United States Department of Labor
Employees' Compensation Appeals Board

SHIRLEY L. EMIG, Appellant	)	
and	)	**Docket No. 05-416**
	)	**Issued: July 13, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Dover, PA, Employer	)	

Appearances:
Jeffrey Zeelander, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member

JURISDICTION

On December 7, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs merit decision dated November 5, 2004, denying her claim of a recurrence of disability. Pursuant to 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 a recurrence of disability causally related to her employment injury.

FACTUAL HISTORY

On May 1, 1995 appellant, then a 48-year-old rural carrier, filed an occupational disease claim (Form CA-2), alleging that she sustained chronic pain in her left arm causally related to her federal employment. The Office accepted the claim for left chronic lateral forearm strain. She filed a recurrence of disability on February 9, 1998 and the Office accepted lateral epicondylitis.

By letter dated January 24, 2000, the Office referred the case for a second opinion examination. Appellant had returned to work, although the specific job duties are not clear from the record. A January 24, 2000 statement of accepted facts indicated that she ha[d] worked with restrictions without providing further detail. In a report dated February 23, 2000, Dr. Dean Nachtigall, an osteopath, selected as a second opinion referral physician, opined that appellant could work full time with restrictions. In a work capacity evaluation (Form OWCP-5c), dated February 10, 2000 he indicated that she had a 15-pound lifting restriction with limitation on pushing and pulling. In a report dated March 28, 2000, Dr. Nachtigall stated that appellant wanted to return to her regular job activity. He stated that he reviewed the job description of a rural carrier and she was able to tolerate the job activity without restrictions.

In a letter dated May 1, 2000, the Office indicated that appellant had previously stated that she did not want restrictions placed on her job, but now she was stating that she cannot "do labels." The Office stated that the employing establishment agreed that she would work without restrictions, but allowances would be made for occasional flare-ups. A May 15, 2000 report from an attending orthopedic surgeon, Dr. J. Joseph Danyo, stated that appellant had chronic epicondylitis and should refrain from repetitive use of the arm such as with labeling.

The Office found a conflict in the medical evidence and referred appellant to Dr. Thomas Ryscavage, a Board-certified orthopedic surgeon. In a report dated May 17, 2001, he provided a history and results on examination. Dr. Ryscavage stated that appellant "has been able to do her job with three accommodations" of assistance in replacing class labels, flats of mail bound with edge to the left and trays of mail brought to a table rather than the floor. He diagnosed chronic left lateral epicondylitis and mild left medial epicondylitis. Dr. Ryscavage indicated that, "the best thing for the [employing establishment] and the employee is to keep the patient working her regular job with the accommodations outlined at the beginning of this report."

The record contains a Form CA-7A (time analysis form), indicating that appellant stopped working as of May 21, 2001 stating that management refused to let her work. The employing establishment indicated on the form that the claim was controverted as she "was offered full[-]duty work in accordance with medical evidence and [appellant] refused." A letter dated July 16, 2001 from the employing establishment to the Office requested that clarification be requested from the impartial specialist regarding the accommodations recommended in his report. In a letter dated September 8, 2001, the employing establishment stated that appellant was denied a limited[-]duty assignment from May 21 to June 4, 2001, because a letter was sent to her treating physician regarding class labels and until a response was received, she was denied limited duty.

In a decision dated December 31, 2001, the Office noted that appellant had filed a claim for compensation for the period May 17 to June 4, 2001. The Office denied the claim on the grounds that she had the responsibility to submit evidence supporting work restrictions and she had not submitted sufficient evidence.

By letter dated and postmarked November 8, 2003, appellant requested an oral hearing before the Office Branch of Hearings and Review.

Appellant filed claims for compensation (Form CA-7), for the period June 4 to 29, 2001. Although the record does not contain a detailed work history, it appears that she had returned to work July 9, 2001. The record contains a letter dated September 6, 2001 notifying appellant that she would be removed from employment effective October 15, 2001. The letter refers to work incidents on July 9, August 6 and 18, 2001 and found that appellant was in violation of employing establishment regulations. Appellant's employment was terminated on October 15, 2001.[1]

By decision dated December 19, 2002, the Office found that appellant's request for a hearing was untimely. The Board affirmed the December 19, 2002 decision on May 1, 2003.[2]

In a decision dated November 6, 2003, the Office noted that appellant had claimed compensation from June 4, 2001 to February 21, 2003. The Office denied the claim for compensation on the grounds that the medical evidence did not establish that she was disabled for work due to the employment injury. Appellant requested a hearing which was held on June 29, 2004.

By decision dated November 5, 2004, the hearing representative affirmed the November 4, 2003 decision. The hearing representative cited case law regarding a recurrence of disability when a claimant is working light duty and found that appellant had not met her burden of proof to establish that she was totally disabled from June 4, 2001 to February 21, 2003.

LEGAL PRECEDENT

It is a well-established principle that the Office must make proper findings of fact and a statement of reasons in its final decisions.[3]

ANALYSIS

In the present case, the Office has identified the period June 4, 2001 to February 21, 2003 as the period of claimed compensation. The record indicated, however, that there were two work stoppages in this case. Appellant stopped working on or about May 21, 2001 and then she apparently returned to work in July 2001 and then again stopped working in October 2001, when her employment was terminated. These work stoppages raise separate issues and the Office must make proper findings with respect to each issue.

With respect to the initial work stoppage in May 2001, it is not clear what job appellant was performing at that time. The employing establishment indicated that she had been working her regular job and was denied light duty because she did not submit sufficient medical evidence. The impartial medical specialist, Dr. Ryscavage, reported that appellant needed accommodations but his report indicated that accommodations had already been made by the employing

[1] The record contains a May 23, 2003 settlement agreement, in which the employing establishment agreed to rescind the September 6, 2001 notice of removal.

[2] Docket No. 03-658 (issued May 1, 2003).

[3] *See Arietta K. Cooper*, 5 ECAB 11 (1952); 20 C.F.R. § 10.126.

establishment. The Office needs to make proper factual findings as to what job she was performing when she stopped working so that the case may be adjudicated by application of the appropriate case law. Once factual findings are made, the Office should properly address the medical evidence, including Dr. Ryscavage's, to determine if a recurrence of disability has been established on or about May 21, 2001.

With respect to October 2001, the Office also needs to make appropriate findings. The hearing representative stated that appellant worked "intermittently" at light duty prior to October 15, 2001, but the record does not contain a light-duty job offer or clearly indicate the specific job that appellant was performing or the specific dates she worked. The Office needs to make factual findings and then make a proper determination as to whether the work stoppage on October 15, 2001 was a recurrence of disability pursuant to appropriate case law.

The case will, therefore, be remanded to the Office for further development. After such further development as the Office deems necessary, it should issue an appropriate decision.

CONCLUSION

The Board finds that the Office did not make appropriate findings with respect to the issue presented in this case and the case will be remanded for further development.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 5, 2004 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: July 13, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member