

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SAM J. MARTINEZ and DEPARTMENT OF AGRICULTURE,
SAWTOOTH NATIONAL FOREST, Burley, ID

*Docket No. 99-376; Submitted on the Record;
Issued October 20, 2000*

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,
VALERIE D. EVANS-HARRELL

The issue is whether appellant has established entitlement to wage-loss compensation for total disability on and after October 3, 1997 causally related to his employment-related conditions.

On November 24, 1992 appellant filed a traumatic injury claim alleging that on November 23, 1992 he sustained an injury to his left shoulder in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for left shoulder strain, left rotator cuff repair and arthroscopy and debridement of the left shoulder. On June 17, 1996 appellant was reemployed by the employing establishment in a part-time light-duty position that required that he answer telephone calls and greet visitors, four hours a day, five days a week. In a decision dated August 27, 1996, the Office found that the light-duty position was suitable and fairly and reasonably represented appellant's wage-earning capacity and effective August 17, 1996 reduced appellant's wage-loss compensation benefits accordingly.

Effective October 3, 1997, the employing establishment terminated appellant from his position for unprofessional conduct.

By decision dated December 16, 1997, the Office found that appellant was not entitled to wage-loss compensation for total disability.¹ The Office found that the medical evidence of record did not support that when appellant was terminated, October 3, 1997, he could no longer perform his light-duty assignment. The Office further stated that appellant remained entitled to compensation for his loss of wage-earning capacity as set forth in the Office's August 27, 1996 decision.

¹ Prior to its December 16, 1997 decision, the Office issued a proposal to reduce or terminate compensation on October 9, 1997. Although the Office phrased the issue in terms of a reduction or termination of wage-loss compensation, the Office actually found that appellant was not entitled to additional wage-loss compensation following his termination by the employing establishment for cause.

The Board finds that appellant has not established entitlement to wage-loss compensation for total disability on and after October 3, 1997 causally related to his employment-related conditions.

Section 8102(a) of the Federal Employees' Compensation Act² states that an employee is eligible for compensation benefits and "[t]he United States shall pay compensation as specified by this subchapter for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty." In general, under the Act, the term "disability" means "incapacity because of injury in employment to earn the wages which the employee was receiving at the time of such injury."³ This meaning, for brevity, is expressed as "disability for work."⁴

The Board finds that the evidence of record clearly demonstrates that appellant's employment was terminated because of his improper conduct and not because of any disability causally related to his accepted employment conditions. In the instant case, appellant had been working successfully performing light duty, 20 hours a week, answering telephones and greeting visitors at the time of his termination, and the position would have remained available for him had he not been terminated for improper conduct. The record contains a copy of a January 24, 1997 letter of warning from the employing establishment to appellant informing him that he needed to communicate more clearly, take more accurate and complete telephone messages, refrain from running and yelling in the hallways and refrain from making inappropriate comments while preparing to transfer telephone calls. In its September 2, 1997 letter, giving notice of its intent to terminate, the employing establishment specifically stated that, while the special equipment purchased to aid appellant in his job tasks had worked perfectly, appellant had not performed his assignment in a manner which adequately and properly represented the employing establishment. The employing establishment noted that appellant continued to take incomplete or incorrect telephone messages, continued to give out wrong or inappropriate information to callers, persisted in attempting to answer questions he had been told to refer to others, and used an abrupt and rude telephone manner. There is no evidence in the record that appellant was terminated due to his physical inability to perform his assigned duties; nor is there evidence that appellant stopped work due to his physical condition. While appellant, through counsel, asserted that he was never qualified for the duties of the position, had not received appropriate training, and was terminated primarily due to a personality conflict, there is no evidence in the record to support these assertions and the employing establishment specifically stated, in its January 24, 1997 letter, that appellant had been provided training in customer service and communications and had been given one-on-one assistance. As there is no evidence in the record that appellant was not capable of performing his assigned duties on and after

² 5 U.S.C. § 8102(a).

³ *Gene Collins*, 35 ECAB 544 (1984).

⁴ *Clarence D. Glenn*, 29 ECAB 779 (1978).

October 3, 1997, the Office correctly found that he had no total disability within the meaning of the Act on and after that date.⁵ As appellant was not totally disabled for work within the meaning of the Act on and after October 3, 1997, he had no entitlement to wage-loss compensation for total disability after that date within the meaning of section 8102(a) of the Act.

The decision of the Office of Workers' Compensation Programs dated December 16, 1997 is hereby affirmed.

Dated, Washington, DC
October 20, 2000

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Valerie D. Evans-Harrell
Alternate Member

⁵ The term "disability" under the Act means incapacity because of injury in employment to earn the wage which the employee was receiving at the time of such injury; see *Major W. Jefferson, III*, 47 ECAB 295 (1996); *John W. Normand*, 39 ECAB 1378 (1988). The relevant medical evidence of record consists of progress notes from appellant's treating physician, Dr. Paul C. Collins, a Board-certified orthopedic surgeon, dated August 26, 1996, September 22 and December 1, 1997. In these reports, Dr. Collins continued to state that appellant was released for light-duty work, and he reiterated the physical restrictions, which were those upon which appellant's light-duty position was designed.