United States Department of Labor
Employees' Compensation Appeals Board

L.D., Appellant	)	
and	)	**Docket No. 09-1469**
	)	**Issued: February 24, 2010**
U.S. POSTAL SERVICE, PROCESSING & DISTRUBUTION CENTER, Cleveland, OH, Employer	)	

Appearances:
Alan J. Shapiro, 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 May 26, 2009 appellant, through her attorney, filed a timely appeal from September 30, 2008 and April 23, 2009 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 is entitled to compensation for disability for four hours per day on August 2, 7, 9 and 16, 2008 due to her accepted employment injury.

FACTUAL HISTORY

On December 9, 1998 appellant, then a 48-year-old mail processor clerk, filed an occupational disease claim alleging that she sustained right thumb strain and right trapezius

strain due to factors of her federal employment.[1] The Office accepted the claim, assigned file number xxxxxx476, for right thumb strain, a right trapezius strain and a right rotator cuff repair. Appellant worked in a permanent modified position beginning July 29, 1999 as a modified mail processor. She underwent a right rotator cuff repair on January 30, 2001. On March 23, 2001 appellant returned to her position as a modified mail processor.

On August 5, 2008 appellant filed a claim for compensation for disability from July 19 to August 1, 2008. On August 19, 2008 she filed a claim for intermittent wage loss from August 2 to 15, 2008. An attached time analysis form provided that appellant used four hours of leave and four hours of leave without pay on August 2, 7, 8 and 9, 2008. On August 20, 2008 the Office informed her that she needed to provide medical evidence by September 11, 2008 supporting the need for time lost from work due to her employment injury.

In a duty status report dated August 1, 2008, Dr. Anthony M. George, Board-certified in preventive medicine and appellant's attending physician, diagnosed a right shoulder rotator cuff tear and found that she could work four hours per day. The duty status report indicated that she usually worked four hours a day five days per week. Dr. George found that appellant could resume her part-time work. He checked "yes" that the history of injury corresponded to that on the form of a rotator cuff tear and surgery due to repetitive movements.

By letter dated September 3, 2008, the Office noted that appellant worked four hours in connection with an injury under file number xxxxxx449. It informed her that to claim lost time under file number xxxxxx476 she needed to submit evidence that she received medical treatment for the dates claimed.

On September 2, 2008 appellant claimed compensation for lost time from August 16 to 29, 2008. A time analysis form indicated that she used leave without pay for four hours per day and leave for four hours per day.[2]

In a September 29, 2008 memorandum to the file, a claims examiner noted that appellant was entitled to compensation for time lost due to medical appointments for 12 hours from July 19, 2009 to August 8, 2008.

By decision dated September 30, 2008, the Office denied appellant's claim for 16 hours of time lost on August 2, 7, 9 and 16, 2008. It noted that there was no medical evidence showing either that she received treatment on those dates or was disabled from work. The Office found that appellant was entitled to compensation for time lost on July 19 and August 1 and 8, 2008.

In a report dated September 30, 2008, Dr. George addressed appellant's disability for employment on July 19 and August 1, 2008.

[1] The Office previously accepted that appellant sustained right carpal tunnel syndrome under file number xxxxxx167. In 1999, its doubled files numbers xxxxxx167 and xxxxxx476.

[2] An official with the employing establishment noted that she also claimed lost time during this period under another file number.

On October 2, 2008 appellant, through her attorney, requested an oral hearing. At the hearing, held on February 9, 2009, her attorney requested that the hearing representative hold the record open for 30 days for the submission of supporting evidence. No further evidence was received into the record.

By decision dated April 23, 2009, the hearing representative affirmed the September 30, 2008 decision. She noted that there was no medical evidence supporting the need for time lost from work on the dates in question due to appellant's accepted right shoulder condition.

LEGAL PRECEDENT

The term disability as used in the Federal Employee' Compensation Act[3] means the incapacity because of an employment injury to earn the wages that the employee was receiving at the time of injury.[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 caused an employee disability for employment is a medical issue which must be resolved by competent medical 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 any 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 their disability and entitlement to compensation.[8]

The Board has long recognized that, under section 8103,[9] payment of expenses incidental to the securing of medical services encompasses payment for loss of wages incurred while obtaining medical services. An employee is entitled to disability compensation for loss of wages incidental to treatment for an employment injury.[10]

[3] 5 U.S.C. §§ 8101-8193; 20 C.F.R. § 10.5(f).

[4] *Paul E. Thams*, 56 ECAB 503 (2005).

[5] *Sandra D. Pruitt*, 57 ECAB 126 (2005); *Dennis J. Balogh*, 52 ECAB 232 (2001).

[6] *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008); *Gary J. Watling*, 52 ECAB 278 (2001).

[7] *D.I.*, 59 ECAB ___ (Docket No. 07-1534, issued November 6, 2007).

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

[9] 5 U.S.C. § 8103.

[10] *Daniel Hollars*, 51 ECAB 355 (2000); *Antonio Mestres*, 48 ECAB 139 (1996).

ANALYSIS

The Office accepted that appellant sustained right thumb strain, a right trapezius strain and a right rotator cuff repair under file number xxxxxx476.[11] On August 5, 2008 appellant claim for wage loss for four hours on July 19 and August 1, 2008. On August 19, 2008 she filed a claim for wage loss for four hours per day on August 2, 7, 8 and 9, 2008. At the time appellant filed her claims for wage loss, she worked four hours per day. The Office accepted that she was entitled to compensation for time lost on July 19 and August 1 and 8, 2008. Appellant burden to establish through the submission of medical evidence that she was disabled from work or attending medical appointments for the remaining claimed time periods due to her accepted employment injury.

In a duty status report dated August 1, 2008, Dr. George diagnosed a right shoulder rotator cuff tear and found that appellant could work four hours per day. He checked "yes" that the history provided on the form corresponded to that given by the employee and noted that she was status post rotator cuff surgery. Dr. George indicated that appellant could return to her part-time work. As he did not find that she was unable to work her four hours per day, his report is insufficient to meet her burden of proof. Additionally, an opinion on causal relationship which consists only of a physician checking "yes" to a medical form question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.[12]

In a report dated September 30, 2008, Dr. George addressed why appellant missed work on July 19 and August 1, 2008. As discussed, however, the Office accepted that she was entitled to wage-loss compensation for those dates.

There is no medical evidence from a physician addressing whether appellant was disabled from work for four hours per day on August 2, 7, 9 and 16, 2008 or establishing that she received medical treatment on those dates for her accepted work injury. As noted, for each period of disability claimed, she has the burden of proving by the preponderance of the reliable, probative and substantial evidence that she is disabled for work as a result of her employment injury.[13] Appellant has not provided medical evidence supporting disability for four hours per day on August 2, 7, 9 and 16, 2008 and thus has not meet her burden of proof.

CONCLUSION

The Board finds that appellant has not established that she is entitled to compensation for disability for four hours per day on August 2, 7, 9 and 16, 2008 due to her accepted employment injury.

[11] The Office also accepted that appellant bilateral carpal tunnel syndrome under file number xxxxxx167, which it doubled with file number xxxxxx476.

[12] *Deborah L. Beatty*, 54 ECAB 334 (2003) (the checking of a box "yes" in a form report, without additional explanation or rationale, is insufficient to establish causal relationship).

[13] *See Sandra D. Pruitt*, *supra* note 5.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 23, 2009 and September 30, 2008 are affirmed.

Issued: February 24, 2010
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