

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

L.N., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,
San Francisco, CA, Employer

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**Docket No. 13-404
Issued: July 1, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 10, 2012 appellant filed a timely appeal of a July 17, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his claim for wage-loss compensation. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 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 was disabled due to the April 30, 2011 employment injury, thereby entitling him to wage-loss compensation commencing June 15, 2011.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 1, 2011 appellant, then a 34-year-old custodian, filed a traumatic injury claim alleging that on April 30, 2011 he injured his right shoulder while loading a pallet onto a cart.² OWCP accepted the claim for a contusion of the right shoulder region. On July 2, 2011 appellant filed a claim for wage-loss compensation for the period April 30 to June 17, 2011.

Appellant submitted disability notes in support of his claim for the period May 14 to June 27, 2011. In a June 14, 2011 disability slip, Dr. Lawrence Bryson, a treating physician, released appellant to return to work on June 17, 2011, but noted that he had been disabled from work from May 14 to June 17, 2011. In a June 24, 2011 disability note, Dr. Lawrence Hall, a treating physician, found that appellant was disabled from June 18 to 26, 2011 and released him to return to full-duty work on June 27, 2011.

By letter dated July 19, 2011, OWCP notified appellant that he was entitled to continuation of pay from May 1 to June 14, 2011. It also informed him that the evidence was insufficient to support his claim for compensation beginning June 15, 2011. OWCP advised appellant as to the medical evidence required to support his claim for disability commencing June 15, 2011. No additional evidence was submitted.

By decision dated September 8, 2011, OWCP denied appellant's claim for wage-loss compensation as of June 15, 2011.

Subsequent to the denial of his claim, appellant submitted disability slips from Dr. Hall, indicating that he was disabled from work from July 9 to November 22, 2011.

On September 20, 2011 appellant requested an oral hearing before an OWCP hearing representative, which was held on May 10, 2012.

In a September 20, 2011 report, Dr. Laura N. Sciaroni, a treating Board-certified orthopedic surgeon, reviewed a history of the employment injury and medical treatment and provided findings on examination. She diagnosed a cervical sprain and right shoulder strain. Dr. Sciaroni reviewed the work excuse from Dr. Hall which found appellant was totally disabled from April 30 to September 22, 2011 and stated that it was an "unusually long interval to keep the patient off work."

On December 5, 2011 OWCP received a November 22, 2011 note from Dr. Hall stating that appellant was disabled from November 22 to December 12, 2011. In a December 15, 2011 office note, Dr. Bryson, provided physical findings and released appellant to full-duty work with no restrictions as of December 16, 2011.

In a June 25, 2012 report, Dr. Abraham Y.H. Law, a treating physician, noted that appellant sustained a right shoulder contusion as the result of the April 30, 2011 employment injury. He examined appellant on May 13, 2011 and placed him on temporary disability due to

² Appellant was sent a letter of removal on August 18, 2011 which became effective within 30 days of the date of the letter.

decreased right shoulder range of motion and inflammation. Dr. Law noted that appellant attempted to return to work in July 2011, but was unable to perform his job duties and was placed on disability beginning July 9, 2011. He reported that a magnetic resonance imaging scan was performed in September 2011 which showed rotator cuff damage which he opined was probably caused by the employment injury. Dr. Law opined that appellant was totally disabled due to his employment injury until December 12, 2011.

By decision dated July 17, 2012, OWCP's hearing representative affirmed the September 8, 2011 denial.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.⁴ For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted 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 probative and reliable medical opinion evidence.⁶

Under FECA the term "disability" means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁷ Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.⁸ An employee who has a physical impairment causally related to his or her federal employment, but who nonetheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.⁹ When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his employment, he or she is entitled to compensation for any loss of wages.

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is

³ 5 U.S.C. §§ 8101-8193.

⁴ See *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

⁵ See *Amelia S. Jefferson, id.*; see also *David H. Goss*, 32 ECAB 24 (1980).

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

⁷ *S.M.*, 58 ECAB 166 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Conard Hightower*, 54 ECAB 796 (2003); 20 C.F.R. § 10.5(f).

⁸ *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

⁹ *Merle J. Marceau*, 53 ECAB 197 (2001).

claimed. To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.¹⁰

ANALYSIS

OWCP accepted that appellant sustained a right shoulder region contusion as a result of the April 30, 2011 employment injury. Appellant received compensation of pay from May 1 to June 14, 2011. OWCP found that the medical evidence of record was insufficient to support wage-loss compensation commencing June 15, 2011. The issue is whether the medical evidence submitted by appellant supports that his disability on and after June 15, 2011 was causally related to the accepted April 30, 2011 employment injury. The Board finds that he has not met his burden of proof.

In his June 25, 2012 report, Dr. Law provided findings on examination and made a tentative diagnosis of rotator cuff damage which he stated was probably caused by appellant's employment injury. He noted that appellant had attempted to return to work in July 2011 and stated that he was totally disabled for work until December 12, 2011. Dr. Law's report is deficient on several counts. It does not provide a firm medical diagnosis of rotator cuff damage or an opinion as to how appellant's shoulder condition caused disability.¹¹ Dr. Law did not discuss appellant's employment duties or how his current physical condition rendered him unable to perform those duties. His opinion that appellant's injury probably caused rotator cuff damage is speculative and lacks adequate rationale. The Board has held that medical reports based on insufficient rationale or are speculative regarding causal relation are of diminished probative value.¹² Dr. Law's report is not sufficient to establish appellant's disability commencing June 15, 2011.

Dr. Sciaroni's September 20, 2011 report also fails to establish that appellant was disabled for the period in question. She provided examination findings and diagnosed cervical sprain and right shoulder strain. Dr. Sciaroni did not provide any opinion as to appellant's disability commencing June 15, 2011 other than noting that it seemed to be an unusually long interval to be disabled from work. Her report is insufficient to establish his claim for wage-loss compensation.¹³

The record also contains treatment notes and disability slips from Drs. Hall and Bryson from June 15 to December 12, 2011 indicating generally that appellant was unable to work. Neither Dr. Hall nor Dr. Bryson addressed the cause of appellant's disability. Therefore, this evidence is insufficient to support appellant's claim for disability. Medical evidence which offers no opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁴ Neither physician provided findings on examination in the

¹⁰ See *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹¹ *Willa M. Frazier*, 55 ECAB 379 (2004); see also *David L. Scott*, 55 ECAB 330 (2004).

¹² *S.S.*, 59 ECAB 315 (2008); *Cecelia M. Corley*, 56 ECAB 662 (2005).

¹³ See *Sandra D. Pruitt*, 57 ECAB 126 (2005).

¹⁴ *Willie M. Miller*, 53 ECAB 697 (2002).

disability certificates. Generally, findings on examination are needed to support a physician's opinion that an employee is disabled from work.¹⁵ As these disability slips contain no findings on examination or opinion regarding the cause of disability, they are insufficient to support appellant's claim that his disability was employment related.

The Board found insufficient medical evidence supporting that appellant was disabled on or after June 15, 2011. Appellant has not met his burden of proof to establish his disability on and after June 15, 2011 was causally related to his accepted April 30, 2011 employment injury.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established that he was disabled due to the April 30, 2011 employment injury commencing June 15, 2011.

ORDER

IT IS HEREBY ORDERED THAT the July 17, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 1, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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

¹⁵ *Laurie S. Swanson*, 53 ECAB 517 (2002).