

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

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C.A., Appellant )

and )

U.S. POSTAL SERVICE, ATLANTIC BRANCH, )  
Coral Springs, FL, Employer )

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**Docket No. 10-2295  
Issued: June 15, 2011**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge

ALEC J. KOROMILAS, Judge

COLLEEN DUFFY KIKO, Judge

**JURISDICTION**

On September 13, 2010 appellant, through her attorney, filed a timely appeal of the August 12, 2010 merit decision of the Office of Workers' Compensation Programs denying her claim for disability compensation. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> and 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 was disabled from October 15, 2008 to December 10, 2009 due to her September 18, 2008 employment injury.

**FACTUAL HISTORY**

The Office accepted that on September 18, 2008 appellant, then a 45-year-old casual clerk, sustained a contusion of the left wrist when a pin from the top of a door fell onto the wrist. The employing establishment stated that she resigned on October 17, 2008.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

On December 17, 2009 appellant filed a claim for compensation (Form CA-7) for the period October 15, 2008 through December 10, 2009. On the CA-7 form the employing establishment stated that she worked on October 15, 2008 and that October 16, 2008 was her day off work. In another Form CA-7 dated December 17, 2009, the employing establishment stated that appellant was out for personal reasons and that her position continued to be available until she resigned.

A September 18, 2008 medical report from Dr. Edwin Kollinger, an emergency medicine physician, advised that appellant sustained a work-related left wrist contusion on that date. He released her to return to light duty as of that date.

By letter dated January 8, 2010, the Office advised appellant that the evidence submitted was insufficient to establish her claim. It requested medical evidence showing that she was totally disabled from her employment during the entire claimed period. Appellant was afforded 30 days to submit the requested evidence. She did not respond.

In a February 16, 2010 decision, the Office noted that appellant had not responded to the January 8, 2010 letter and denied her claim for total disability compensation for the period October 15, 2008 through December 10, 2009.

By letter dated February 19, 2010, appellant, through counsel, requested a telephonic hearing with an Office hearing representative.

Appellant submitted medical records from Dr. Laszlo J. Mate, an attending Board-certified neurologist. In a February 10, 2010 report, Dr. Mate obtained a history of the September 18, 2008 employment injury and her medical treatment, social and family background. He noted appellant's left arm, wrist and hand symptoms and sleeping difficulties. Dr. Mate listed his findings on physical and neurological examination of the upper and lower extremities. He advised that appellant most likely had radial neuropathy and possible complex regional pain syndrome (CRPS) although there were no clear cut signs of atrophy of the skin or nails and the peripheral pulses were good bilaterally. Dr. Mate recommended diagnostic testing of the upper extremities. In a February 10, 2010 prescription, he ordered an x-ray of appellant's left forearm. In a February 24, 2010 report, Dr. Mate advised that an electromyogram/nerve conduction study was unremarkable. He reiterated that appellant likely had CRPS. Also, on February 24, 2010 Dr. Mate prescribed physical therapy to treat her CRPS of the left upper extremity. In an April 14, 2010 report, he advised that appellant's examination was unremarkable and her condition remained unchanged. In a May 13, 2010 report, Dr. Mate indicated that appellant had a history of left upper extremity pain. He advised that physical therapy aggravated her condition. Dr. Mate stated that it was hard to discern if appellant really had limited movement in her thumb as found by a physical therapist or whether she was describing severe pain. Appellant was extremely tender even to light touch so it was hard for Dr. Mate to assess whether there was any underlying weakness. Dr. Mate advised that a prior magnetic resonance imaging (MRI) scan of her left forearm was benign apart from swelling. In prescriptions dated May 13, 2010, he ordered an MRI scan of appellant's left wrist and referred her to a hand surgeon.

In a February 11, 2010 left forearm x-ray report, Dr. Charles C. Cole, III, a Board-certified radiologist, found no evidence of fracture or bony abnormality. There appeared to be some soft tissue swelling that correlated with a physical examination.

Reports from appellant's physical therapists addressed the treatment of appellant's left arm, wrist and hand from March 29 to May 4, 2010.

In a June 1, 2010 left wrist MRI scan report, Dr. Bruce A. Rodan, a Board-certified radiologist, identified small joint effusions and ulnar negative variance. He advised that the examination was otherwise unremarkable.

In a partially illegible left upper extremity MRI scan report dated March 3, 2010, Dr. Larry Burk, a Board-certified radiologist, advised that appellant had mild edema of the pronator quadratus muscle in the distal forearm. There were no other forearm muscle abnormalities. Dr. Burk stated that this finding was nonspecific of undetermined chronicity. He advised that the diagnosed condition may be related to the September 18, 2008 employment injury and that the pronator quadratus muscle could sometimes be affected by anterior interosseous nerve syndrome.

At a June 18, 2010 hearing, appellant contended that, following her September 18, 2008 employment injury, she did not miss any time from work until she was fired by the employing establishment in October 2008. Her employment was terminated because she worked too slowly. Prior to her termination, appellant performed her regular work duties despite experiencing left hand symptoms. She indicated that her work hours were subsequently decreased because work was slow.

In an August 12, 2010 decision, an Office hearing representative affirmed the February 16, 2010 decision. She found that the medical evidence was insufficient to establish that appellant was totally disabled during the claimed period due to her accepted condition.

### **LEGAL PRECEDENT**

With respect to a claimed period of disability, an employee has the burden of establishing that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>2</sup> The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.<sup>3</sup>

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.<sup>4</sup> The medical evidence required to establish

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

<sup>3</sup> 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).

<sup>4</sup> *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

a period of employment-related disability is rationalized medical evidence.<sup>5</sup> Rationalized medical evidence is medical evidence based on a complete factual and medical background of the claimant, of reasonable medical certainty, with an opinion supported by medical rationale.<sup>6</sup> The Board, however, 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.<sup>7</sup> To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.<sup>8</sup>

### ANALYSIS

The Office accepted that appellant sustained a contusion of the left wrist in the performance of duty on September 18, 2008. Appellant claimed compensation for disability from October 15, 2008 to December 10, 2009. On February 16 and August 12, 2010 the Office denied compensation for the claimed period of disability. Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed disability and the accepted condition.<sup>9</sup> The Board finds that she did not submit sufficient medical evidence to establish employment-related disability for the period claimed due to her accepted injury.

Reports from appellant's attending physician, Dr. Mate, are insufficient to establish appellant's claim. He listed his findings on physical and diagnostic examination of the upper extremities. Dr. Mate's finding that, appellant "most likely" had radial neuropathy and "possible" CRPS is speculative in nature and, thus, insufficient to establish appellant's claim.<sup>10</sup> Moreover, his reports offer no opinion on whether she was totally disabled during the claimed period due to the accepted employment injury. Similarly, Dr. Mate's prescriptions which ordered an x-ray and MRI scan of appellant's left forearm and wrist and physical therapy failed to address whether she was totally disabled during the claimed period due to the accepted injury. Medical reports not containing rationale on causal relationship are of limited probative value.<sup>11</sup> The Board finds that Dr. Mate's reports and prescriptions are insufficient to establish appellant's burden of proof.

Dr. Kollinger's report found that appellant sustained an employment-related left wrist contusion on September 18, 2008 and released her to perform light-duty work. Dr. Kollinger did not address whether she was totally disabled during the claimed period due to the accepted employment injury. The diagnostic test reports from Dr. Cole, Dr. Rodan and Dr. Burk also did

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<sup>5</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>6</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>7</sup> *Sandra D. Pruitt*, 57 ECAB 126 (2005).

<sup>8</sup> *See William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, *supra* note 4.

<sup>9</sup> *Alfredo Rodriguez*, 47 ECAB 437 (1996).

<sup>10</sup> *L.R. (E.R.)*, 58 ECAB 369 (2007); *Kathy A. Kelley*, 55 ECAB 206 (2004).

<sup>11</sup> *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

not address whether appellant was totally disabled during the claimed period due to the accepted injury. The Board finds that these reports are insufficient to establish appellant's claim.

The reports from appellant's physical therapists are of no probative value because a physical therapist is not a physician as defined under the Act.<sup>12</sup> The Board finds, therefore, that these reports are insufficient to establish appellant's claim.

Appellant has failed to submit rationalized medical evidence establishing that her disability from October 15, 2008 to December 10, 2009 resulted from residuals of her accepted employment-related contusion of the left wrist.

Appellant contended that she was unjustly terminated because her employment injury prevented her from performing her job. However, the employing establishment stated that she resigned from her position on October 17, 2008. It further stated that appellant worked on October 15, 2008 and was on a scheduled day off work on October 16, 2008. The employing establishment advised that her position was still available, contrary to her testimony at the hearing that it reduced her hours to work. The Board finds that there is no evidence that appellant was terminated due to her physical inability to perform her assigned duties or that she stopped work due to residuals of her accepted condition. The medical evidence submitted by her does not establish any employment-related disability. Accordingly, the Board finds that she has failed to establish that she had any employment-related disability during the claimed period.

On appeal, appellant's attorney contended, without explanation, that the Office's decision was contrary to fact and law. For reasons stated above, the Board finds that appellant did not submit sufficient evidence establishing her entitlement to disability compensation for the claimed period.

### **CONCLUSION**

The Board finds that appellant has failed to establish that she was disabled from October 15, 2008 to December 10, 2009 due to her September 18, 2008 employment injury.

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<sup>12</sup> See 5 U.S.C. § 8101(2); A.C., Docket No. 08-1453 (issued November 18, 2008).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 12, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 15, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board