United States Department of Labor
Employees' Compensation Appeals Board

T.M., Appellant	)	
and	)	**Docket No. 08-1212**
	)	**Issued: July 22, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Coppell, TX, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 18, 2008 appellant filed a timely appeal from the merit decision of the Office of Workers' Compensation Programs dated January 22, 2008 denying her claim for compensation for the period October 16 to 26, 2007. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this decision.

ISSUE

The issue is whether appellant has established that she was disabled from October 16 to 26, 2007.

FACTUAL HISTORY

On January 10, 2000 appellant, then a 42-year-old city mail carrier, filed a traumatic injury claim alleging that on January 6, 2000, while lifting a steel dock door to enter the employing establishment for the evening collection of mail, she sustained an injury to the right side of her lower back and pain in her legs. By letters dated February 3 and 4, 2000, the Office accepted her claim for lumbar strain.

The record indicates that the employing establishment offered appellant the modified assignment of a limited-duty city carrier on April 16, 2007. The duties of this position included casing and delivering mail and answering the telephone. The physical requirements of the position were standing, sitting, driving and walking from zero to four hours daily. On April 30, 2007 appellant accepted the position, but indicated that she "signed under protest." She returned to work.

On November 28, 2007 appellant filed a claim for compensation (Form CA-7) for the period October 16 to 26, 2007. In a time analysis form, she indicated that there was no work available from October 16 to 26, 2007, resulting in her taking leave without pay for a total of 80 hours. The employing establishment signed this form but indicated that, as appellant was not scheduled to work on October 18 or 26, 2007, the total leave without pay was 72 hours.

In support of her claim, appellant submitted a September 25, 2007 work capacity evaluation wherein Dr. John S. Townsend, IV, appellant's treating physician, indicated that appellant could stand and walk four hours a day and sit eight hours a day, but must be able to change position for comfort. Dr. Townsend indicated that appellant could reach above shoulder as tolerated and could only do a minimum of bending, stooping, twisting, pushing and pulling. In a progress note of the same date, he diagnosed appellant with, *inter alia*, lumbar strain, lumbar herniated nucleus pulposus and lumbar degenerative disc and joint disease. Appellant also submitted an October 30, 2007 physician progress report by Dr. Townsend wherein he noted that appellant was not currently working. Dr. Townsend indicated that appellant told him that there was no work available for her. He noted that appellant continued with pain management.

By letter dated December 14, 2007, the Office informed appellant that the evidence was insufficient to establish disability from work for the period October 16 to 26, 2007 and requested further information. It allotted appellant 30 days to submit the requested information; no timely response was received.

By decision dated January 22, 2008, the Office denied appellant's claim.

LEGAL PRECEDENT

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[1] This term also means an inability to work when a light-duty assignment made specifically to accommodate an employee's physical limitations due to her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed her established physical limitations.[2]

[1] 20 C.F.R. § 10.5(x).

[2] *Id.*

ANALYSIS

In the instant case, the Office accepted that on January 6, 2000 appellant suffered a lumbar strain/sprain while lifting a steel door during her federal employment. Appellant returned to work in a limited-duty assignment. No formal loss of wage-earning capacity decision was issued. Subsequently, appellant filed a claim for disability for the period October 16 to 26, 2007. The record indicates that she missed time from work from October 16 through 26, 2007. Appellant alleged on her time analysis form that there was no work available during this time period and that she took 80 hours of leave without pay. The employing establishment, in signing the form, did not disagree with appellant's allegation that no work was available but rather indicated that appellant only took 72 hours of leave without pay.

In evaluating this case, the Office discussed the medical evidence. However, the Office never addressed whether the employing establishment withdrew appellant's limited-duty position for the time period October 16 to 26, 2007.

The Office procedure manual provides that when a claimant stops work after reemployment and no formal loss of wage-earning capacity decision has been issued, the Office must ask the claimant to state his or her reasons for ceasing work and make a suitability determination on the job in question. If the job is considered suitable, the claimant has the burden of proving total disability and the Office should invite appellant to file a Form CA-2a notice of recurrence of disability and claim for pay compensation, and develop the evidence as appropriate.[3]

The Board notes that the Office procedure manual notes that in *Terry R. Hedman* the Board held that a partially disabled claimant who returns to a light-duty job has the burden of proving that he or she cannot perform the light duty if a recurrence of total disability is claimed.[4] The evidence in this case indicates that appellant did not work on the dates in question because there was no work available. If appellant was unable to work due to the fact that there was no work available within her restrictions, then a recurrence would be established as the employing establishment would have withdrawn appellant's limited-duty assignment for this period of time. If it were for another reason, a recurrence may not have occurred. The record is unclear as to why no work was available. Accordingly, the Board finds that this case is not in posture for a decision and will be remanded for further development as to whether the employing establishment did not provide work within appellant's restrictions to appellant from October 16 to 26, 2007. Following such further development as may be necessary, the Office shall issue an appropriate final decision on this issue.

CONCLUSION

The Board finds that this case is not in posture for decision.

[3] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814(b) (December 1995).

[4] 38 ECAB 222 (1986); *see also William H. Kong*, 53 ECAB 394 (2002).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 22, 2008 is set aside and the case is remanded to the Office for further development consistent with this decision.

Issued: July 22, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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