

On January 28, 2004 appellant, then a 49-year-old clerk, filed a Form CA-2, occupational disease claim, alleging that she sustained a rotator cuff injury due to sorting flats and light weight parcels. She stated that she was first aware of the illness on December 16, 2003 and its relationship to her employment on December 17, 2003. By report dated December 17, 2003, Dr. Lynn Staker, an attending orthopedic surgeon, noted findings of decreased range of motion

of the right shoulder with tenderness and crepitation on examination. He diagnosed cervical and lumbar strains and right rotator cuff impingement syndrome and advised that appellant was working four hours a day, which he thought was all she was capable of doing. On January 14, 2004 Dr. Staker noted that appellant complained of significant pain in the neck and right side into the shoulder and was not capable of working. In a duty status report dated February 13, 2004, he noted examination findings and diagnosed cervical disc disease and rotator cuff impingement. Dr. Staker advised that appellant could work four hours daily with restrictions to her physical activity.

A limited-duty assignment signed by appellant on February 10, 2004 advised that she would work from 15:30 to 00:00 daily distributing manual letters for one hour, distributed state mail for four hours and other clerical duties for three hours. The physical requirements were described as clerical duties with a 20-pound lifting restriction. The employing establishment informed the Office that appellant was only working four hours daily when she claimed an injury in December 2003 and noted that she had been working under restrictions since June 2003, working an average of four hours daily and that she was not allowed to push or pull mail containers and had a lifting restriction of 15 pounds. A description of her duties dated March 11, 2003 provided that, when distributing manual letters, continuous motion of the arms and hands was required. On May 6, 2004 the Office accepted that appellant sustained right shoulder impingement syndrome.¹

A magnetic resonance imaging (MRI) scan of the right shoulder on July 7, 2004 demonstrated what could be a small partial thickness area of fraying. Dr. Staker submitted a number of reports providing physical findings of tenderness and decreased range of motion of the right shoulder. He diagnosed rotator cuff impingement and advised that appellant could work four hours daily. On July 14, 2004 Dr. Staker advised that appellant was unable to work from July 14 through 21, 2004 because of a right shoulder injury and pain.

Beginning in August 2004, appellant submitted a number of CA-7 form claims for compensation, claiming four hours of disability daily except for the periods January 12 through 23 and July 14 through 21, 2004, when she claimed eight hours.² Dr. Staker continued to submit form reports and treatment notes advising that appellant could work four hours of restricted duty daily. On July 14, 1964 he advised that she could not work from July 14 to 21, 2004 because of right shoulder injury and pain and on August 18, 2004 advised that appellant would most likely require acromioplasty and decompression of the rotator cuff. In a letter dated August 23, 2004, the Office informed appellant that in order for the CA-7 form claims to be considered for payment, she should submit a well-reasoned narrative report from her physician with objective findings advising why she could not work.

By decision dated September 24, 2004, the Office denied disability compensation for the period December 16, 2003 to September 17, 2004, on the grounds that the medical evidence

¹ The instant claim was adjudicated under Office file number xxxxxx392. Appellant, who is hearing impaired, also has accepted claims for cervical strain and concussion, file number xxxxxx996 and tenosynovitis of the hand and wrist, file number xxxxxx023.

² Appellant also claimed eight hours on intermittent days throughout the period claimed.

submitted was insufficient to establish that the disability resulted from the accepted right shoulder impingement syndrome. On October 3, 2004 appellant requested a hearing and submitted additional treatment notes and form reports from Dr. Staker dating from January 14 to September 15, 2004. In a September 20, 2004 report, Dr. Staker advised that he had treated appellant conservatively for cervical scapular pain, cervical degenerative discs and rotator cuff impingement on the right. He stated, “she has been working [four] hours a day at a limited[-]duty status and will continue that with a 20[-pound] limitation for the next at least 90 days.”

In a decision dated October 18, 2004, the Office denied appellant’s claim for disability compensation for the period September 20 to October 1, 2004. In an October 6, 2004 report, Dr. Staker advised that appellant had a significant shoulder injury as demonstrated on MRI scan that prevented her from doing overhead activity or repetitive activity with her shoulder and that she had not responded to conservative treatment. He stated that authorization for surgery had been requested and that recovery was not expected until three to four months following surgery. Dr. Staker concluded that appellant was able to work only four hours a day with a 20-pound restriction.

In an April 8, 2005 decision, an Office hearing representative found that the Office improperly denied disability compensation because, based on the reports of Dr. Staker, appellant had established that she was partially disabled from December 16, 2003 forward. By decision dated July 22, 2005, a second Office hearing representative set aside the April 8, 2005 decision. The hearing representative noted that the director had filed a request for reconsideration, stating that the claimant had sustained a previous injury on October 24, 2002 and was temporarily totally disabled but returned to work on March 17, 2003. Under that claim appellant’s entitlement to compensation benefits was terminated by decision dated December 8, 2003,³ and the director argued that, because the medical evidence demonstrated that the claimant was capable of working four hours a day, she was capable of performing her date-of-injury job in the instant claim and was not due further compensation. The July 22, 2005 decision found that, because the previous hearing representative remanded the case on the basis that the appellant was partially disabled for four hours while not giving due consideration to the fact that she was only working four hours at the time of her injury, the April 5, 2005 decision was prematurely issued and the case was in posture for an oral hearing to enable the Office to accurately establish a factual basis upon which a final determination could be made.

At the hearing held on October 18, 2005, appellant testified that in 2001 she had nonwork-related knee surgery and began working six hours daily at that time but at some point reduced her workday to four hours because she continued to have symptoms from her cervical injury. She stated that Dr. Staker released her to four hours of work a day with a 20-pound lifting restriction when she returned to work following her cervical claim and that she had received no compensation since her return to work in March 2003.

³ Office file number xxxxxx996, *supra* note 1.

By decision dated December 15, 2005, an Office hearing representative affirmed the September 24 and October 18, 2004 decisions. The hearing representative noted that, under file number xxxxxx996, the cervical claim, by decision dated August 25, 2003, the Office denied entitlement to compensation benefits beginning March 22, 2003 and on December 8, 2003 terminated appellant's compensation benefits under that claim.⁴ Regarding the period of disability beginning December 16, 2003, the hearing representative found that, as the record established that appellant was only working four hours a day when she sustained an injury to her right shoulder and had worked less than full duty dating back to March 2003, she would not be entitled to benefits for eight hours a day. The hearing representative further found that the medical evidence was insufficient to establish that appellant was disabled due to the accepted condition because Dr. Staker did not provide sufficient rationale relating her claimed disability to work.

Dr. Staker continued to submit reports and in a May 17, 2006 report, advised that appellant's cervical condition was medically stable but that he continued to treat her for rotator cuff impingement and possible tear of the right shoulder. He advised that she should continue to work four hours a day. On June 2, 2006 the Office referred appellant to Dr. Joan Sullivan, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a June 23, 2006 report, Dr. Sullivan noted her review of the record and appellant's continued complaint of right shoulder pain. Examination of the right shoulder demonstrated tenderness, decreased range of motion and a markedly positive impingement sign. Dr. Sullivan reviewed the MRI scan and diagnosed right rotator cuff impingement syndrome, possible rotator cuff tear on the right, occupationally-related on a more probable than not basis. She recommended further MRI scan studies and advised that appellant could need surgery. On an attached work capacity evaluation, Dr. Sullivan advised that appellant could work four hours a day with restrictions to her physical activity. An August 23, 2006 right shoulder arthrogram was unremarkable. A right shoulder MRI scan that day was interpreted as suggestive of possible superior margin partial tears of the supraspinatus.

On December 2, 2006 appellant requested reconsideration, arguing that the medical evidence established that she was entitled to disability compensation for her right shoulder injury. On February 28, 2007 Dr. Staker provided findings on examination, diagnosed a rotator cuff tear and advised that appellant continued to work four hours daily. In a merit decision dated April 5, 2007, the Office denied modification of the prior decision.

LEGAL PRECEDENT

Under the Federal Employees' Compensation Act⁵ the term "disability" is defined as incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.⁶ Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn the wages. An employee who has a physical impairment causally related to a federal employment injury but who nonetheless has the capacity to earn

⁴ The hearing representative noted that appellant did not appeal those decisions.

⁵ 5 U.S.C. §§ 8101-8193.

⁶ See *Prince E. Wallace*, 52 ECAB 357 (2001).

wages he or she was receiving at the time of injury has no disability as that term is used in the Act.⁷

Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.⁸ Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work. When a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that she hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.⁹ The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.¹⁰

ANALYSIS

The Board finds that appellant, did not meet her burden of proof to establish that she was entitled to wage-loss compensation for the period December 16, 2003 through October 1, 2004 causally related to her accepted right shoulder impingement syndrome. The issue of whether a claimant's disability is related to an accepted condition is a medical question which must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to employment factors and supports that conclusion with sound medical reasoning.¹¹

The record supports that, beginning in 2001, appellant had been working only six hours a day following a nonwork-related knee injury. As she testified at the hearing, following her return to work in March 2003 from the accepted cervical strain, she received no further wage-loss compensation but began working four hours a day. The medical evidence contemporaneous with the period of claimed disability includes Dr. Staker's numerous reports dating from December 17, 2003. On December 17, 2003 Dr. Staker noted that appellant was only working four hours a day and advised that she could continue to do so and the majority of his reports after that date advised that she could continue working four hours daily. Appellant also claimed total disability for the periods January 12 to 23 and July 14 to 21, 2004. In a January 14, 2004 report, Dr. Staker noted positive physical findings regarding appellant's shoulder and advised that she was not capable of returning to her job. He, however, exhibited no knowledge of the requirements of her light-duty job or explained why her shoulder injury prevented her from work activities. Likewise, in a brief July 14, 2004 report, Dr. Staker merely

⁷ *Cheryl L. Decavitch*, 50 ECAB 397 (1999); *Maxine J. Sanders*, 46 ECAB 835 (1995).

⁸ *See Fereidoon Kharabi*, 52 ECAB 291, 293 (2001); *Edward H. Horton*, 41 ECAB 301, 303 (1989).

⁹ *G.T.*, 59 ECAB ____ (Docket No. 07-1345, issued April 11, 2008); *see Huie Lee Goal*, 1 ECAB 180, 182 (1948).

¹⁰ *G.T.*, *id.*; *Fereidoon Kharabi*, *supra* note 8.

¹¹ *Sandra D. Pruitt*, 57 ECAB 126 (2005).

advised that appellant could not work from July 14 to 21, 2004 because of right shoulder injury and pain. From that point on, he advised that appellant could work four hours of limited-duty daily.

Medical conclusions unsupported by rationale are of diminished probative value and are insufficient to establish causal relation.¹² Dr. Staker's later reports and that of Dr. Sullivan who performed a second opinion evaluation in June 2006 are of diminished probative value as they provide no opinion regarding the period of disability at issue here. The Board therefore concludes that, as there is no rationalized medical evidence contemporaneous with the period of claimed disability, appellant did not meet her burden of proof as Dr. Staker's reports did not provide sufficient rationale to support that she was disabled from her light-duty job for the period December 16, 2003 to October 1, 2004.¹³

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she was totally disabled for the period December 16, 2003 through October 1, 2004 causally related to her accepted right shoulder impingement syndrome.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 5, 2007 is affirmed.

Issued: November 10, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹² *Albert C. Brown*, 52 ECAB 152 (2000).

¹³ *Conard Hightower*, 54 ECAB 796 (2003).