United States Department of Labor
Employees' Compensation Appeals Board

A.W., Appellant	)	
and	)	**Docket No. 09-849**
	)	**Issued: October 27, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Carol Stream, IL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 11, 2009 appellant filed a timely appeal from the November 13, 2008 merit decision of the Office of Workers' Compensation Programs, which denied compensation for disability beginning a particular date. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUE

The issue is whether appellant's disability beginning February 7, 2006 was causally related to his December 2, 2005 employment injury.

FACTUAL HISTORY

On December 2, 2005 appellant, then a 46-year-old mail handler and equipment operator, sustained a traumatic injury in the performance of duty when he suddenly felt a sharp pain from his neck to his left shoulder while pushing a bulk mail container. He stopped work the following day. Appellant was diagnosed with cervical strain and left shoulder strain. The employer offered him limited duty as a forklift operator.

The Office accepted appellant's claim for cervical strain and left shoulder strain. It later expanded its acceptance to include left rotator cuff tear. Appellant received continuation of pay from December 3, 2005 to January 16, 2006. He used annual leave from January 17 to 21, 2006. Appellant received compensation for temporary total disability from January 21 to February 3, 2006.

On January 27, 2006 Dr. Benjamin A. Goldberg, the attending Board-certified orthopedic surgeon and shoulder specialist, released appellant to return to work on February 4, 2006. Appellant stated that he could operate a forklift "as he says this is one activity at work which he does not have pain doing." The employer advised that appellant did return to work with restrictions on February 7, 2006 but for only 4.53 hours. On February 17, 2006 Dr. Goldberg continued to recommend limited duty. In a separate note, Dr. Harold Bach, a resident, excused appellant from work from February 7 to 11, 2006. On March 17, 2006 Dr. Goldberg indicated that appellant was disabled from December 2, 2005 to "present." He stated that appellant attempted to return to work "and was unable to tolerate this." Dr. Goldberg certified that appellant could return to work on March 18, 2006 with restrictions.

Appellant filed a claim for wage-loss compensation beginning February 5, 2006.[1] He worked 4.53 hours on February 7, 2006. Appellant worked on March 20 and April 15, 2006. Otherwise he claimed total disability for work.

An April 25, 2006 magnetic resonance imaging scan showed a central disc herniation at C6-7. On April 28, 2006 Dr. Goldberg reported that he could not comment on the spine condition, as he was a shoulder specialist. He gave appellant a referral to see a spine specialist.

On May 23, 2006 the Office asked Dr. Goldberg for further information, including whether appellant's rotator cuff and herniated disc conditions caused disability for work beginning February 8, March 23 and April 18, 2006.

On May 26, 2006 Dr. Goldberg reported that appellant's rotator cuff tear was related to his work injury, however, "this cannot explain total disablement." He noted that appellant was off work due to his cervical condition and had an appointment pending with a spine specialist.

In a decision dated July 10, 2006, the Office denied appellant's claim for wage loss beginning February 7, 2006.

On June 22, 2006 Dr. Anis O. Mekhail, a Board-certified orthopedic surgeon and spine specialist, examined appellant and offered his opinion on the relationship between appellant's very small disc herniation with no neural impingement and his work injury:

> "This is a patient with neck pain. At this time, we will diagnose [appellant] with neck strain that is per [his] history is most likely a work-related injury. It is unsure at this time. We cannot comment on the fact that his disc herniation in his neck is due to his work injury and we can also not say that this disc herniation is causing his pain. Due to [appellant's] neck, we stated that he can go back to work

[1] February 5, 2006 was a Sunday. Appellant did not work Sundays and Mondays.

on full duty. This is not a serious condition that would require surgery. These types of injury are usually reached on maximum medical improvement at approximately [six] months and he is well passed at this time."

In an undated note, Dr. Mekhail indicated that appellant was disabled from December 2, 2005 to July 20, 2006. On August 17, 2006 another note, from a physician whose name is illegible, indicated that appellant was disabled from December 2, 2005 to August 21, 2006. On August 31, 2006 another note, from another physician whose name is illegible, indicated that appellant was disabled from August 22 to September 2, 2006.

In a decision dated April 30, 2007, an Office hearing representative affirmed the July 10, 2006 denial of compensation. The hearing representative found no rationalized medical opinion supporting the periods of disability claimed.

On November 13, 2008 the Office reviewed the merits of appellant's claim and denied modification of its prior decision. It found that the medical evidence contained no rationalized medical opinion explaining how his accepted condition prevented him from continuing in his limited-duty job beginning February 7, 2006.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of his duty.[2] "Disability" means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total.[3]

A claimant seeking benefits under the Act has the burden of proof to establish the essential elements of his claim by the weight of the evidence,[4] including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.[5]

Whether a particular injury causes an employee to become disabled for work and the duration of that disability, are medical issues that must be proved by a preponderance of the reliable, probative and substantial evidence.[6] When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his employment, he is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.[7]

[2] 5 U.S.C. § 8102(a).

[3] 20 C.F.R. § 10.5(f).

[4] *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

[5] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] *Edward H. Horton*, 41 ECAB 301 (1989).

[7] *Bobby W. Hornbuckle*, 38 ECAB 626 (1987).

Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work.[8] The Board has held that when a physician's statements regarding an employee's ability to work consist only of a repetition of the employee's complaints that he or she hurt too much to work, without objective signs 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]

ANALYSIS

On appeal, appellant explains that he sustained two injuries on December 2, 2005 and was seen by two specialists. He states that he was cleared to return to work for his rotator cuff but not for his herniated disc.[10]

Appellant has touched on the key to his case. The Office has not accepted his claim for a herniated disc. It accepted appellant's left rotator cuff tear because Dr. Goldberg, the shoulder specialist, offered his professional opinion and explained how the action of pushing a heavy cart could legitimately explain that type of injury. However, no physician has offered a similar opinion in support of appellant's herniated disc. In fact, Dr. Mekhail, the spine specialist, reported that he could not comment on whether appellant's disc herniation was due to his work injury and he could not say that the disc herniation was even causing appellant's neck pain.

Dr. Goldberg made clear that appellant's rotator cuff tear could not explain his claimed disability for work. Appellant was off work because of his cervical spine. However, the medical evidence does not explain how pushing a heavy bulk mail container on December 2, 2005 caused the herniation at the C6-7 level, nor does it explain how the herniation caused total disability for work beginning February 7, 2006. The record contains several prescription notes indicating disability for work, but these brief notations do not address the issue of causal relationship and therefore have little if any probative value to establish appellant's entitlement to the compensation claimed.

Because appellant has submitted no medical opinion that soundly explains how pushing a heavy bulk mail container on December 2, 2005 caused total disability for work beginning February 7, 2006, the Board finds that he has not met his burden of proof. The Board will affirm the Office's November 13, 2008 decision.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that his disability beginning February 7, 2006 was causally related to his December 2, 2005 employment injury.

---

[8] *See Dean E. Pierce*, 40 ECAB 1249 (1989); *Paul D. Weiss*, 36 ECAB 720 (1985).

[9] *John L. Clark*, 32 ECAB 1618 (1981).

[10] Appellant also states that he was never paid for his 45 days following his injury. However, the employer, who did not controvert continuation of pay, reported that appellant received continuation of pay from December 3, 2005 to January 16, 2006.

ORDER

IT IS HEREBY ORDERED THAT the November 13, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 27, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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