United States Department of Labor
Employees' Compensation Appeals Board

A.D., Appellant	)	
and	)	**Docket No. 10-1837**
	)	**Issued: May 10, 2011**
U.S. POSTAL SERVICE, POST OFFICE, New Orleans, LA, Employer	)	

Appearances:
Appellant, pro se
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 June 28, 2010 appellant filed a timely appeal from March 29 and April 8, 2010 merit decisions of the Office of Workers' Compensation Programs denying her claim for disability compensation. Pursuant to the Federal Employees' Compensation Act[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether appellant has established that she was disabled from October 31 until November 20, 2009 due to her accepted condition of tenosynovitis of the left hand and wrist.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Office also issued an April 14, 2010 decision accepting the diagnosed condition of traumatic arthropathy of the left hand, but this decision is not before the Board as it was not adverse to appellant's claim. *See* 20 C.F.R. § 501.3(a).

FACTUAL HISTORY

On July 8, 2009 appellant, then a 56-year-old assistant window clerk, filed an occupational disease claim alleging that she developed left forearm and wrist conditions due to her federal employment. She stated that her doctor explained that her left arm movements caused her pain. Appellant stopped work on June 29, 2009.

By decision dated September 17, 2009, the Office accepted her claim for tenosynovitis of the left hand and wrist.

Appellant provided several medical reports from her treating physician, Dr. Richard E. Matis, a Board-certified family practitioner. In a June 30, 2009 medical report, Dr. Matis related that she had experienced left forearm and hand discomfort for the past six to seven months. He noted that in performing appellant's work duties she held most of the letters and periodicals in her left arm while she filed with her right arm. In a July 6, 2009 medical report, Dr. Matis stated that she continued to experience pain in her wrist and when gripping, which limited her hand use. In a letter to the employing establishment, he stated that appellant had an overuse injury related to her work and he recommended that she remain off work for two to four weeks. In a July 27, 2009 medical report, Dr. Matis diagnosed her with de Quervain's tenosynovitis. In an August 10, 2010 medical report, he referred appellant to an orthopedic doctor and stated that her symptoms were too aggravated to consider returning to work.

Dr. Harold J. Granger, a Board-certified orthopedic surgeon, reviewed appellant's medical background and by report dated August 18, 2009 noted that she tested negative for Finklestein's test, Tinel's test carpal canal and Phalen's test carpal canal. He ultimately diagnosed her with tenosynovitis of hand and wrist, which resulted from her repetitive activities at work in the employing establishment. Dr. Granger also provided an August 18, 2009 work excuse slip stating that appellant was unable to work.

In a September 15, 2009 medical note, Dr. Granger reported that appellant's left wrist had no swelling and was tender in her anatomic snuffbox. He further stated that she tested negative for Finklestein's test, Tinel's test carpal canal and Phalen's test carpal canal and an x-ray of her wrist revealed no acute or chronic abnormalities. Dr. Granger referred appellant for electromyograms (EMGs).

In September 17, 2009 diagnostic testing results, Dr. Stuart A. Begnaud, Board-certified in physical medicine and rehabilitation, reported that appellant's bilateral upper extremity was normal throughout with no findings of entrapment centrally or peripherally.

In a September 25, 2009 letter, Dr. Granger stated that he did not know when appellant could return to work.

In an October 7, 2009 duty status report, Dr. Granger checked a form box stating that the employee was not advised to resume work.

By letter dated October 22, 2009, the employing establishment advised appellant that her eligibility for continuation of pay expired on November 2, 2009 and enclosed a (Form CA-7) claim for compensation, to be completed for subsequent compensation benefits.

On November 9, 2009 appellant submitted a Form CA-7 claim for the period October 31 to November 6, 2009. She submitted another Form CA-7 on November 23, 2009 requesting compensation for the period of November 4 to 20, 2009.

In a November 20, 2009 letter, the Office advised appellant that the evidence submitted was insufficient to support her claim for disability compensation for the period October 31 to November 6, 2009. It informed her to submit a comprehensive medical report providing reasonable medical rationale regarding why she could not work for the specified time period and explaining the cause of her disability during the applicable time period.

Appellant provided various medical notes from Dr. Rowdy C. Abshire, a chiropractor. On October 26, 2009 Dr. Abshire reported that cervical x-rays had been taken in his office which revealed spondylosis of C5-6, degeneration of facet joints C5-6 and a reversed cervical curvature. In an October 26, 2009 letter, he requested that appellant's claim be upgraded to include cervical spondylosis with myelopathy and cervicalgia. On November 3, 2009 the Office issued a letter requesting additional information in order to determine whether chiropractic care would be authorized for appellant's work-related condition.

In an October 30, 2009 duty status report, Dr. Abshire checked a form box noting that appellant was advised not to return to work. In an October 23, 2009 work excuse slip, he also stated that she should be excused from work from October 6, 2009 until the present. In an October 30, 2009 attending physician's report, Dr. Abshire further noted that appellant was partially disabled beginning on June 30, 2009 and that he treated her from October 6, 2009 until the present. He diagnosed appellant with cervical spondylosis with myelopathy and explained that this condition was caused or aggravated by the repetitive activities and heavy lifting as documented in the 2002 incident.

Dr. Granger stated in a December 8, 2009 letter that appellant had been under his care since August 18, 2009 for left wrist and hand pain and was unable to perform her repetitive work duties at the employing establishment. He further explained that if she returned to work, her progress would be adversely affected and she would continue to have pain.

By decision dated December 22, 2009, the Office disallowed appellant's claim for disability compensation for wage loss for the period October 31 to November 20, 2009 due to insufficient medical evidence establishing that she was disabled for work during the requested time periods due to her accepted work-related conditions. It noted that the medical evidence providing a medical diagnosis of cervical spondylosis were not sufficient because it was provided by a chiropractor, who is not considered a physician as defined under the Act.

Appellant provided additional medical reports from Dr. Granger. In a December 3, 2009 medical report, Dr. Granger stated that her hand condition was an overuse injury from her job and that the reason she had not returned to work was because her work was what precipitated her condition. In a January 14, 2010 work excuse slip, he also noted that appellant was unable to work from October 23, 2009 until present.

On January 15, 2010 appellant requested a review of the written record.

In a January 14, 2010 medical note, Dr. Granger stated that appellant was still unable to return to work since her job required repetitive motion. He reviewed her medical and social background, and upon examination, noted that she had a negative Finklestein test, Tinnel's test carpal canal and Phalen's test. Appellant's x-ray and diagnostic test results were also normal.

In a March 1, 2010 letter, the Office submitted a copy of appellant's request for a review of the written record to the employing establishment for review and comment. No response was received.

In a decision dated March 29, 2010, an Office hearing representative affirmed the December 22, 2009 decision on the grounds of insufficient evidence establishing that her disability was causally related to her accepted employment-related condition.

By decision dated April 8, 2010, the Office denied appellant's claim for disability compensation for the period October 31 to November 20, 2009 because she failed to provide any medical opinion evidence establishing that her disability resulted from her work-related accepted conditions.

LEGAL PRECEDENT

The term disability as used in the 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 causes an employee to be disabled for employment is a medical issue which must be proved by a preponderance of the reliable, probative and substantial medical evidence.[6] Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work.[7]

The Board will not require the Office to pay compensation for disability in the absence of any medical evidence 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.[8]

5 U.S.C. § 8101(2) of the Act provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by state law.

[3] 5 U.S.C. §§ 8101-8193.

[4] 20 C.F.R. § 10.5(f); *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 447 (2008); *Gary J. Watling*, 52 ECAB 278 (2001).

[7] *See S.F.*, 59 ECAB 525 (2008); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

[8] *Amelia S. Jefferson*, 57 ECAB 183 (2005); *see William A. Archer*, 55 ECAB 674 (2004).

ANALYSIS

On September 17, 2009 the Office accepted appellant's occupational disease claim for tenosynovitis of the left hand and wrist. Appellant received continuation of pay through October 31, 2009. She claimed compensation for October 31 to November 20, 2009, and it is her burden of proof to establish the claimed period of employment-related disability. When determining whether appellant's burden of proof has been met, the Board considers factors such as whether there are objective findings, a thorough understanding of the job duties by the physician, a firm diagnosis and a rationalized, unequivocal opinion that appellant was disabled due to the employment injury for the period claimed.[9] Appellant has not met her burden of proof in this case.

Appellant provided medical reports from Dr. Granger. In a September 25, 2009 medical slip, Dr. Granger reported that he did not know when she could return to work. Similarly, in a December 8, 2009 letter, he stated that appellant was unable to perform her repetitive work duties at employing establishment due to her left wrist and hand pain. In a December 3, 2009 medical report, Dr. Granger also noted that she was unable to return to work as her work was the cause of her condition. In a January 14, 2010 work excuse slip, he further reported that appellant was unable to work from October 23, 2009 until present.

Dr. Granger, however, failed to provide any medical basis for appellant's claimed disability for work after October 31, 2009. By September 15, 2009, Dr. Granger had reported that appellant's Finklestein's test, Tinel's test and Phalen's tests were all negative, she had no swelling of her left wrist and x-ray of her wrist revealed no acute or chronic abnormalities. Only tenderness in appellant's anatomic snuffbox was noted. Although Dr. Granger referred her for EMG evaluation, the results of this testing were also reported as within normal limits by Dr. Begnaud on September 17, 2009. He reconfirmed the negative findings on further testing as of January 14, 2010. Dr. Granger never explained, with medical rationale, why appellant continued to be disabled during the time period in question, given the lack of objective findings. While in his December 8, 2009 report he stated that if she returned to work, her progress would be adversely affected, the Board has held that fear of future injury is not compensable.[10]

Appellant also submitted reports from Dr. Abshire, a chiropractor. In an October 23, 2009 work excuse slip, Dr. Abshire stated that she should be excused from work from October 6, 2009 until the present. In an October 30, 2009 attending physician's report, he noted that appellant was partially disabled beginning on June 30, 2009. Although Dr. Abshire opined that she was partially disabled and that her condition was a result of her federal employment, this opinion regarding disability is of no probative value as he is not considered a "physician" as defined under the Act.[11] The term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to

[9] *See L.D.*, Docket No. 09-1503 (issued April 15, 2010); *V.M.*, Docket No. 10-1056 (issued December 16, 2010).

[10] *I.J.*, 59 ECAB 408 (2008).

[11] 5 U.S.C. § 8101(2) of the Act provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law.

correct a subluxation as demonstrated by x-ray to exist and subject to regulations by the Secretary.[12] Dr. Abshire had x rays taken in his office, but his diagnoses do not relate subluxation, and thus, he is not considered a physician under the Act.

As previously stated, 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.[13] In this case, appellant did not meet her burden of proof because she submitted insufficient medical evidence explaining why she was disabled during the relevant time periods and why the claimed disability was causally related to her accepted conditions.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish an employment-related disability from October 31 to November 20, 2009.

ORDER

IT IS HEREBY ORDERED THAT the April 8 and March 29, 2010 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 10, 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

[12] *Paul Foster*, 56 ECAB 208 (2004); *Mary A. Ceglia*, 55 ECAB 626 (2004).

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