United States Department of Labor
Employees' Compensation Appeals Board

V.C., Appellant	)	
and	)	**Docket No. 12-1080**
	)	**Issued: October 17, 2012**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION FACILITY, Santa Clarita, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On April 10, 2012 appellant filed a timely appeal from a March 1, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her claim for leave buyback. Pursuant to the Federal Employees' Compensation Act[1] (FECA) 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 was disabled from May 24 to June 10, 2003 causally related to her accepted employment injury.

FACTUAL HISTORY

On May 11, 2003 appellant, then a 52-year-old flat sorting machine operator, filed an occupational disease claim alleging that she sustained bilateral carpal tunnel syndrome causally

[1] 5 U.S.C. § 8101 *et seq.*

related to factors of her federal employment. OWCP accepted the claim for bilateral carpal tunnel syndrome.

In a May 21, 2003 disability certificate, Dr. John A. Vogel, a chiropractor, found that appellant was disabled from May 23 to June 20, 2003. On May 23, 2003 he discussed her history of repetitive work duties.

On June 2, 2003 the employing establishment indicated that appellant had used sick leave from May 23 to June 2, 2003.

In a report dated June 9, 2003, Dr. Donna Meeks, a chiropractor, diagnosed carpal tunnel syndrome with cervicalgia. She opined that appellant was totally disabled until July 1, 2003 and had been on a "leave of absence since May 21, 2003."

In a form report dated August 19, 2003, Dr. Meeks diagnosed employment-related bilateral carpal tunnel syndrome and found that appellant was totally disabled from June 9, 2003 to the present.

On January 20, 2005 appellant requested leave buyback from May 24 to June 10, 2003. She indicated that she used sick leave during this time.

By letter dated May 5, 2005, OWCP informed appellant that the evidence was insufficient to show that she was disabled from May 24 to June 10, 2003. It advised her that a chiropractor was not considered a physician under FECA for the purposes of treating carpal tunnel syndrome. OWCP requested that appellant submit medical evidence to show that she was disabled from work due to her carpal tunnel syndrome for the claimed period.

In a decision dated March 1, 2012, OWCP denied appellant's request for leave buyback from May 24 to June 10, 2003. It noted that she had not responded to its May 5, 2005 request for supporting medical evidence.

On appeal, appellant alleges that she was disabled from May 24 to June 10, 2003 due to her carpal tunnel syndrome.

LEGAL PRECEDENT

The term disability as used in FECA[2] means the incapacity because of an employment injury to earn the wages that the employee was receiving at the time of injury.[3] Whether a particular injury caused an employee disability for employment is a medical issue which must be resolved by competent medical evidence.[4] When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in the employment held when injured, the employee is entitled to

[2] 5 U.S.C. § 8101 *et seq*; 20 C.F.R. § 10.5(f).

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

[4] *Id*.

compensation for any loss of wage-earning capacity resulting from such incapacity.[5] The Board will not require OWCP 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]

In situations where compensation is claimed for periods where leave was used, OWCP has the authority to determine whether the employee was disabled during the period for which compensation is claimed.[7] It determines whether the medical evidence establishes that an employee is disabled by an employment-related condition during the period claimed for leave buyback, after which the employing establishment will determine whether it will allow the employee to buy back the leave used.[8]

Section 8101(2) of FECA provides that chiropractors are considered physicians and their reports considered medical evidence only to the extent that they treat spinal subluxations as demonstrated by x-ray to exist.[9]

ANALYSIS

OWCP accepted that appellant sustained bilateral carpal tunnel syndrome. On January 20, 2005 appellant filed a claim requesting leave buyback from May 24 to June 10, 2003. OWCP must thus determine whether the medical evidence establishes that she was disabled during this period due to her bilateral carpal tunnel syndrome.[10]

Appellant submitted reports dated May 21 and 23, 2003 from Dr. Vogel, a chiropractor, and reports dated June 9 and August 19, 2003 from Dr. Meeks, also a chiropractor. As noted, however, under section 8101(2) of FECA, chiropractors are only considered physicians and their reports considered medical evidence to the extent that they treat spinal subluxations as demonstrated by x-ray to exist.[11] As chiropractors are considered physicians only to the extent of treating spinal subluxations based on x-ray, a chiropractor is not competent to address other conditions.[12] Dr. Vogel and Dr. Meeks, as chiropractors, are not competent to render an opinion on appellant's disability due to her carpal tunnel syndrome and thus their reports do not

[5] *Id*.

[6] *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

[7] *See Laurie S. Swanson*, 53 ECAB 517 (2002); *see also* 20 C.F.R. § 10.425 (the employee may claim compensation for periods of annual and sick leave which are restorable in accordance with the rules of the employing establishment).

[8] *See Laurie S. Swanson, id*.

[9] 5 U.S.C. § 8101(2); *Paul Foster*, 56 ECAB 208 (2004).

[10] *See supra* note 7.

[11] 5 U.S.C. § 8101(2); *Pamela K. Guesford*, 53 ECAB 726 (2002).

[12] *See id*. at § 8101(2)-(3); *George E. Williams*, 44 ECAB 530 (1993).

constitute competent medical evidence.[13] The remaining medical evidence of record does not address disability May 24 to June 10, 2003.

By letter dated May 5, 2005, OWCP advised appellant of the limitations of a chiropractor under FECA and requested that she submit a medical report from a physician addressing whether she was disabled due to her accepted bilateral carpal tunnel syndrome from May 24 to June 10, 2003. Appellant did not respond to OWCP's request with supporting medical evidence. The Board will not require OWCP 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.[14]

On appeal, appellant maintains that she was disabled from May 24 to June 10, 2003 due to her accepted work injury. She has the burden, however, to submit medical evidence showing that any disability claimed is causally related to her employment injury.[15] 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 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established that she was disabled from May 24 to June 10, 2003 causally related to her accepted employment injury.

[13] *Ronald Q. Pierce*, 53 ECAB 336 (2002) (as a chiropractor may qualify as a physician only in the diagnosis and treatment of spinal subluxation, his or her opinion is not considered competent medical evidence in evaluation of other disorders).

[14] *Fereidoon Kharabi*, *supra* note 6.

[15] *See C.S.*, 59 ECAB 686 (2008); *G.T.*, 59 ECAB 447 (2008).

ORDER

IT IS HEREBY ORDERED THAT the March 1, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 17, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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