

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

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C.W., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,  
Pittsburgh, PA, Employer

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**Docket No. 08-1949  
Issued: February 18, 2009**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On July 7, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' May 9 and June 3, 2008 merit decisions, denying her claims for periods of employment-related total disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant met her burden of proof to establish that she sustained employment-related disability for periods between October 22, 2007 and May 9, 2008.

**FACTUAL HISTORY**

The Office accepted that by mid 2003 appellant, then a 42-year-old window clerk, sustained several conditions due to the repetitive duties of her job.<sup>1</sup> It accepted that she sustained sprains of her neck, right rotator cuff and right upper arm, disorder of the bursae and tendons of her right shoulder, impingement syndrome of her right shoulder and cervalgia. Appellant

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<sup>1</sup> The window clerk position required appellant to lift up to 70 pounds and reach above her shoulders.

returned to limited-duty work for the employing establishment, which did not require lifting more than 15 pounds or reaching above her shoulders.

On January 19, 2004 appellant underwent subacromial decompression and distal clavicle excision surgery of her right shoulder. The procedure was authorized by the Office. In a July 5, 2005 decision, the Office granted appellant a schedule award for a 22 percent permanent impairment of her right arm. The award ran for 68.64 weeks from January 18, 2005 to May 13, 2006. In several claims for compensation (Forms CA-7), appellant alleged that she sustained total disability for periods between October 22, 2007 and April 25, 2008 due to her employment injuries.

In a December 18, 2007 report, Dr. Eric Heimberger, an attending Board-certified orthopedic surgeon, stated that appellant presented with some chronic right shoulder and neck pain and a mild radiculopathy in her right arm. He indicated that appellant had been diagnosed with sarcoidosis and had some related pulmonary problems. Appellant reported that she had to delay pain management therapy until she was cleared for her sarcoidosis condition. Dr. Heimberger stated that her examination was relatively unchanged with good range of motion and only mild tenderness in her neck and right shoulder. He noted, "I do feel, once again, that she is unable to do her normal job duties in regards to her neck, right shoulder and arm pain at this time. This will also include any type of repetitive lifting, pushing, pulling, grasping or grabbing."<sup>2</sup>

On March 18, 2008 the Office requested that appellant submit additional factual and medical evidence in support of her claim. In an April 3, 2008 report, Dr. Heimberger stated that appellant had been under his care for chronic neck and right shoulder pain that she sustained following a May 2002 employment-related injury. He noted that when appellant was referred for pain management she was diagnosed with an unrelated condition and asserted that she was unable to do her normal activities as she did have some worsening pain about her neck and right shoulder. Dr. Heimberger stated, "Once again, she is unable to undergo treatment for this at this time due to her other, unrelated condition. I do not foresee any significant changes in the near future. Certainly, once she is able to resume her treatment, in regards to her neck and right shoulder, including pain management therapy, her condition might improve where upon she could return back to her previous level of restricted duty."

In a May 9, 2008 decision, the Office denied appellant's claim that she sustained employment-related total disability for periods between October 22, 2007 and April 25, 2008 on the grounds that she did not submit sufficient medical evidence to establish such disability. On May 12, 2008 appellant filed a Form CA-7 alleging that she sustained total disability for the period April 26 to May 9, 2008 due to her employment injuries. In a June 3, 2008 decision, the Office denied appellant's claim that she sustained employment-related total disability for the period April 26 to May 9, 2008 on the grounds that she did not submit sufficient medical evidence to establish such disability.

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<sup>2</sup> In a December 18, 2007 work restriction form, Dr. Heimberger checked a box indicating that appellant could not work until further notice.

## LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act<sup>3</sup> has the burden of establishing the essential elements of her 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 and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>4</sup> The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.<sup>5</sup>

## ANALYSIS

The Office accepted that appellant sustained sprains of her neck, right rotator cuff and right upper arm, disorder of the bursae and tendons of her right shoulder, impingement syndrome of her right shoulder and cervalgia due to her repetitive job duties. On January 19, 2004 appellant underwent subacromial decompression and distal clavicle excision surgery of her right shoulder. She returned to limited-duty work for the employing establishment which did not require lifting more than 15 pounds or reaching above her shoulders.

Appellant alleged that she sustained total disability for periods between October 22, 2007 and May 9, 2008 due to her employment injuries, but the Board finds that she did not submit sufficient medical evidence to support such employment-related disability.

In a December 18, 2007 report, Dr. Heimberger, an attending Board-certified orthopedic surgeon, stated that appellant presented with some chronic right shoulder and neck pain and a mild radiculopathy in her right arm. He indicated that she had been diagnosed with sarcoidosis and had delayed her pain management therapy until she was cleared for her sarcoidosis condition. Dr. Heimberger stated that appellant's examination was relatively unchanged with good range of motion and only mild tenderness in her right shoulder. He indicated that once appellant's sarcoidosis was "squared away" he would recommend proceeding with pain management therapy. Dr. Heimberger noted that appellant could not perform her normal job duties "in regards to her neck, right shoulder and arm pain" and could not engage in any repetitive lifting, pushing, pulling, grasping or grabbing.

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>5</sup> *See Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

This report, however, is of limited probative value on the relevant issue of the present case in that it does not contain an opinion on causal relationship.<sup>6</sup> Dr. Heimberger did not provide a clear opinion that appellant's work limitations on or after October 22, 2007 were related to her accepted employment injuries. He did not describe appellant's employment injuries in any detail or explain how they could have caused total disability. In addition, Dr. Heimberger did not provide a clear opinion that appellant could no longer perform her very limited job duties on or after October 22, 2007. He did not describe what objective employment-related findings on examination or diagnostic testing would lead to such disability. In fact, Dr. Heimberger indicated that appellant's right shoulder condition had not changed and only noted that she reported mild tenderness in her neck and right shoulder. In a December 18, 2007 work restriction form, he checked a box indicating that appellant could not work until further notice. However, Dr. Heimberger did not indicate that this total disability was due to residuals of any employment injury.<sup>7</sup>

On April 3, 2008 Dr. Heimberger stated that appellant had been under his care for chronic neck and right shoulder pain that she sustained following a May 2002 employment-related injury. He noted that she reported she was unable to do her normal activities as she had some worsening pain about her neck and right shoulder. Dr. Heimberger again noted that appellant had suspended her pain management therapy due to a condition unrelated to her neck and right shoulder and stated, "Certainly, once she is able to resume her treatment, in regards to her neck and right shoulder, including pain management therapy, her condition might improve where upon she could return back to her previous level of restricted duty." Dr. Heimberger again did not provide a clear opinion that appellant's work limitations on or after October 22, 2007 were related to her accepted employment injuries. He did not explain why appellant could no longer perform her very limited job duties on or after October 22, 2007.

### **CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish that she sustained employment-related disability for periods between October 22, 2007 and May 9, 2008.

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<sup>6</sup> See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

<sup>7</sup> Moreover, Dr. Heimberger did not explain how this disability assessment comported with the suggestion in his December 18, 2007 narrative report that appellant could perform some type of limited-duty work.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' June 3 and May 9, 2008 decisions are affirmed.

Issued: February 18, 2009  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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