

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

M.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Urbana, OH, Employer**

)
)
)
)
)
)
)
)

**Docket No. 07-1886
Issued: February 11, 2008**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 10, 2007 appellant filed a timely appeal of the May 7, 2007 merit decision of the Office of Workers' Compensation Programs, which denied her claim for wage-loss compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.¹

ISSUE

The issue is whether appellant is entitled to wage-loss compensation for the period February 2, 2005 to December 10, 2006.

¹ The record contains evidence that was received after the Office issued its May 7, 2007 decision. The Board's review is limited to the evidence in the case record which was before the Office at the time of its final decision. 20 C.F.R. § 10.501.2(c) (2007).

FACTUAL HISTORY

This case has previously been before the Board. Appellant, a 62-year-old rural carrier, has an accepted occupational disease claim for aggravation of cervical radiculitis, which arose on or about January 10, 2005 (No. 09-2059956). She stopped work on February 2, 2005 and filed a claim for wage-loss compensation. In a decision dated July 20, 2005, the Office denied appellant's claim for wage-loss compensation beginning February 2, 2005. The Office found that she did not establish that she was totally disabled.

On August 22, 2005 appellant returned to work in a limited-duty capacity, working four hours per day. She subsequently filed additional claims (Form CA-7) for wage-loss compensation for partial disability. After increasing her workday to five hours in September 2006, appellant stopped work entirely on December 10, 2006. She was scheduled to undergo surgery the following day, which the Office had authorized.²

Appellant twice requested reconsideration of the Office's July 20, 2005 decision. In both instances, the Office denied further merit review. The Board issued an April 5, 2007 decision remanding the claim for a merit review on the issue of entitlement to wage-loss compensation beginning February 2, 2005.³

The relevant medical evidence included reports from Dr. Ephraim K. Brenman, a Board-certified physiatrist, and Dr. Paul A. Cook, a Board-certified orthopedic surgeon specializing in hand surgery. Dr. Cook treated appellant primarily for her bilateral upper extremity condition. Dr. Brenman focused on appellant's cervical condition, which he began treating in November 2004.

On February 2, 2005 Dr. Cook recommended that appellant take off from work for three weeks because of pain in her thumbs. Apart from her bilateral thumb pain, he also noted that she continued to have radiating pain from her cervical spine down to her left hand. On February 8, 2005 Dr. Cook reiterated that appellant was off work due to "bilateral thumb pain."

When Dr. Brenman saw appellant on February 11, 2005 he noted that she had been taking off from work due to carpal tunnel syndrome. He also reviewed a February 7, 2005 cervical magnetic resonance imaging (MRI) scan that revealed C5-6 degenerative disc disease, with spurring and a disc protrusion that caused some foraminal narrowing, with probable nerve root impingement at C6. Dr. Brenman diagnosed probable cervical nerve root irritation, with corresponding neck and left arm symptoms. He recommended a four-week course of physical therapy and cervical epidural steroid injections.

On February 23, 2005 Dr. Cook excused appellant from work through March 28, 2005. The attending physician's report (Form CA-20) did not include a specific diagnosis or history of injury, but noted that appellant was to receive an injection from Dr. Brenman. Additionally, Dr. Cook identified the date of injury as November 13, 1999. His corresponding treatment notes

² Following her December 11, 2006 surgery, the Office placed appellant on the periodic compensation rolls.

³ Docket No. 06-1788. The Board's April 5, 2007 decision is incorporated herein by reference.

reflected appellant's ongoing complaints of bilateral shoulder pain as well as pain radiating from the neck to her fingertips. Dr. Cook advised that appellant required restrictions, which would be provided by her current physiatrist and spine surgeon.

In a March 11, 2005 report, Dr. Cook explained that appellant's cervical radiculopathy was directly related to her work activities, which included constant movement of magazines, envelopes and mail containers. He also explained that overhead reaching, looking upward, and left to right neck movements aggravated appellant's symptoms and resulted in pain radiating from her shoulders. Dr. Cook, however, did not specifically address whether appellant's cervical radiculopathy precluded her from performing either some or all of her rural carrier duties.

A month later, Dr. Cook stated that appellant was "off work due to her neck pain." In an April 14, 2005 report, he explained that her neck pain radiated into her left hand. Appellant's symptoms were aggravated by constant flexion and extension of the neck, which was necessary to place mail into mailboxes. Dr. Cook further stated that she needed to be evaluated by a spine physician to determine any restrictions that she may need to return to work. He reiterated that appellant's injury was directly related to her activities at work.

In a May 20, 2005 report, Dr. Brenman similarly attributed appellant's neck and upper extremity symptoms to repetitive job activities. He also reiterated his February 11, 2005 finding of left paracentral disc protrusion abutting the C6 nerve root. Dr. Brenman did not address whether appellant was capable of performing her rural carrier duties.

On July 7, 2005 Dr. Cook diagnosed cervical radiculitis. He also indicated that appellant would be able to return to work on July 21, 2005. On July 18, 2005 Dr. Cook stated that she had been off work due to her cervical radiculopathy. However, he noted that he was not appellant's treating physician for that particular condition.

On August 10, 2005 appellant saw both Dr. Cook and Dr. Brenman. Dr. Cook examined her hand and reported that she continued to have basal thumb pain. He also noted that appellant had been advised that she could return to work with restriction at the end of August 2005. Dr. Cook also completed an August 10, 2005 return to work certificate in which he noted that she was temporarily totally disabled from February 2 to August 21, 2005 due to her cervical radiculopathy.

Dr. Brenman also provided an August 10, 2005 return to work certificate. He noted that appellant had been under his care since July 20, 2005, and that she was temporarily totally disabled due to lumbar radiculitis and a herniated disc at C5-6. Dr. Brenman also noted that there was a possible myofascial component. He advised that appellant could return to light-duty work August 21, 2005. In an August 10, 2005 attending physician's report (Form CA-20), Dr. Brenman diagnosed cervical nerve root irritation. He also noted that appellant was totally disabled from February 2 to August 21, 2005.

The record also included a report from Dr. Brenman, which appears to have been mistakenly dated July 26, 2005. He noted that he had been treating appellant for neck and left arm discomfort. Dr. Brenman also explained that there was evidence of a disc protrusion at C5-6, with foraminal narrowing involving the C6 nerve root. As in his earlier reports, he stated

that appellant was totally disabled from February 2 to August 22, 2005, when she was placed on light-duty work. Prior to that time, her significant pain prevented her from fulfilling her employment duties, which included repetitive lifting and twisting, as well as repetitive head and neck movements. Dr. Brenman indicated that appellant's symptoms subjectively improved in August 2005 and at that time she was able to resume some light-duty work. He explained that appellant's C5-6 disc protrusion precluded repetitive rotation, flexion and extension. Dr. Brenman also precluded repetitive lifting, bending and twisting and he limited appellant to lifting and carrying no more than 25 pounds, and frequent lifting and carrying of no more than 10 pounds.

By decision dated May 7, 2007, the Office reviewed the claim on the merits and denied appellant's claim for wage-loss compensation for the period February 2, 2005 to December 10, 2006.

Appellant's counsel subsequently requested an oral hearing. On June 15, 2007 the Branch of Hearings and Review denied the request because appellant had previously sought reconsideration before the Office. On July 10, 2007 appellant's counsel timely appealed the May 7, 2007 decision denying wage-loss compensation.⁴

LEGAL PRECEDENT

A claimant has the burden of establishing the essential elements of her claim, including that the medical condition for which compensation is claimed is causally related to the claimed employment injury.⁵ For wage-loss benefits, the claimant must submit medical evidence showing that the condition claimed is disabling.⁶ The evidence submitted must be reliable, probative and substantial.⁷

ANALYSIS

When appellant initially stopped working on February 2, 2005, the contemporaneous medical evidence indicated that her work stoppage was due to bilateral thumb pain associated with her November 13, 1999 claim (File No. 09-0461034). While Dr. Cook also noted complaints of cervical pain radiating into her left hand, he did not find her disabled due to an employment-related cervical condition. Neither did Dr. Brenman when he saw appellant on February 11, 2005. At that time, he noted that she had been off work because of carpal tunnel syndrome.

It was not until April 14, 2005 when Dr. Cook first reported appellant being "off work due to her neck pain," which he attributed to her employment. Pain, however, is a symptom and

⁴ Because counsel did not specifically challenge the Branch of Hearings and Review's June 15, 2007 nonmerit decision, the Board will limit its review to the Office's May 7, 2007 merit decision.

⁵ 20 C.F.R. § 10.115(e) (2007); see *Tammy L. Medley*, 55 ECAB 182, 184 (2003).

⁶ 20 C.F.R. § 10.115(f).

⁷ 20 C.F.R. § 10.115.

not a medical diagnosis. Dr. Cook did not specifically find that appellant was disabled from work due to her accepted condition of aggravation of cervical radiculitis. Moreover, he had earlier indicated that appellant's physiatrist, Dr. Brenman, would be responsible for providing work restrictions with respect to appellant's cervical condition.

On July 7, 2005 Dr. Cook diagnosed cervical radiculitis and advised that appellant would be able to return to work on July 21, 2005. He also stated in a July 18, 2005 report that appellant had been off work due to her cervical radiculopathy. But neither of Dr. Cook's July 2005 reports provided a clear rationale as to why appellant was precluded from working as a result of her January 10, 2005 employment injury. Moreover, he qualified his opinions regarding appellant's cervical condition by repeatedly noting that he was not the treating physician with respect to this particular condition.

The next medical reports that ostensibly address the issue of employment-related disability were provided by both Dr. Cook and Dr. Brenman on August 10, 2005. The return to work certificates provided by both physicians contain little, if any, information to substantiate the doctors' respective opinions that appellant was totally disabled from February 2 to August 22, 2005 due to her employment-related cervical condition. While Dr. Cook's corresponding treatment notes for August 10, 2005 focus on appellant's ongoing complaints of basal thumb pain, his disability certificate identifies cervical radiculopathy as the disabling condition without providing any meaningful explanation. Dr. Brenman found appellant disabled due to a herniated disc at C5-6 and lumbar radiculitis, but not cervical radiculitis. The Office has not accepted either a cervical disc herniation, nerve root irritation, or a lumbar condition as being causally related to the January 10, 2005 employment injury.

The last item of evidence that purports to establish an employment-related disability was the misdated July 26, 2005 report from Dr. Brenman. Again, he identifies appellant's C5-6 disc protrusion, with C6 nerve root involvement as the source of her ongoing problems. As previously discussed, this particular condition has not been accepted as being causally related to appellant's January 10, 2005 employment injury. Thus far, the Office has only accepted appellant's claim for aggravation of cervical radiculitis. The record does not include any probative medical evidence to support appellant's claim for either total or partial disability from February 2, 2005 to December 10, 2006. Accordingly, the Office properly denied appellant's claim for wage-loss compensation.

CONCLUSION

Appellant failed to establish entitlement to wage-loss compensation for the period February 2, 2005 to December 10, 2006.

ORDER

IT IS HEREBY ORDERED THAT the May 7, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 11, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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