

FACTUAL HISTORY

On February 13, 2008 appellant, a 50-year-old electrician, filed a traumatic injury claim (Form CA-1) for abrasions and internal bruises in his right shoulder area. He attributed his injury to a September 17, 2007 incident when he and two coworkers were dismantling and removing an overhead air duct. Appellant submitted medical evidence and by decision dated February 20, 2008, the Office accepted his claim for contusion of the right shoulder and upper arm, abrasion or friction burn of the right shoulder and upper arm without infection.

In a September 17, 2007 report, Jean C. Russell, Chief of Projects, reported that appellant was injured on September 17, 2007. The next day, she met with appellant concerning the incident. Ms. Russell asked appellant if he wanted to fill out a CA-1 form, advising him that, if he thought that this injury might give him problems down the road, filling a CA-1 form was the way to protect himself. She reported that appellant stated he did not want to fill out a CA-1 form and that the shoulder in question had been giving him problems for some time. On December 5, 2007 appellant informed Ms. Russell that he had changed his mind and wanted to fill out a CA-1 form. Ms. Russell told him that "this was fine because anyone who is injured has up to one year to [file a CA-1 form]." She stated that it took some time to get appellant set up to use the assist program and then more time to finally meet with him to get the task completed. During this time, Ms. Russell reported that appellant's supervisor became increasingly dissatisfied with appellant's performance. During the final week of appellant's employment, she stated that she tried several times, unsuccessfully, to meet with appellant and get the Form CA-1 filed. On the day appellant's employment was terminated, Ms. Russell met with him, but due to technical problems they were unable to get the form filled out. As an alternate solution, she reported that she gave him a printed copy of the Form CA-1 and instructed him that once he completed the form he should mail it to personnel. Ms. Russell reported that she was out sick the following week but that the employer portion of the Form CA-1 was completed by Caryl Hamilton.

Appellant filed a wage-loss compensation claim (Form CA-7) dated March 3, 2008 for the period February 7 through March 7, 2008.

In support of his claim, appellant submitted a Kaiser Permanente Industrial Work Status report dated February 26, 2008, signed by Dr. Tony C. Fernandez, who ordered modified work for the period February 26 through March 11, 2008. Dr. Fernandez recommended work restrictions consisting of a limitation on the lifting/carrying greater than five pounds and no lifting using the right arm.

Appellant submitted no other evidence in support of his claim and by letter dated March 18, 2008 the Office notified him that the evidence of record did not demonstrate how his accepted medical condition prohibited him from performing any work-related duties for the full day for the period claimed. It requested him to submit additional evidence in support of his claim and provided instruction as to the type of evidence required.

Appellant submitted a February 20, 2008 report signed by Dr. Fernandez, diagnosing him with contusion of the right shoulder and a strained neck muscle, as well as a physical therapy authorization form dated February 12, 2008. Dr. Fernandez' course of treatment included

medications and physical therapy. The record reflects that the Office authorized compensation for physical therapy.

By decision dated April 29, 2008, the Office denied appellant's claim for continuation of pay because his injury was not reported on a form approved by the Office within 30 days following the injury. By separate decision, also dated April 29, 2008, it denied appellant's compensation claim for the period February 7 through March 7, 2008.

Appellant disagreed and requested an oral hearing. By letter dated August 20, 2008, appellant through his attorney, requested review of the written record in lieu of an oral hearing.

Appellant submitted a report dated May 6, 2008 signed by Dr. Fernandez, who reported that examination of his neck revealed mild tenderness along the right paraspinous area. Dr. Fernandez also noted the presence of mild tenderness and spasms of the right trapezius muscles. Examination of appellant's shoulder revealed mild tenderness along the bicipital groove. Based on this examination, Dr. Fernandez diagnosed him with right shoulder impingement and right shoulder contusion. In a subsequent medical report dated June 10, 2008, he restated the identical findings and diagnosis.

By decision dated October 22, 2008, the Office's Branch of Hearings and Review affirmed its April 29, 2008 decision because the evidence of record failed to establish that appellant was disabled from work commencing February 7, 2008 for a condition causally related to his accepted employment injuries. Moreover, by separate decisions also dated October 22, 2008 the Office's Branch of Hearings and Review affirmed its April 29, 2008 decision denying appellant's claim for continuation of pay.

LEGAL PRECEDENT -- ISSUE 1

Section 8118 1 of the Federal Employees' Compensation Act² provides for payment of continuation of pay, not to exceed 45 days, to an employee who has filed a claim for a period of wage loss due to traumatic injury with his immediate supervisor on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title. Section 8122(a)(2)³ provides that written notice of injury must be given as specified in section 8119. The latter section provides in part that notice of injury shall be given in writing within 30 days after the injury.⁴

The Act's implementing regulations provide, in pertinent part, that to be eligible for continuation of pay, a claimant must:

- (1) Have a "traumatic injury" as defined at [section] 10.5(ee) which is job related and the cause of the disability, and/or the cause of lost time due to the need for medical examination and treatment;

² 5 U.S.C. §§ 8101-8193.

³ *Id.* at § 8122(a)(2).

⁴ *Id.* at § 8119(a)(c). *See also Gwen Cohen-Wise*, 54 ECAB 732 (2003).

(2) File Form CA-1 within 30 days of the date of the injury (but if that form is not available, using another form would not alone preclude receipt); and

(3) Begin losing time from work due to the traumatic injury within 45 days of the injury.⁵

ANALYSIS -- ISSUE 2

The employing establishment received appellant's traumatic injury claim form for the September 17, 2007 injury on February 13, 2008, more than 30 days after the September 17, 2007 injury. The Board notes that there are no exceptions to the requirement that a claim for continuation of pay be filed within 30 days of the date of injury.⁶ The Board has held that the responsibility for filing a claim rests with the injured employee.⁷ Because appellant did not file his CA-1 claim form within 30 days of the September 17, 2007 injury, he is not entitled to continuation of pay.⁸

The Board notes that, although appellant is barred from receiving continuation of pay, he may be entitled to other compensation benefits under the Act. As appellant's claim was accepted, a decision denying continuation of pay does not affect his entitlement to compensation benefits as he may still claim wage-loss compensation for disability or claim compensation for medical treatment rendered due to the effects of the accepted employment injury.

LEGAL PRECEDENT -- ISSUE 2

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.⁹ 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 he 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.¹⁰ 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

⁵ 20 C.F.R. § 10.205(a)(1)-(3). *See also Carol A. Lyles*, 57 ECAB 265 (2005).

⁶ *See Dodge Osbourne*, 44 ECAB 849 (1993); *Theresa Samilton*, 40 ECAB 955 (1989) and *William E. Ostertag*, 33 ECAB 1925 (1982).

⁷ *See Catherine Budd*, 33 ECAB 1011 (1982) (continuation of pay denied where employee did not timely file her claim because the employing establishment erroneously told her that her medical records and accident report were sufficient).

⁸ *Loretta R. Celi*, 51 ECAB 560 (2000).

⁹ *See Fereidoon Kharabi*, 52 ECAB 291, 293 (2001); *Edward H. Horton*, 41 ECAB 301,303 (1989).

¹⁰ *G.T.*, 59 ECAB ____ (Docket No. 07-1345, issued April 11, 2008); *see Huie Lee Goal*, 1 ECAB 180,182 (1948).

disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.¹¹

ANALYSIS -- ISSUE 2

Appellant claimed he was disabled from work for the period February 7 through March 7, 2008. On appeal, his burden is to establish through reliable, probative and substantial medical evidence that the disability during the period claimed was causally related to his accepted employment-related injury. The Board finds the evidence of record insufficient to accomplish such a task and therefore the Office properly denied appellant's claim for wage-loss compensation for the period February 7 through March 11, 2008.

The relevant medical evidence of record consisted of reports from Dr. Fernandez. The Board finds, however, that his reports are of little probative value. While these reports proffered findings upon examination and a diagnosis, none of these reports contained a rationalized medical opinion explaining why appellant became disabled from work in February 2008 due to the September 17, 2007 incident, given that he was able to work until his employment was terminated. Dr. Fernandez's reports repeated his complaints of shoulder pain; however, a recitation of his complaints is not rationalized medical opinion supporting disability. The Board also notes that, while the accepted conditions were contusion of the right shoulder and upper arm and abrasion or friction burn of the right shoulder, in February 2008 he also diagnosed shoulder impingement syndrome. Dr. Fernandez did not provide a medical opinion explaining the causal relationship between this diagnosed condition and appellant's accepted employment-related injury. The Board has held that a medical report lacking an opinion on causal relationship to be of little probative value.¹² As Dr. Fernandez' medical report proffered no medical opinion on the causal relationship between appellant's alleged disability during the period claim and his accepted employment injury, his medical reports are insufficient.

As appellant has submitted no competent and probative rationalized medical evidence in support of his claim that he was disabled from February 7 through March 11, 2008 causally related to his accepted employment injury, he did not meet his burden of proof.

CONCLUSION

The Board finds appellant is not entitled to continuation of pay for his September 17, 2007 employment injury for the period September 18 through October 31, 2007. The Board also finds that appellant has not established entitlement to wage-loss benefits for the period of disability from February 7 through March 7, 2008.

¹¹ *Supra* note 10; *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

¹² *See Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value). *See also, Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001).

ORDER

IT IS HEREBY ORDERED THAT the October 22, 2008 decisions of the Office of Workers' Compensation Programs' Branch of Hearings and Review is affirmed.

Issued: August 19, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board