

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

C.C., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Coppell, TX, Employer)

**Docket No. 11-1023
Issued: January 24, 2012**

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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 22, 2011 appellant filed a timely appeal from a February 15, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied her claim for wage-loss compensation. Pursuant to the Federal Employees' Compensation Act¹ (FECA) 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 met her burden of proof to establish that her disability for the period January 3 to 21, 2011 was causally related to the November 12, 2010 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the issuance of the February 15, 2011 OWCP decision, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1).

On appeal appellant contends that OWCP accepted her employment injury and therefore it is inconsistent for OWCP to disallow her claims for wage-loss compensation.

FACTUAL HISTORY

On November 13, 2010 appellant, then a 53-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that she sustained a left elbow contusion after being struck by a flat bed container in the performance of duty on November 12, 2010.

In a November 12, 2010 authorization for examination and/or treatment form (CA-16) Dr. Jose G. Trevino, an internist, diagnosed elbow contusion. In a medical report of the same date, Dr. Trevino diagnosed left elbow contusion with ulnar nerve neurapraxia and released appellant to light-duty work that same day with restrictions.

On December 2, 2010 Dr. R. Robert Ippolito, a Board-certified plastic surgeon, diagnosed contusion of the left elbow and ordered a magnetic resonance imaging (MRI) scan of the left elbow due to possible injury to the collateral radial ligament.

Appellant filed a claim on December 30, 2010 for compensation (Form CA-7) for the period January 3 to 21, 2011. She submitted two time analysis forms indicating that Dr. Ippolito took her off work for a total of 88 hours for the period January 3 to 17, 2011 and 16 hours for the period January 20 to 21, 2011. In a December 16, 2010 progress report, Dr. Ippolito reiterated his diagnosis and indicated that his plan to continue with conservative treatment.

By decision dated January 14, 2011, OWCP accepted appellant's claim for left elbow contusion.

On January 14, 2011 OWCP requested additional medical evidence establishing disability for work during the period January 3 to 21, 2011 and allotted 30 days for submission.

Appellant submitted a December 2, 2010 duty status report by Dr. Ippolito, who reiterated his diagnosis and advised appellant not to resume work. In a December 30, 2010 attending physician's report, Dr. Ippolito reiterated his diagnosis and opined that appellant was totally disabled from December 2, 2010 to February 2, 2011. A January 13, 2011 work release form by Dr. Ippolito revealed that appellant had been injured and unable to work from January 13 to 27, 2011.

In a December 30, 2011 work release form, Dr. Ippolito reported that appellant had been injured and unable to work from December 30, 2010 to January 13, 2011.

On February 8, 2011 OWCP expanded appellant's claim to include aggravation of lesion of ulnar nerve, left.

By decision dated February 15, 2011, OWCP denied appellant's claim for disability for the period January 3 to 21, 2011 on the grounds that the medical evidence submitted was not sufficient to support disability due to the November 12, 2010 employment injury.

LEGAL PRECEDENT

Section 8102(a) of FECA³ sets forth the basis upon which an employee is eligible for compensation benefits. That section provides: “The United States shall pay compensation as specified by this subchapter for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty....” In general the term “disability” under FECA means “incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury.”⁴ This meaning, for brevity, is expressed as disability for work.⁵ For each period of disability claimed, the employee has the burden of proving that he or she was disabled for work as a result of the accepted employment injury.⁶ Whether a particular injury caused an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by the preponderance of the reliable probative and substantial medical evidence.⁷

Disability is not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to his or her federal employment, but who nonetheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used under FECA and is not entitled to compensation for loss of wage-earning capacity. The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the particular period of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.⁸

ANALYSIS

The Board finds that appellant has not established that she was disabled for the period January 3 to 21, 2011 causally related to the November 12, 2010 employment injury. On appeal appellant contends that it is inconsistent for OWCP to accept her employment injury and then disallow her claim for wage-loss compensation. While OWCP accepted that appellant sustained an employment injury, she bears the burden to establish through medical evidence that she was disabled during the claimed time periods and that her disability was causally related to her accepted injury.⁹ The Board finds that she submitted no rationalized medical evidence explaining how the November 12, 2010 employment injury materially worsened or aggravated

³ 5 U.S.C. § 8102(a).

⁴ 20 C.F.R. § 10.5(f). *See also William H. Kong*, 53 ECAB 394 (2002); *Donald Johnson*, 44 ECAB 540, 548 (1993); *John W. Normand*, 39 ECAB 1378 (1988); *Gene Collins*, 35 ECAB 544 (1984).

⁵ *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

⁶ *William A. Archer*, 55 ECAB 674 (2004).

⁷ *Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

⁸ *Id.*

⁹ *See supra* notes 6-7. *See also V.P.*, Docket No. 09-337 (issued August 4, 2009).

her left elbow condition and caused her to be disabled for work for the period January 3 to 21, 2011.

In a series of medical reports, Dr. Ippolito diagnosed contusion of the left elbow. On December 2, 2010 he advised appellant not to resume work. On December 30, 2010 Dr. Ippolito opined that she was totally disabled from December 2, 2010 to February 2, 2011. In a series of work release forms, he reported that appellant had been injured and unable to work from December 30, 2010 to January 27, 2011. Although Dr. Ippolito provided a firm diagnosis and opined that appellant was disabled, he failed to provide a rationalized medical explanation as to why appellant had employment-related residuals and how the residuals of the November 12, 2010 employment injury prevented her from continuing in her federal employment. Thus, appellant has not met her burden of proof to establish that she was disabled for work due to the employment injury.

In several reports dated November 12, 2010, Dr. Trevino diagnosed left elbow contusion with ulnar nerve neurapraxia and released appellant to light-duty work with restrictions that same day. As he failed to offer any probative medical opinion on whether appellant was disabled on the dates at issue due to her accepted conditions, his reports are of diminished probative value.¹⁰

Appellant has not submitted any rationalized medical evidence establishing that she was disabled during the period January 3 to 21, 2011 causally related to the November 12, 2010 employment injury. Thus, appellant has not met her burden of proof to establish that she is entitled to compensation for any loss of wage-earning capacity.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she was disabled for the period January 3 to 21, 2011 causally related to the November 12, 2010 employment injury.

¹⁰ See *Sandra D. Pruitt*, 57 ECAB 126 (2005). See also *V.P.*, *supra* note 9.

ORDER

IT IS HEREBY ORDERED THAT the February 15, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 24, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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