

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

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**DALE MACKELPRANG, Appellant**

**and**

**U.S. POSTAL SERVICE, GENERAL MAIL  
FACILITY, Phoenix, AZ, Employer**

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**Docket No. 05-278  
Issued: January 6, 2006**

*Appearances:*

*Barbara Mackelprang, 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  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On November 9, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated October 18, 2004. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether appellant is entitled to compensation for wage loss during the period December 30, 2001 to February 6, 2002; and (2) whether appellant was disabled on March 21, 2002.

**FACTUAL HISTORY**

The case was before the Office on a prior appeal. As the Board noted in a December 16, 2003 decision, appellant has filed several claims for injuries, including three accepted left shoulder muscle strains.<sup>1</sup> In a decision dated December 16, 2003, the Board found that appellant was at fault in creating an \$8,049.00 overpayment. The Board also found that appellant was not

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<sup>1</sup> Docket No. 03-1614 (issued December 16, 2003).

entitled to compensation for wage loss from February 25 to March 8, 2001. The history of the case is contained in the Board's prior decision and is incorporated herein by reference.

With respect to the period December 30, 2001 to February 6, 2002, the record indicated that in 2001 appellant had been working a shift from 11:00 p.m. to 4:30 a.m., with 2.5 hours of leave without pay. In a report dated July 11, 2001, the attending family practitioner, Dr. James Anderson, stated that working into the daylight hours interfered with appellant's sleep and he had less left shoulder pain when he stopped working before sunrise. The Office paid appellant compensation for the 2.5 hours claimed. On November 27, 2001 Dr. Anderson indicated in a duty status report (Form CA-17) that appellant could work eight hours with restrictions. On December 9, 2001 appellant began working a new shift from 12:00 p.m. to 8:30 p.m. He continued to work this shift through February 6, 2002. On February 21, 2002 appellant filed a claim for compensation from December 30, 2001 to February 6, 2002. Appellant indicated that he had lost night differential as a result of his schedule change.

In a report dated March 18, 2002, Dr. Anderson stated that the work restrictions from November 27, 2001 should continue. He stated that, "due to the sleep disorder associated with his [left shoulder] condition, in which [appellant] retires to bed after sunrise and has exacerbated symptoms as a result, he is also to continue on the previously recommended work schedule, where he is able to return home prior to sunrise in order to retire to bed by that hour."

On March 28, 2002 appellant filed a claim for compensation for March 20 and 21, 2002. Appellant submitted a note dated March 27, 2002 from Dr. Anderson, who provided results on examination and stated "RSD exacerbation" on March 20, 2002. He stated that medical leave was given "[March 20] - AM [March 21]." In a report dated April 9, 2002, Dr. Anderson stated that, on March 20 and 21, 2002, appellant was totally disabled due to an exacerbation of the muscle flare-ups from his chronic left shoulder condition. He stated that this was the direct result of the long thoracic nerve palsy, and that appellant was unable to work as he was unable to elevate his left arm in any way. Dr. Anderson stated that appellant's condition was chronic and exacerbations would recur periodically.

By decision dated April 9, 2002, the Office denied appellant's claim for compensation from December 30, 2001 to February 6, 2002. The Office found that the change in schedule was the result of a mutual agreement between appellant and a supervisor, Ms. Wardlaw-Smith.

In a letter dated April 22, 2002, appellant requested reconsideration and argued that there was no mutual agreement regarding a schedule change. In a statement dated April 24, 2002, a union steward, Mr. Ortega, stated that on December 9, 2001 Ms. Wardlaw-Smith told him that she was going to accommodate the request for a schedule change by appellant's physician.

In a decision dated June 14, 2002, the Office stated that appellant had filed a claim for compensation (Form CA-7) on March 28, 2002, stating that he was disabled on March 21, 2002. The Office stated that the medical evidence was insufficient to establish disability for work on March 21, 2002.

By decision dated June 20, 2002, the Office determined that a sleep disorder was not employment related. Appellant requested a hearing, which was held on July 27, 2004.

In a decision dated October 18, 2004, the hearing representative found that an unresolved conflict remained on the issue of an employment-related sleep disorder, and the case was remanded for further development. The hearing representative affirmed the April 9 and June 14, 2002 Office decisions.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>3</sup>

### **ANALYSIS -- ISSUE 1**

In this case appellant alleged that the employing establishment changed his work schedule as a result of an employment-related condition, and for the period December 30, 2001 to February 6, 2002 he could not earn night differential and Sunday premium. The initial question is whether the change in work schedule was due to an employment-related condition; if so, then the Office would determine if appellant was disabled and the extent of that disability.

The medical evidence regarding the period December 30, 2001 to February 6, 2002 suggests that any restriction on working hours was based on a sleep disorder. Appellant had been stopping work at 4:30 a.m. based on Dr. Anderson's recommendations. Dr. Anderson's March 18, 2002 report continues the work restrictions in effect since November 27, 2001 and refers to the recommended work schedule based on a sleep disorder. Before the question of whether any change in work schedule was an accommodation of an employment-related condition, it must first be determined if there was a sleep disorder condition causally related to the employment injury. That issue is still under development by the Office. Once the Office has properly made a determination as to a sleep disorder, then the issue of disability from December 30, 2001 to February 6, 2002 can be resolved.

If the inability to work after 4:30 a.m. was an employment-related restriction, then it must be determined if the change in work schedule was due to an employment-related condition. There are time analysis forms submitted by the employing establishment stating that the schedule change was not due to the work injury, but it is not clear whether those statements were based on the assumption that a sleep disorder was not employment related. The Office should secure a statement from the supervisor or other relevant source as to the reason for the schedule change. After such further development as the Office deems necessary, it should issue an appropriate decision.

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

### **LEGAL PRECEDENT -- ISSUE 2**

As noted above, an employee seeking benefits under the Act has the burden of establishing any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>4</sup> Whether a particular injury causes an employee to be disabled for work, and the duration of that disability, are medical issues that must be proved by a preponderance of the reliable, probative and substantial medical evidence.<sup>5</sup>

### **ANALYSIS -- ISSUE 2**

With respect to a specific claim for disability on March 21, 2002, Dr. Anderson stated in an April 9, 2002 report that appellant was disabled on March 20 and 21, 2002. He stated that appellant had a muscle flare-up as a direct result of the long thoracic nerve palsy, which was a chronic condition and exacerbations would recur. Dr. Anderson reported that appellant was unable to elevate his left arm, thus, precluding him from work. The Board notes that the Office has accepted the condition of long thoracic nerve palsy and there is no contrary evidence regarding disability for work on March 21, 2002. The evidence of record is sufficient to establish an employment-related disability for work on March 21, 2002.

### **CONCLUSION**

The Board finds that the case is not in posture for decision with respect to disability from December 30, 2001 to February 6, 2002. The Board further finds that appellant met his burden of proof to establish disability on March 21, 2002.

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<sup>4</sup> *Id.*

<sup>5</sup> *Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 18, 2004 is reversed with respect to disability on March 21, 2002, and is set aside and remanded for further action consistent with this decision of the Board with respect to disability from December 30, 2001 to February 6, 2002.

Issued: January 6, 2006  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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