

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

D.D., Appellant)	
)	
and)	Docket No. 08-1768
)	Issued: May 14, 2009
U.S. POSTAL SERVICE, POST OFFICE, Los Angeles, CA, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 3, 2008 appellant filed a timely appeal from an Office of Workers' Compensation Programs' March 12, 2008 decision denying compensation for wage loss. 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 benefits between December 22, 2007 and March 14, 2008 causally related to her federal employment.

FACTUAL HISTORY

On November 3, 2007 appellant, a 52-year-old window clerk, filed a claim for benefits, alleging that she injured her left wrist while pulling a drawer.

In a Form CA-20 report dated November 5, 2007, Dr. Artis Woodward, a specialist in anesthesiology and appellant's treating physician, diagnosed left wrist sprain. He noted wrist pain extending into the left arm, with palpatory tenderness in the left wrist and forearm, and increased pain with gripping, grasping, palmar flexing and dorsiflexing on examination. Dr. Woodward placed appellant on total disability until December 5, 2007.

By letter dated January 25, 2007, the Office noted that it had originally handled appellant's claim administratively as a routine, uncontroverted case resulting in minimal or no time lost from work, which permitted medical payments up to \$1,500.00. However, as appellant's medical payments had exceeded \$1,500.00, it stated that it was required to formally adjudicate her claim.¹ The Office accepted appellant's claim for left wrist sprain.

Appellant submitted CA-7 forms requesting compensation for wage loss for the following periods: December 22, 2007 to January 4, 2008; January 5 to 18, 2008; January 19 to February 1, 2008; February 2 to 15, 2008; and February 16 to 29, 2008.

In a return to work slip dated January 11, 2008, Dr. Woodward indicated that appellant could return to work on January 30, 2008 based on the "specific medical condition" for which he had been treating her.

By letter dated January 31, 2008, the Office asked appellant to submit probative, rationalized medical evidence establishing disability for the period December 22, 2007 to January 4, 2008 and from January 5 to 14, 2008.

In a return to work slip dated January 29, 2008, Dr. Woodward indicated appellant should continue on disability until February 28, 2008, at which time she could return to work. He indicated again that this instruction was based on the "specific medical condition" for which he had been treating her.

In a February 3, 2008 report, responding to an employing establishment questionnaire, Dr. Woodward stated that appellant was unable to perform modified work due to her diagnosed left wrist sprain. He indicated that appellant was experiencing a prolonged recovery period due to suspected entrapment syndrome and estimated that she could return to work on March 1, 2008.

In a February 6, 2008 Form CA-20 report, Dr. Woodward indicated that he had examined and treated appellant on five occasions between November 16, 2007 and January 29, 2008. He reiterated his previous diagnosis and findings on examination and indicated that appellant demonstrated positive Tinel's and Phalen's tests of the left wrist. Dr. Woodward stated that appellant was totally incapacitated and was incapable of any repetitive use or activity involving the left hand. He advised that appellant was restricted from pushing, pulling or lifting.

Appellant submitted a February 13, 2008 electromyogram report, which indicated mild ulnar neuropathy at the elbow.

In a February 20, 2008 Form CA-20 report, Dr. Woodward reiterated his previous diagnosis of left wrist sprain. He indicated he had placed appellant's left wrist in a splint and placed her on total disability until March 14, 2008.

By decision dated March 12, 2008, the Office denied appellant's claim for compensation based on wage loss, finding that she failed to establish that her total disability as of December 22, 2007 and continuing was causally related to her accepted employment injury. It

¹ See Federal (FECA) Procedural Manual, Part 2 -- Claims, *Development of Claims*, Chapter 2.800.14 (January 2004).

indicated that the medical evidence appellant submitted was not well rationalized and did not explain the nature of the underlying condition in sufficient detail to support such an extended period of disability.

On April 15, 2008 appellant requested a review of the written record.

By decision dated May 16, 2008, the Office denied appellant's request for a review of the written record. It stated that appellant's request was postmarked April 18, 2008, which was more than 30 days after the issuance of the Office's March 12, 2008 decision, and that he was therefore not entitled to a hearing as a matter of right. The Office nonetheless considered the matter in relation to the issue involved and denied appellant's request on the grounds that the issue was factual and medical in nature and could be addressed through the reconsideration process by submitting additional evidence.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing that the essential elements of his or her claim by the weight of the evidence.³ 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.⁴ For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the 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 probative and reliable medical opinion evidence.⁶ 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.⁷ 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.⁸

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *See Prince E. Wallace*, 52 ECAB 357 (2001).

⁵ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁶ *Gary L. Watling*, 52 ECAB 278 (2001).

⁷ *Manual Garcia*, 37 ECAB 767 (1986).

⁸ *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

Chapter 2.807.17(c) of the Federal (FECA) Procedural Manual, states:

“c. *Medical Evidence.* Absent information that the claimant has returned to duty, the CE may authorize the payment of compensation for wage loss based on medical evidence of injury-related disability for the period claimed or the period for which compensation is being authorized.

(1) *Medical evidence* may take the form of:

- (a) Form CA-16, Form CA-20 or Form CA-17 with a period of disability indicated.
- (b) Medical notes from the attending physician indicating that the claimant is not to work until the next scheduled office visit, at which time he/she will be reevaluated.
- (c) Hospital records indicating disability for the period in question.
- (d) A current narrative medical report indicating disability for the period in question or projecting disability through the period claimed.”⁹

ANALYSIS

In the instant case, the Office accepted appellant’s claim for left wrist sprain and authorized continuation of pay from November 3 to December 22, 2007. Appellant subsequently submitted CA-7 forms covering the period December 22, 2007 to February 29, 2008. In support of her claim, she submitted several reports and disability slips from the attending physician, Dr. Woodward. These reports indicated periods of disability, restricted appellant from work until her next scheduled office visits, and projected disability through the periods claimed. On January 11 and 29, 2008 return to work slips, Dr. Woodward indicated that appellant should continue on disability until January 30 and February 28, 2008, respectively, after which he expected her to return to work. He stated on both of these disability slips that he was keeping her out of work due to the “specific medical condition” for which he had been treating her. In his February 3, 2007 report, Dr. Woodward advised that appellant was unable to perform modified work due to her diagnosed left wrist sprain and was experiencing a prolonged recovery period due to suspected entrapment syndrome. In his February 6, 2008 Form CA-20 report, he indicated that testing demonstrated positive Tinel’s and Phalen’s tests of the left wrist, that appellant, was totally incapacitated and was incapable of any repetitive use or activity involving the left hand; and he restricted appellant from pushing, pulling or lifting. In his Form CA-20 dated February 20, 2008, Dr. Woodward stated that he had placed appellant’s left wrist in a splint and placed her on total disability until March 14, 2008.

The Board finds that the medical evidence appellant submitted above was sufficient to support total disability for the periods claimed. The reports from Dr. Woodward clearly met the

⁹ Federal (FECA) Procedural Manual, Part 2 -- Claim, *Continuation of Pay and Initial Payments*, Chapter 2.807.17(c) (March 2004)

standard for establishing entitlement to total disability compensation for an accepted condition set out in Chapter 2.807.17(c) of the Federal (FECA) Procedural Manual. The standard utilized by the Office to determine appellant's entitlement to total disability compensation is not applicable to the facts of this case. The Office asked appellant to submit evidence which was "probative and well rationalized" explaining the nature of the underlying condition, which constitutes the standard for establishing an injury in the performance of duty. However, the Office had already accepted that appellant sustained a left wrist sprain in the performance of duty on November 3, 2007. Dr. Woodward submitted medical reports which were sufficient to establish that appellant was entitled to compensation for total disability based on her accepted left wrist condition for the periods requested, pursuant to the applicable protocols of the Federal (FECA) Procedural Manual, as stated above. The Board therefore reverses the March 12, 2008 Office decision.¹⁰

CONCLUSION

The Board finds that appellant has met her burden of proof in establishing that she was entitled to additional compensation for wage loss for the period December 22, 2007 to March 14, 2008 causally related to her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the March 12, 2008 decision of the Office of Workers' Compensation Programs be reversed and the case is remanded to the Office to determine the amount of compensation to which appellant is entitled.

Issued: May 14, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

¹⁰ As the Board has reversed the March 12, 2008 Office decision, the May 16, 2008 decision denying appellant's request for a review of the written record is moot and need not be considered.