

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

DUANE A. GARRETT, Appellant

and

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

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**Docket No. 05-1411
Issued: September 30, 2005**

Appearances:

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
WILLIE T.C. THOMAS, Alternate Judge

JURISDICTION

On June 22, 2005 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated June 6, 2005, denying his claim for disability on and after November 2, 2002. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the June 6, 2005 decision.

ISSUE

The issue is whether appellant met his burden of proof to establish that he was disabled on and after November 2, 2002 due to his employment-related right shoulder impingement syndrome.

FACTUAL HISTORY

On June 18, 2002 appellant, then a 41-year-old rural carrier, filed an occupational disease claim alleging that he sustained an injury to his right shoulder due to repetitive motions involved in his job.

In a report dated June 25, 2002, Dr. Robert H. Bell, an attending Board-certified orthopedic surgeon, provided findings on examination and diagnosed a possible right rotator cuff tear.

By decision dated October 7, 2002, the Office denied appellant's claim on the grounds that the evidence did not establish that his rotator cuff tear was causally related to factors of his employment. He requested a hearing that was held on May 7, 2004.

In notes dated November 12, 2002, Dr. Bell diagnosed chronic impingement tendinitis and traumatic arthritis of the acromioclavicular joint. He did not indicate that appellant was disabled.

In a January 17, 2003 report, Dr. Benjamin J. Constante, an attending Board-certified family practitioner, stated that appellant was disabled and was being referred to Dr. John J. Brems, a Board-certified orthopedic surgeon. In a February 28, 2003 report, Dr. Brems provided findings on examination which included passive range of motion of his shoulder well maintained for elevation and external and internal rotation. He diagnosed a chronic rotator cuff impingement syndrome and recommended arthroscopic surgery.

By decision dated July 24, 2003, an Office hearing representative reversed the October 7, 2002 decision. He found that appellant had established that he sustained right shoulder impingement syndrome causally related to his employment.

On September 4, 2003 the Office accepted appellant's claim for right shoulder impingement syndrome.

Appellant submitted a claim for lost wages beginning on November 2, 2002.

In a letter dated December 9, 2003, the Office advised appellant that he needed to submit rationalized medical evidence establishing that he was disabled on and after November 2, 2002 due to his accepted right shoulder impingement syndrome.

In a report dated January 16, 2004, Dr. Sheldon Kaffen, a Board-certified orthopedic surgeon and an Office referral physician, provided a history of appellant's condition, a review of the medical records, statement of accepted facts and findings on physical examination. He noted that appellant had received no medical treatment for his right shoulder impingement syndrome since February 2003. Dr. Kaffen stated:

"On the date of examination [appellant] did not exhibit objective findings to indicate that he had residuals of the accepted condition of impingement syndrome of the right shoulder. However, it should be noted that [he] has not worked since [November 2, 2002] and, therefore, has not engaged in any repetitive use of his right shoulder. The physical examination of [February 28, 2003] [by Dr. Brems] also reveals full range of motion of the right shoulder.

"It is my opinion, based on the history and physical examination and review of medical records, that [appellant] was not totally disabled from the period

[November 2, 2002] to the present, due to the ... accepted work-related condition of impingement syndrome of the right shoulder.

“It is my opinion [that] [appellant] is medically capable of returning to his date of injury job as a rural letter carrier without restrictions. This opinion is based on the absence of objective physical findings on examination.”

In a February 3, 2004 report, Dr. Bell requested authorization for arthroscopic surgery.

In a letter dated March 4, 2004, the Office asked Dr. Bell to review Dr. Kaffen’s report and explain whether or not he agreed with his assessment of appellant’s condition. Dr. Bell responded by writing “In agreement with Dr. Kaffen” and signed his name on his copy of the Office’s letter.

By decision dated June 16, 2004, the Office denied appellant’s claim for lost wages on the grounds that the evidence did not establish that he was disabled on and after November 2, 2002 due to his work-related right shoulder impingement syndrome.

Appellant requested a hearing that was held on March 29, 2005.

In an April 13, 2005 report, Dr. Bell stated that he had not examined appellant for the past year and a half and, therefore, it would be difficult to determine whether he was capable of working on and after November 2, 2002.

By decision dated June 6, 2005, an Office hearing representative affirmed the June 16, 2004 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act¹ has the burden to establish the essential elements of his claim including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability or condition for which compensation is claimed is causally related to the employment injury. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.² When an employee claims that he sustained an injury in the performance of duty, he must submit evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury.³

¹ 5 U.S.C. §§ 8101-8193.

² *Donald W. Wenzel*, 56 ECAB __ (Docket No. 05-146, issued March 17, 2005).

³ *Joseph W. Kripp*, 55 ECAB ____ (Docket No. 03-1814, issued October 3, 2003).

Appellant has the burden of proving by the preponderance of the reliable, probative and substantial evidence that he was disabled for work as the result of an employment injury.⁴ Monetary compensation benefits are payable to an employee who has sustained wage loss due to disability for employment resulting from the employment injury.⁵ Whether a particular employment injury causes disability for employment and the duration of that disability are medical issues which must be proved by a preponderance of reliable, probative and substantial medical evidence.⁶

ANALYSIS

The Office accepted that appellant sustained a right shoulder impingement syndrome as a result of his employment duties. He filed a claim for lost wages for disability on and after November 2, 2002.

Dr. Kaffen, a Board-certified orthopedic surgeon and an Office referral physician, provided a history of appellant's condition, a review of the medical records and statement of accepted facts, and findings on physical examination which included full range of motion of the right shoulder. He stated that appellant had no objective findings to indicate that he had residuals of his accepted right shoulder impingement syndrome. Dr. Kaffen noted that he has not worked since November 2, 2002 and, therefore, had not engaged in any repetitive use of his right shoulder and noted that he had not been treated for his condition since February 2003. He opined that appellant was not totally disabled on and after November 2, 2002 due to his work-related right shoulder impingement syndrome and was capable of performing his regular job without restrictions.

The reports of appellant's attending physicians do not establish that he was disabled on and after November 2, 2002 due to his accepted right shoulder impingement syndrome. In reports dated November 12, 2002 and February 3, 2004, Dr. Bell diagnosed chronic impingement tendinitis and traumatic arthritis of the acromioclavicular joint and requested authorization for arthroscopic surgery. However, he did not indicate that appellant was disabled on and after November 2, 2002 due to his accepted right shoulder condition. On March 4, 2004 he indicated his agreement with Dr. Kaffen's January 16, 2004 report, which found no work-related disability on and after November 2, 2002. In an April 13, 2005 report, Dr. Bell stated that he had not examined appellant for the past year and a half and, therefore, it would be difficult to determine whether he was capable of working on and after November 2, 2002. His reports do not establish that appellant was disabled on and after November 2, 2002 due to his accepted right shoulder impingement syndrome.

In a January 17, 2003 report, Dr. Constante stated that appellant was disabled. However, he did not provide any findings on examination or a rationalized explanation as to why appellant

⁴ *Thomas M. Petroski*, 53 ECAB 484 (2002).

⁵ *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

⁶ *Fereidoon Kharabi*, 52 ECAB 291 (2001).

was disabled on and after November 2, 2002 due to his accepted right shoulder impingement syndrome. Therefore, this report does not support disability for the period claimed by appellant.

In a February 28, 2003 report, Dr. Brems diagnosed a rotator cuff impingement syndrome and recommended arthroscopic surgery. However, he did not opine that appellant was disabled on and after November 2, 2002 due to his employment injury. Therefore, Dr. Brems' report is insufficient to establish that he was disabled on and after November 2, 2002 due to his accepted right shoulder impingement syndrome.

The Board finds that the medical evidence is insufficient to establish that appellant was disabled on and after November 2, 2002 due to his work-related right shoulder impingement syndrome. Accordingly, the Office properly denied his claim for wage-loss compensation for that period.

CONCLUSION

The Board finds that appellant failed to establish that he was disabled on and after November 2, 2002 due to his employment-related right shoulder impingement syndrome.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 6, 2005 is affirmed.

Issued: September 30, 2005
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board