2006. On July 16, 2008 she filed a claim (Form CA-7) for lost wages for the period between September 1, 2006 and July 3, 2008.

Medical evidence pertaining to the period of compensation claimed consisted of a duty status report (Form CA-17) dated October 24, 2006 signed by Dr. C. Clay Craighead, a Board-certified general surgeon, in which he diagnosed degenerative disc disease and checked the box indicating that appellant was unable to perform regular work, but noted on the form that appellant was able to perform some sedentary work with straight-back chair, limited walking, standing, pushing, pulling, bending, stooping and lifting. Appellant also submitted several medical notes from January 24 to June 2, signed by Dr. Craighead discussing her diagnosis. These notes from Dr. Craighead omit from the date reference the year in which they were prepared.¹

By decision dated September 24, 2008, the Office denied appellant's claim for wage-loss compensation because the medical evidence did not establish that she continued to suffer a disability causally related to the accepted employment injury during the period claimed.

LEGAL PRECEDENT

For each period of disability claimed, the employee has the burden of proving that he or she was disabled for work as a result of the accepted employment injury.² As used in the Federal Employees' Compensation 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.³ Disability is thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.⁴ Whether a particular injury causes an employee to be disabled for employment, and the duration of that disability, are medical issues, which must be proved by a preponderance of the reliable, probative and substantial medical evidence.⁵ The Board will not require the

¹ In a medical note dated January 27, Dr. Craighead states that appellant has a new problem with her right leg and is temporarily disabled. In a medical note dated February 14, he diagnoses appellant with neurologic impairment based on a computerized tomography (CT) scan of her back. Dr. Craighead also states that she has multiple lesions consistent with a chronic injury such as the one she suffered in 1989. Moreover, in a March 13 medical note, he states that appellant is totally disabled from her back injuries and a chronic/acute disease in her leg. In a June 2 medical note, Dr. Craighead asserts that the location and nature associates with the abnormal x-rays, making it more likely than not that the injury was caused by her injury in 1989.

² *William A. Archer*, 55 ECAB 674 (2004).

³ *Patricia A. Keller*, 45 ECAB 278 (1993); 20 C.F.R. § 10.5(f).

⁴ *See Fred Foster*, 1 ECAB 21 (1947).

⁵ *Fereidoon Kharabi*, 52 ECAB 291 (2001); *see also Edward H. Horton*, 41 ECAB 301 (1989).

Office to pay compensation in the absence of medical evidence directly addressing the particular period of disability for which compensation is sought. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.⁶

With respect to claimed disability for medical treatment, section 8103 of the Act provides for medical expenses, along with transportation and other expenses incidental to securing medical care for injuries.⁷ Appellant would be entitled to compensation for any time missed from work due to medical treatment for an employment-related condition.⁸ However, the Office's obligation to pay for medical expenses and expenses incidental to obtaining medical care, such as loss of wages, extends only to expenses incurred for treatment of the effects of any employment-related condition. Appellant has the burden of proof which includes the necessity to submit supporting rationalized medical evidence.⁹

ANALYSIS

Appellant has an accepted injury for lumbar strain. In a decision dated May 8, 2007, an Office hearing representative also found that appellant's degenerative disc disease had been accelerated by the accepted injury. Appellant thereafter claimed that she was disabled from work from September 1, 2006 through July 3, 2008 due to the accepted injury. She bears the burden to establish through medical evidence that she was disabled during the claimed time periods and that her disability was causally related to her accepted injury. The Board finds that appellant has not established that she was disabled during the claim periods as a result of her employment injury.

On the Form CA-17, Dr. Craighead indicated that appellant's diagnosis was degenerative disc disease and checked the box indicating that appellant was not able to perform regular work but noted that she was able to perform some limited work duties such as sedentary work with a straight chair and limited walking, standing, pushing, pulling, bending, stooping and lifting. This is insufficient medical evidence to establish appellant's total disability and further is insufficient to show that any disability was causally related to the accepted conditions for the period claimed. The Board has held that, without further explanation or rationale, a checked box is not sufficient to establish causation.¹⁰ Dr. Craighead did not provide any medical explanation as to whether appellant's current condition was causally related to the accepted diagnosed conditions. His reports are therefore of limited probative value in establishing that appellant's disability after September 1, 2006 was causally related to the accepted injury.

Because it is not possible to ascertain the date of most of the medical notes, and thus their relevance to appellant's claim, they are of no probative value. The only notes that reflected a

⁶ *Sandra D. Pruitt*, 57 ECAB 126 (2005); *William A. Archer*, *supra* note 1.

⁷ 5 U.S.C. § 8103(a).

⁸ *Vincent E. Washington*, 40 ECAB 1242 (1989).

⁹ *Dorothy J. Bell*, 47 ECAB 624 (1996); *Zane H. Cassell*, 32 ECAB 1537 (1981).

¹⁰ *Debra S. King*, 44 ECAB 203 (1992); *Salvatore Dante Roscello*, 31 ECAB 247 (1979).

year were written February 9 and May 26, 2006, both prior to the claimed period of disability and therefore not relevant to this claim. In its September 24, 2008 decision, the Office references a medical note dated April 23, 2007 from Dr. Craighead. The record reveals that the medical notes were received by the Office on April 23, 2007, but none of the notes were dated April 23, 2007. Because it is not possible to ascertain the date of these notes, and thus their relevance to appellant's claim, they are of no probative value. There is no other probative medical evidence of record that addresses her disability on the dates claimed.

The Board finds that appellant has failed to submit sufficient rationalized medical evidence to establish that she was unable to work during the specified period.

CONCLUSION

The Board finds that the Office properly denied appellant's claim for wage-loss benefits for the periods between September 1, 2006 and July 3, 2008.

ORDER

IT IS HEREBY ORDERED THAT the September 24, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 24, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board