U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MANUEL C. GARCIA, JR. and U.S. POSTAL SERVICE, POST OFFICE, Reno, NV

Docket No. 00-327; Submitted on the Record;
Issued December 27, 2000

DECISION and ORDER

Before MICHAEL E. GROOM, PRISCILLA ANNE SCHWAB, VALERIE D. EVANS-HARRELL

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's claim for continuation of pay after March 5, 1999.

On December 8, 1998 appellant, then a 50-year-old truck driver, sustained a right shoulder strain when he pushed and pulled overloaded containers.[1] He stopped work on December 10, 1998 and received continuation of pay intermittently from December 8, 1998 through March 3, 1999 and continuously from March 4 until April 7, 1999. The Office accepted appellant's claim for a right shoulder strain and on March 4, 1999 he underwent authorized right rotator cuff repair surgery.

Appellant submitted a report dated January 26, 1999 in which Dr. George W. Prutzman, a Board-certified orthopedic surgeon, provided a history of injury and noted his examination findings. He diagnosed right rotator cuff impingement secondary to acromioclavicular joint changes with a partial rotator cuff tear. Dr. Prutzman advised, based on his objective findings and appellant's symptoms, that appellant undergo right shoulder surgical decompression and right rotator cuff repair surgery.

Appellant also submitted a February 26, 1999 attending physician's report (Form CA-20) from Dr. Prutzman in which he noted that a magnetic resonance imaging (MRI) showed significant acromioclavicular joint degeneration with rotator cuff tendinitis and a partial rotator cuff tear. He also noted that appellant would be totally disabled from March 4 to April 1, 1999. Dr. Prutzman diagnosed impingement of the right rotator cuff with a partial tear of the rotator cuff, indicated that the diagnosis was employment related; and explained that appellant sustained the conditions "while pulling on tractor trailer injured shoulder."

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[1] A December 14, 1998 report, from a physician whose signature is illegible, states that appellant sustained a previous shoulder injury in a motor vehicle accident "one year ago."

He stated:

> "[Appellant] is having surgery on March 4, 1999 and will be on total disability for a couple of weeks. Unable to give dates on return to work at this time."

In his March 4, 1999 operative report, Dr. Prutzman described appellant's authorized Neer right shoulder decompression surgery and diagnosed right shoulder impingement syndrome with right shoulder rotator cuff fraying.

Appellant further submitted progress notes from Dr. Prutzman dated January 26 to July 13, 1999 in which he noted appellant's work restrictions. In his March 5, 1999 note, Dr. Putzman released appellant to restricted-duty work effective March 6, 1999, but with no use of his right arm. He also restricted appellant from using his right arm in his notes dated March 19, April 2 and 16, 1999.

By letter dated April 2, 1999, the employing establishment advised Dr. Prutzman that his reports contained conflicting information regarding appellant's ability to work. He responded that appellant was released to modified-duty work on March 5, 1999 but could not use his right arm. He stated:

> "[Appellant] obviously was totally disabled on the day of surgery, which was March 4, 1999. The following day he was seen in my office, his dressing was changed and if at that point a job was available involving 'no use of the right arm' then he could have returned to modified work at that point. In most job situations, this actually would mean that the patient was still totally disabled since there usually are no jobs available without the use of one arm. On the other hand, some employers do have positions such as answering phones where an employee could actually work without using one arm. I do n[o]t know what this particular patient's workplace situation is."

In a July 13, 1999 report, Dr. Prutzman noted that appellant was improved, had full range of motion and no clinical weakness. He opined that appellant did not need work restrictions. Regarding the issue of appellant's postoperative work status, Dr. Prutzman stated:

> "It has been brought to my attention that there is a discrepancy of [appellant's] work capacity in the immediate postoperative period due to the fact that there were two different forms filled out simultaneously. The one form said that he was able to do restricted duty, but in fact at that time he was unable to use the right arm in any way. Therefore, he was essentially totally disabled from the date of his surgery, March 4, 1999, until April 2, 1999 when he was then released for work with minimal use of the right arm."

By letter dated July 27, 1999, the employing establishment asserted that modified work was available subsequent to his March 4, 1999 surgery and, therefore, he was not entitled to continuation of pay after that date.

By decision dated August 18, 1999, the Office denied appellant's claim for continuation of pay after March 5, 1999 on the grounds that Dr. Prutzman released him to modified duty

effective March 6, 1999 and that the employing establishment had work available within the restrictions set forth by Dr. Prutzman.

The Board finds that appellant was entitled to receive continuation of pay until April 7, 1999.

Section 8118 of the Federal Employees' Compensation Act provides for payment of continuation of pay, not to exceed 45 days and subject to specified conditions, to an employee who has filed a claim for a period of wage loss due to a traumatic injury.[2] Section 10.222(a)(3) of Title 20 of the Code of Federal Regulations provides that, where pay is continued after an employee stops work due to a disabling traumatic injury, such pay shall be terminated only when medical evidence from the treating physician shows that the employee is not totally disabled and the employee refuses a written offer of a suitable alternative position, which is approved by the treating physician.[3]

In this case, while the medical evidence of record failed to establish that appellant was totally disabled after March 5, 1999, appellant was not offered suitable employment in writing until April 7, 1999,[4] when he was offered the limited-duty position of casing mail. Under section 10.222(a)(3) of the Office's regulations, appellant's continuation of pay may not be terminated unless, both the medical evidence establishes that the employee is not totally disabled and the employee refuses a written offer of suitable work.[5] Appellant was, therefore, entitled to receive continuation of pay until April 7, 1999.

[2] 5 U.S.C. § 8118.

[3] 20 C.F.R. § 10.222(a)(3) (1999).

[4] Dr. Prutzman's February 26, 1999 attending physician's report noted that appellant would be totally disabled from January 26 to April 1, 1999, however, the report was not contemporaneous with the alleged period of disability. Additionally, in reports and notes dated March 5, April 2 and July 13, 1999, Dr. Prutzman released appellant to modified duty effective March 5, 1999. His April 2, 1999 report clarified his opinion regarding appellant's ability to work and he stated that appellant could have returned to modified-duty work on March 5, 1999 had there been a job available in which he could have completely restricted the use of his right arm.

[5] 20 C.F.R. § 10.222(a)(3) (1999).

The decision of the Office of Workers' Compensation Programs dated August 18, 1999 is hereby affirmed as modified.

Dated, Washington, DC
December 27, 2000

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member

Valerie D. Evans-Harrell
Alternate Member