

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

YUL T. GODFREY, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Detroit, MI, Employer**

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**Docket No. 04-916
Issued: July 12, 2004**

Appearances:
Yul T. Godfrey, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On February 23, 2004 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated January 26, 2004, which denied his claim for disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that he sustained any disability on or after July 25, 2003, causally related to his July 25, 2003 employment injuries.

FACTUAL HISTORY

On November 3, 2003 the Office accepted that on July 25, 2003 appellant, then a 43-year-old letter carrier, sustained a left shoulder contusion, a buttocks contusion, a contusion of the right toe and a low back strain when he fell as he carried a heavy parcel up some stairs. The

Office found, however, that it had not received sufficient documentation that he was disabled from his accepted injuries. The Office noted that appellant initially reported his injury after he had been terminated from his employment on July 28, 2003 due to misconduct. At that time, he had been released to return to duty with restrictions. On November 3, 2003 the Office denied appellant continuation of pay.

On November 7, 2003 appellant filed a Form CA-2a, claim for recurrence of disability, alleging that he sustained a recurrence of disability commencing July 25, 2003, causally related to his July 25, 2003 fall. Appellant alleged that he had back, shoulder, neck and toe pain with which he suffered as of that date and he claimed that he could not work due to the pain.

By letter dated November 18, 2003, the Office requested further information about appellant's alleged recurrence of disability, including a physician's statement discussing the causal relationship between his alleged disability with his accepted employment injuries. Appellant submitted nurses' notes, billing statements, personal statements, compensation claim forms and attendance records.

By report dated July 25, 2003, Dr. Racquel M. Brockington, an osteopath, noted that appellant fell on a step while carrying an oversize box and had pain in his left shoulder, back, neck and right great toe, with stiffness. She noted that he had decreased active range of lumbar motion without spasm, but was neurovascularly intact. Physical therapy was recommended and Dr. Brockington opined that appellant could return to work sorting mail.

Appellant was removed from duty effective July 28, 2003 for misconduct.

In a July 29, 2003 report, Mark Lowry, a physical therapist, noted that appellant presented with five positive Waddell's signs. Also on that date Dr. Brockington noted that appellant had been working within restrictions, but that he felt his pattern of symptoms was no better. Dr. Brockington noted tenderness of the paraspinous muscles at L4, L5 and S1 and a full range of motion. She indicated that appellant could sort mail and diagnosed shoulder contusion and back/buttock contusion.

On August 1, 2003 George Andooparambil, a physical therapist, confirmed five positive Waddell's signs. Also on August 1, 2003 Dr. Sharon R. Sneed, an internist, noted that appellant was released to return to modified activity.

In a report dated August 20, 2003, Dr. Sunil R. Parikh, a family practitioner, examined appellant and found basically a normal examination with only mild local left shoulder tenderness and spasm. Dr. Parikh noted that appellant had not been working because he chose not to and that he had been advised that he could return to full duty on August 4, 2003.

On August 26, 2003 Dr. Brockington released appellant to return to regular activity.

By decision dated January 26, 2004, the Office denied appellant's claim on the grounds that the medical evidence did not support that he was totally disabled for employment. The

Office found that the reason for appellant's work stoppage was his removal/termination for cause on July 28, 2003.

LEGAL PRECEDENT

As used in the Federal Employees' Compensation Act,¹ the term "disability" means incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.² An individual who claims a recurrence of disability due to an accepted employment injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury. This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.³ Where no such rationale is present, the medical evidence is of diminished probative value.⁴ Causal relationship is a medical issue and can be established only by medical evidence.⁵

A physician's contemporaneous medical opinion was found to be of greater probative value on appellant's ability to work than the opinion of another physician who did not promptly examine him or offer an opinion on his ability to work until after the time in question.⁶ Further, the opinion of a registered nurse is not considered to be probative medical evidence in establishing disability for work.⁷ Physical therapists are also not considered to be physicians under the Act,⁸ such that, their opinions do not constitute probative medical evidence.

ANALYSIS

Although appellant's traumatic injury claim was accepted for a left shoulder contusion, a buttocks contusion, a contusion of the right toe and low back strain, he did not submit any rationalized medical evidence to establish that he was disabled for work on or after July 25, 2003

¹ 5 U.S.C. §§ 8101-8193.

² *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.5(17).

³ *Stephen T. Perkins*, 40 ECAB 1193 (1989); *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. 10.121(a).

⁴ *Michael Stockert*, 39 ECAB 1186 (1988).

⁵ *Mary J. Briggs*, 37 ECAB 578 (1986); *Ausberto Guzman*, 25 ECAB 362 (1974).

⁶ *See, e.g., Eileen R. Kates*, 46 ECAB 573 (1995).

⁷ *See Vicky L. Hannis*, 48 ECAB 538 (1997); *Joseph N. Fassi*, 42 ECAB 231 (1991); *Joseph P. Bennett*, 38 ECAB 484 (1987).

⁸ *See Jennifer L. Sharp*, 48 ECAB 209 (1996); *Thomas R. Horsfall*, 48 ECAB 180 (1996); *Barbara J. Williams*, 40 ECAB 649 (1988).

due to the accepted employment injuries. The record establishes that his work stoppage was due to his removal from work as a result of misconduct.

The medical evidence of record supports that, on or after July 25, 2003, appellant was seen by his physician. In a report dated July 25, 2003, Dr. Brockington noted appellant's subjective pain symptoms and objective decreased active range of lumbar motion, but indicated that he was neurovascularly intact and could return to work sorting mail. This report does not establish that appellant was disabled for work as of July 25, 2003.

Dr. Brockington noted on July 29, 2003 that appellant had been working within his physical restrictions and that he felt that his symptoms were no better. She found that he had full range of lumbar motion and could sort mail without problems. Dr. Brockington noted that appellant had subjective tenderness of the paraspinal muscles and diagnosed shoulder contusion and back/buttocks contusion; but did not find him disabled for work. This report, therefore, does not support disability commencing July 25, 2003 or thereafter, causally related to his accepted employment injuries.

Further, the reports of the two physical therapists, who noted multiple positive Waddell's signs, do not constitute probative medical evidence. Physical therapists are not defined as physicians under the Act.⁹ On August 1, 2003 Dr. Sneed released appellant to return to modified activity, but the physician did not address the issue of appellant's disability. Dr. Parikh examined appellant on August 20, 2003 and found a basically normal examination with only mild left shoulder tenderness and spasm. This report does not establish disability for work on or after July 25, 2003 causally related to the employment injuries. Dr. Parikh indicated that appellant was not working because he chose not to work, rather than being totally disabled from work due to injury-related residuals. This report does not establish that appellant was disabled on or after July 25, 2003 due to his accepted employment injuries. Dr. Brockington released appellant to return to regular activity effective August 26, 2003. This report, accordingly, does not support disability.

The remainder of the evidence submitted in support of appellant's claim of temporary total disability is of diminished probative value as it was not provided by licensed physicians, it contained lay opinions and it did not pertain to the issue of his total disability, instead dealing with attendance and billing issues and nurses' notations on causal relation.

CONCLUSION

The Board finds that appellant has not established that he was disabled on or after July 25, 2003 due to his accepted injury.

⁹ See *Linda Blue*, 50 ECAB 227 (1999).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 26, 2004 is affirmed.

Issued: July 12, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member