

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

C.B., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Columbus, OH, Employer)

**Docket No. 09-2363
Issued: June 11, 2010**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 23, 2009 appellant filed a timely appeal from an August 7, 2009 merit decision of the Office of Workers' Compensation Programs. 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 an employment-related disability commencing May 16, 2008.

FACTUAL HISTORY

On April 29, 2008 appellant, then a 40-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that he sustained a bilateral wrist injury in the performance of duty on April 28, 2008. He indicated that he was lifting boxes and felt a pop in both wrists. The record indicates that appellant received emergency room treatment on April 28, 2008. In an attending physician's report (Form CA-20) dated April 29, 2008, Dr. Ryan Cantzler, an

emergency medicine specialist, diagnosed wrist sprains and checked a box “yes” the condition was employment related. Appellant was limited to 10 pounds lifting for one week.

The Office accepted the claim for bilateral wrist sprains. The employing establishment submitted a personnel form indicating appellant’s last day in pay status was May 15, 2008 and he was separated for “nonperformance” effective March 23, 2008.

Appellant submitted form reports from Dr. Naomi Wriston, an osteopath, dated June 4 and 11, July 2 and 23, 2008, indicating appellant had a 25-pound lifting restriction. The initial June 4, 2008 report provided a history that appellant was lifting heavy boxes at work and noted pain in both wrists.

On September 3, 2008 appellant submitted a claim for compensation (Form CA-7) for the period May 16 to August 29, 2008. In a letter dated September 3, 2008, the employing establishment reported that appellant had returned to regular-duty work as of May 7, 2008 and his employment was terminated on May 15, 2008. By undated letter received on September 26, 2008, appellant stated that he worked light duty for one week following the injury and then returned to regular duty. He reported that he continued to have wrist pain while working and thought the employing establishment would have enough sense to send him to a physician.

By report dated October 2, 2008, Dr. Wriston stated that appellant was first seen on June 15, 2008 with a history of a wrist injury on April 28, 2008 and complaints of wrist tenderness. She stated that, due to inconsistencies between the pain level described and the physical findings, appellant was referred to a hand specialist.

In a decision dated November 14, 2008, the Office denied the claim for compensation commencing May 16, 2008. It found the medical evidence did not establish an employment-related disability. Appellant requested a hearing before an Office hearing representative, which was held on May 19, 2009. He again indicated that he continued to have wrist pain after returning to work, and he told the employing establishment he “couldn’t do it” and was told not to come back to work.

By decision dated August 7, 2009, the hearing representative affirmed the November 14, 2008 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act¹ has the burden of establishing the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.² The term disability is defined as the incapacity because of an employment injury to earn

¹ 5 U.S.C. §§ 8101-8193.

² *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.³

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.⁴ Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work. When a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that she hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.⁵ 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.⁶

To establish a causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.⁷ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁸ The opinion of the physician must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship.⁹

ANALYSIS

The Office accepted a bilateral wrist sprain in the performance of duty on April 28, 2008. Appellant worked light duty, then returned to regular duty on or about May 7, 2008 and his employment was terminated as of May 15, 2008. He has filed a claim for compensation commencing May 16, 2008. It is, as noted above, appellant's burden of proof to establish a period of disability. He must submit rationalized medical evidence establishing disability for the periods claimed causally related to the accepted employment injury.

In this case, the record does not contain rationalized medical evidence on the issue presented. Although Dr. Wriston stated in her October 2, 2008 report that appellant was initially treated on June 15, 2008, her first report was dated June 4, 2008. She did not provide a complete

³ 20 C.F.R. § 10.5(f); *see e.g.*, *Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury but no loss of wage-earning capacity).

⁴ *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁵ *Id.*

⁶ *Id.*

⁷ *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

⁸ *Elizabeth Stanislav*, 49 ECAB 540 (1998).

⁹ *Leslie C. Moore*, 52 ECAB 132 (2000).

factual and medical background, or an opinion that appellant was disabled due to the employment injury for a specific period. Dr. Wriston indicated in her October 2, 2008 report that appellant's complaints of pain were inconsistent with the physical findings, without discussing disability for work. The form reports commencing June 4, 2008 do not provide a complete background or an opinion regarding a period of employment-related disability.

On appeal, appellant suggests that the hearing representative did not understand the wrist pain he had suffered. Compensation under the Act is not based on appellant's perception of pain and his own belief he is unable to work. Disability for work is a medical issue and it is appellant's burden of proof to submit rationalized medical evidence that establishes he was unable to work due to an employment injury for the period claimed. Appellant did not meet his burden of proof in this case and the Office properly denied the claim.

CONCLUSION

The Board finds appellant did not meet his burden of proof to establish an employment-related disability commencing May 16, 2008.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 7, 2009 and November 14, 2008 are affirmed.

Issued: June 11, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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