

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

M.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Birmingham, AL, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 10-1921
Issued: June 20, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 19, 2010 appellant filed a timely appeal from decisions of the Office of Workers' Compensation Programs dated January 13 and February 23, 2010 concerning the denial of wage-loss compensation. The Board also has jurisdiction over a June 28, 2010 nonmerit decision finding she abandoned her hearing request. Pursuant to the Federal Employees' Compensation Act¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² Under the Board's *Rules of Procedure*, the 180-day time period for determining jurisdiction is computed beginning on the day following the Office's decision. *See* 20 C.F.R. § 501.3(f)(2). The 180-day period following the January 13, 2010 Office decision commenced January 14, 2010. Since using the July 19, 2010 receipt date by the clerk of the Board would render the appeal untimely for this decision, the date of the postmark, July 12, 2010, is considered and renders the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

ISSUES

The issues are: (1) whether appellant is entitled to wage-loss compensation for disability from June 6, 2008 to August 28, 2009; and (2) whether she abandoned her request for an oral hearing before OWCP's hearing representative.

FACTUAL HISTORY

On January 26, 1999 appellant, then a 38-year-old letter carrier, filed an occupational disease claim alleging that on December 22, 1998 she first realized that her bilateral hand and wrist pain with numbness was employment related. The Office accepted the claim for material aggravation of preexisting bilateral carpal tunnel syndrome. It authorized right carpal tunnel surgery, which was performed on June 21, 2004 and left carpal tunnel surgery, which was performed on June 21, 1999. Appellant returned to modified work for eight hours a day on October 18, 2004.

On November 14 and 17, 2008 the employing establishment informed appellant that the rehabilitation she had been performing would be eliminated as tour two was being compressed. Appellant was offered a modified job within her restrictions with the hours of 12:05 p.m. to 8:35 p.m. and Wednesdays and Thursdays off. She rejected the offered position on December 5, 2008 on the grounds that her physician recommended not starting a new position until surgery and functional testing were approved.

On April 7, 2009 Dr. Steven P. Roberts, a treating Board-certified orthopedic surgeon, noted a functional capacity evaluation was performed on February 2, 2009. He listed limitations based upon pressure specific sensory device (PSSD).

On May 22, 2009 appellant filed a claim for compensation (Form CA-7) for wage loss beginning March 28, 2009. In support of her claim, she submitted a disability slip from Dr. James P. Bailey, a treating Board-certified orthopedic surgeon, who reported on June 6, 2008 that she was unable to work, but could return to work on June 16, 2008.

Dr. Roberts reported on October 9, 2008 that he released appellant to return to work on October 14, 2008. The restrictions included no repetitive motion and no scanning. Dr. Roberts indicated appellant was off work for 45 days in a November 20, 2008 disability slip. On December 30, 2008 he indicated that she was unable to work pending approval from workers' compensation. On April 7, 2009 Dr. Roberts released appellant to work with restrictions set by a functional capacity evaluation effective April 13, 2009.

On August 10, 2009 the Office received a response from Dr. Roberts to a June 8, 2009 letter. Dr. Roberts reported diagnoses of bilateral carpal tunnel syndrome, lesion of the radial and ulnar nerves and joint pain and recommended multiple nerve releases.

On August 10, 2009 appellant filed a claim for compensation Form CA-7 for wage loss for the period December 1, 2008 to July 31, 2009.

In a letter dated September 30, 2009, the Office informed appellant that additional information was required as it appeared she might be eligible for compensation from

December 1, 2008 to January 14, 2009 and possibly up to April 12, 2009, when she was released to work by her physician. Appellant was advised that the employing establishment was requested to provide information on her work and leave used for the period December 1, 2008 to July 31, 2009.

On November 13, 2009 the Office received eight disability slips from Dr. Roberts dated June 19 to December 30, 2008 and April 7, 2009.

By letter dated December 2, 2009, the Office informed appellant that the evidence of record was insufficient to support her wage-loss claim for the period December 1, 2008 to July 31, 2009 and advised her to submit additional medical evidence to support her claim.

On January 4, 2010 appellant filed a claim for compensation Form CA-7 for intermittent wage loss for the period June 6, 2008 to August 28, 2009. In support of her claim, she submitted disability slips from Drs. Bailey and Roberts. In an attached time analysis form appellant claimed 984 hours of leave without pay. The employing establishment could not certify the time she claimed.

In a June 19, 2008 disability slip, Dr. Roberts indicated that appellant could return to work. In a July 24, 2008 disability slip, he released her to return to work on July 25, 2008. On disability slips dated May 5 and June 16, 2009, Dr. Roberts stated that appellant was unable to work. On May 5, 2009 he advised that she was seen for test results and PSSD. A June 16, 2009 disability slip, indicated that appellant could return to work and was to be seen again in four months.

The employing establishment controverted appellant's wage-loss claim on January 6, 2010. It noted that she was entitled to four hours of compensation for medical appointments on June 6, July 24, September 11 and October 9, 2008, not eight hours as claimed. As to July 25, 2008, the evidence reflected that appellant should return to work that day, but did not and compensation should not be paid.

By decision dated January 13, 2010, the Office denied appellant's claim for intermittent wage-loss compensation for the period December 1, 2008 to July 31, 2009.

On February 1, 2010 appellant requested an oral hearing before an Office hearing representative on the issue of her wage-loss compensation for the period December 1, 2008 to July 31, 2009.

By decision dated February 23, 2010, the Office denied appellant's claim for wage-loss compensation for the periods June 6 to November 30, 2008 and August 1 to 28, 2009.

On February 28, 2010 appellant requested an oral hearing before an Office hearing representative on the issue of her wage-loss compensation for the periods June 6 to November 30, 2008 and August 1 to 28, 2009.

In an April 27, 2010 letter, the Office informed appellant that a telephonic hearing would be held on June 8, 2010 at 8:45 p.m. Appellant was given a toll free telephone number to call and a passcode. She failed to appear for the telephonic hearing.

By decision dated June 28, 2010, the Office hearing representative found appellant had abandoned her request for an oral hearing.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of her claim by the weight of the evidence.⁴ For each period of disability claimed, the employee has the burden of establishing that she was disabled for work as a result of the accepted employment injury.⁵ Whether a particular injury causes an employee to become disabled for work and the duration of that disability, are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.⁶

Under the Act the term “disability” means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁷ Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.⁸ An employee who has a physical impairment causally related to her federal employment, but who nonetheless has the capacity to earn the wages she was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.⁹ When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in her employment, she is entitled to compensation for any loss of wages.

To meet this burden, a claimant must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician’s opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factor(s).¹⁰ The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹¹

³ 5 U.S.C. §§ 8101-8193.

⁴ See *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

⁵ See *Amelia S. Jefferson*, *supra* note 4; see also *David H. Goss*, 32 ECAB 24 (1980).

⁶ See *Edward H. Horton*, 41 ECAB 301 (1989).

⁷ *S.M.*, 58 ECAB 166 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Conard Hightower*, 54 ECAB 796 (2003); 20 C.F.R. § 10.5(f).

⁸ *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

⁹ *Merle J. Marceau*, 53 ECAB 197 (2001).

¹⁰ *A.D.*, 58 ECAB 1183 (2006).

¹¹ *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

The Board will not require the Office to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.¹²

ANALYSIS -- ISSUE 1

The Office accepted the claim for material aggravation of preexisting bilateral carpal tunnel syndrome and authorized carpal tunnel surgery, which was performed on June 21, 1999 and June 21, 2004. The issue is whether appellant sustained intermittent disability from June 6 to August 28, 2009 causally related to her accepted condition.

Drs. Roberts and Bailey generally advised that appellant should be off work with intermittent return to work. Appellant was released to return to work on June 16, July 25, August 18, September 15, October 14, 2008 and April 13, 2009. However, they did not address the job requirements of appellant's sedentary position or provide a rationalized explanation as to why she could not perform this work. The Board has long held that medical conclusions unsupported by rationale are of diminished probative value and insufficient to establish causal relationship.¹³ The reports by Drs. Bailey and Roberts are insufficient to establish that appellant was disabled for this period. The record also contains clinic notes and a response to a June 8, 2009 Office letter from Dr. Roberts requesting surgery. The medical records are not probative in addressing why appellant was disabled from her sedentary position from June 6, 2008 to August 28, 2009. Appellant has submitted insufficient medical evidence to establish her disability for this period. The Office properly denied wage-loss compensation from June 6, 2008 to August 28, 2009.¹⁴

LEGAL PRECEDENT -- ISSUE 2

The Office's regulations address the requirements for obtaining a hearing and provide that a teleconference may be substituted for the oral hearing at the discretion of the hearing representative.¹⁵ Scheduling is at the sole discretion of the hearing representative, and is not reviewable.¹⁶ The legal authority governing abandonment of hearings rests with the procedure manual of the Office which provides that a hearing can be considered abandoned only under very limited circumstances.¹⁷ The following conditions must be present: (1) the claimant has not requested a postponement; (2) the claimant has failed to appear at a scheduled hearing; and (3) the claimant has failed to provide any notification for such failure within 10 days of the

¹² See *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹³ See *D.U.*, Docket No. 10-144 (issued July 27, 2010); *A.D.*, 58 ECAB 149 (2006); *Albert C. Brown*, 52 ECAB 152 (2000).

¹⁴ See *Tammy L. Medley*, 55 ECAB 182 (2003).

¹⁵ 20 C.F.R. §§ 10.615, 10.616.

¹⁶ *Id.* at § 10.622(b).

¹⁷ *Claudia J. Whitten*, 52 ECAB 483 (2001).

scheduled date of the hearing.¹⁸ Under these circumstances, the Office will issue a formal decision finding that the claimant has abandoned his or her request for a hearing.¹⁹

ANALYSIS -- ISSUE 2

On February 28, 2010 appellant requested a hearing. By letter dated April 27, 2010 the Office informed her of the hearing procedure and informed her that a hearing was scheduled for June 8, 2010 at 8:45 p.m. and gave the toll free number to call and a passcode. Appellant failed to appear for the telephonic hearing.

The Board finds that the April 27, 2010 Office communications put appellant on notice that a telephonic hearing had been scheduled. Appellant did not communicate with the Office either before or within 10 days after the scheduled hearing to request a postponement or explain why she did not telephone the Office for the scheduled hearing. The record thus supports that she did not request a postponement of the June 8, 2010 hearing, that she failed to appear by calling the free telephone number, and that she failed to provide any notification for such failure within 10 days of the scheduled date of the hearing. As this meets the conditions for abandonment specified in the Office's procedure manual, the Office properly found that appellant abandoned her request for an oral hearing before an Office hearing representative.²⁰

CONCLUSION

The Board finds that appellant has not established entitlement to wage-loss compensation disability from June 6, 2008 to August 28, 2009, causally related to her accepted bilateral carpal tunnel syndrome. The Board further finds that she abandoned a hearing scheduled for June 8, 2010.

¹⁸ *G.J.*, 58 ECAB 651 (2007); *Levi Drew, Jr.*, 52 ECAB 442 (2001).

¹⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(e) (January 1999); *see also C.T.*, Docket No. 08-2160 (issued May 7, 2009); *G.J.*, 58 ECAB 651 (2007); *Chris Wells*, 52 ECAB 445 (2001).

²⁰ *Claudia J. Whitten*, *supra* note 17.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 28, February 23 and January 13, 2010 are affirmed.

Issued: June 20, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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