United States Department of Labor
Employees' Compensation Appeals Board

NYVELTA G. BYRD, Appellant	)	
and	)	**Docket No. 04-409**
	)	**Issued: May 6, 2004**
U.S. POSTAL SERVICE, POST OFFICE, Chicago, IL, Employer	)	

Appearances:
Nyvelta G. Byrd, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On December 3, 2003 appellant timely filed an appeal of a nonmerit Office of Workers' Compensation Programs' decision dated November 24, 2003 denying reconsideration and a July 24, 2003 merit decision denying compensation for the period February 12 through March 22, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant is entitled to wage-loss compensation for the period February 12 through March 8, 2003 due to her accepted back injury; and (2) whether the Office abused its discretion in refusing to reopen appellant's claim for further review of the merits of her claim under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On November 19, 2002 appellant, then a 43-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that repeated lifting, bending and walking in her position

caused a disc herniation at L4-5. Appellant stated that she first realized her back condition was caused or aggravated by her employment on November 19, 2002. Appellant stopped work on September 11, 2002 and returned to limited-duty work with restrictions on January 31, 2003. She stopped work again on March 20, 2003 for a medical procedure and returned to work on March 24, 2003.

By letter dated March 6, 2003, the Office accepted appellant's claim for aggravation of a disc herniation at L5-S1, disc protrusion at L4-5, minimal disc bulge at L2-3, aggravation of disc degeneration at L4-5 and L2-3, and an aggravation of an annular tear at L4-5. Appellant was advised that, if her injury resulted in lost time from work, she could claim disability compensation using Form CA-7.

Appellant filed a Form CA-7 claim requesting wage-loss compensation for the period February 12 through March 8, 2003 and March 20 through 22, 2003.[1] A time analysis form, which the Office received from the employing establishment on April 28, 2003, indicated the specific days and the number of hours of leave without pay for which appellant sought compensation during the period February 12 through March 22, 2003.

In a June 19, 2003 letter, appellant advised that she had been without compensation since the time she was injured in September 2002 until she returned to work on January 31, 2003. She stated that, when she returned to work on January 31, 2003, she had medical restrictions and her supervisor sent her home as the employing establishment had no work available within her restrictions. Appellant advised that her supervisor again sent her home at various times from February 3 through March 8, 2003. In a May 9, 2003 letter, Venice P. Singleton, supervisor customer service, stated that on the dates for which appellant claimed compensation during the period February 3 through March 8, 2003 there was no work for appellant within her restrictions.

Appellant underwent a medical procedure due to her accepted condition on March 20, 2003 and returned to work on March 24, 2003.[2] Materials from South Suburban Hospital indicate that she underwent a medical procedure on March 20, 2003 and could return to work on March 24, 2003. Medical reports and other factual information were submitted to the record.

By decision dated July 24, 2003, the Office found that appellant was entitled to wage-loss compensation for 24 hours of medical treatment she received on March 20 through 22, 2003 due to her employment injury, but that disability for those days would not be payable as they were waiting days for an injury causing disability for less than 14 days. The Office further found the evidence of record was insufficient to establish disability from work for the intermittent hours claimed on February 12 (4.71 hours), February 25 (3.68 hours), February 28 (4.96 hours), March 6 (2.18 hours), March 7 (5.00 hours) and March 8, 2003 (3.48 hours) due to her accepted employment injury.

[1] Although appellant noted wage-loss compensation for the period February 1 through March 8, 2003, it appears from the context of the evidence that the date of February 1 is a typographical error and should be February 12, 2003.

[2] The medical procedure was not specified by either appellant or the hospital.

On November 3, 2003 the Office received a copy of appellant's Form CA-7 claiming compensation for the period February 12 through March 8, 2003 with the words "request 2nd consideration." Submitted were copies of leave requests dated February 12 to March 8, 2003 which contained the comment "management stated that they have no work for me" and approved by Ms. Singleton. Medical evidence was also submitted.

By decision dated November 24, 2003, the Office denied appellant's request for reconsideration on the grounds that no substantive legal argument was raised and the evidence submitted was irrelevant and insufficient to warrant further review of the July 24, 2003 decision.

LEGAL PRECEDENT -- ISSUE 1

A claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the period of claimed disability was caused or adversely affected by the employment injury.[3] As part of this burden, he or she must submit rationalized medical opinion evidence based on a complete factual and medical background showing a causal relationship between his or her disability and the federal employment.[4] The fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[5] Under the Federal Employees' Compensation Act, the term disability is defined as the incapacity because of an injury in employment 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.[6]

ANALYSIS -- ISSUE 1

Appellant returned to limited-duty work with restrictions on January 31, 2003 following her employment injury. Thereafter, she requested compensation for specific times and dates during the period February 12 through March 8, 2003. She alleged that she had appeared for work and was told to go home as the employing establishment did not have work available within her physical restrictions. Copies of appellant's leave requests and Supervisor Singleton's May 9, 2003 letter indicated that the employing establishment had no work for appellant within her restrictions during some of the dates claimed.

This presents a question of whether appellant has established a recurrence of disability. Although appellant did not file a claim for a recurrence of disability, Office regulations defining a recurrence of disability may be applicable to the situation in this case.[7] These regulations state that a recurrence of disability includes a work stoppage caused by withdrawal of a light-duty

[3] *Dennis J. Balogh*, 52 ECAB 232 (2001).

[4] *Gary J. Watling*, 52 ECAB 278 (2001).

[5] *Manuel Garcia*, 37 ECAB 767 (1986).

[6] *See Prince E. Wallace*, 52 ECAB 357 (2001).

[7] 20 C.F.R. § 10.5(x). *See also John T. Ratliff*, 8 ECAB 223 (1955) (limiting consideration of the claim on the grounds that the employee failed to conform to the niceties of technical pleading tends to mitigate against the remedial purpose of the Act).

assignment made specifically to accommodate the claimant's condition due to a work-related injury.[8]

The record establishes that following acceptance of her back condition appellant returned to work on or about January 31, 2003 and performed light duty during intermittent times from February 3 through March 8, 2003 when the employing establishment had light-duty work available. As the employing establishment did not have light-duty work available for appellant during the period, it appears that the nature and extent of appellant's light-duty job requirements changed.[9] As the Office has not developed this aspect of the claim, the case will be remanded for findings on whether the dates and times claimed from February 12 through March 8, 2003 during which the employing establishment did not have light-duty work available for appellant, constitute recurrence of disability. Following this and such other development as deemed necessary, the Office shall issue an appropriate merit decision.

CONCLUSION

The Board finds that the case is not in posture for a decision as to whether appellant is entitled to wage-loss compensation for the period February 12 through March 8, 2003 due to her accepted employment injury.[10]

[8] *Id. See also Terry R. Hedman*, 38 ECAB 222 (1986). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(1)(b) (May 1997).

[9] *See Jackie B. Wilson*, 39 ECAB 915 (1988) (finding that an employee working limited duty established total disability when he was terminated from his federal employment on the grounds that his employing establishment no longer had any work within his physical limitations). In cases such as *Wilson*, the employee's injury-related physical disability contributes to the work stoppage.

[10] In light of the Board's disposition on this issue, it is not necessary for the Board to address the second issue in this case.

ORDER

IT IS HEREBY ORDERED THAT the November 24 and July 24, 2003 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further action consistent with this decision.

Issued: May 6, 2004
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member