

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN P. BLOW and U.S. POSTAL SERVICE,
POST OFFICE, Jacksonville, FL

*Docket No. 98-169; Submitted on the Record;
Issued October 4, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has established any disability for work between January 10 and March 31, 1996, causally related to his accepted shoulder injury.

On April 15, 1996 appellant filed a claim alleging that he had developed a left shoulder condition causally related to his federal employment. Appellant indicated on his CA-2 claim form that he first realized that his condition was caused or aggravated by his employment on April 4, 1996, and first reported his condition to his supervisor on April 15, 1996, the day he filed his claim. On August 16, 1996 the Office of Workers' Compensation Programs accepted the claim for left shoulder impingement syndrome and later expanded the acceptance to include consequential headaches. On a Form CA-7 received by the Office on November 20, 1996, appellant claimed wage-loss compensation for the period January 1 through April 10, 1996. On this claim form and on related paperwork subsequently submitted, appellant indicated that he had used 251.70 hours of leave during this period, which he wished to buy back. By decision dated April 15, 1997, the Office denied appellant's request for compensation for the period January 10 through March 31, 1996 on the grounds that the evidence submitted did not establish that appellant was disabled from work during this period, due to his accepted employment injury. Appellant requested reconsideration of the Office's decision and submitted additional evidence in support of his claim. By decision dated May 29, 1997, the Office found that the evidence submitted by appellant was cumulative in nature and not sufficient to warrant a merit review of the prior decision.

The Board has reviewed the record and finds that appellant has not established any disability for work between January 10 and March 31, 1996, causally related to his accepted shoulder injury.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim, including that any disability for which compensation is claimed is causally related to the employment injury.²

In support of his claim, appellant submitted several reports from his initial treating physician, Dr. Bruce A. Hartwig, a Board-certified neurologist, and submitted many more reports from his subsequent treating physician, Dr. Robert Silvera, a physiatrist, who first examined appellant on April 4, 1996. On a prescription form dated January 25, 1996, Dr. Hartwig stated simply "limited duty. Casing only," but did not otherwise discuss appellant's condition or his capacity for work. In support of his request for reconsideration, appellant submitted additional medical evidence from Dr. Hartwig, relevant to the period of disability claimed. On prescription slips dated February 15 and 28, 1996, Dr. Hartwig stated "No change in work status while shoulder is being evaluated," and "No change in work while he receives further treatment," respectively, but did not provide any additional information. Finally, in a February 28, 1996 letter to a colleague with whom he had consulted regarding appellant's condition, Dr. Hartwig stated, in pertinent part, that he had been "treating him with anti-inflammatories and [had] restricted his motion at work." The record contains no additional reports from Dr. Hartwig or from any other physician who treated appellant between January 10, and March 31, 1996. While Silvera's reports cover only the period from April 4, 1996 to July 15, 1997, they do contain an indication that appellant may have been partially disabled between January 10 and March 31, 1996.³ However, as Dr. Silvera did not treat appellant until April 4, 1996, and as he does not offer a rationalized opinion regarding appellant's capacity for work during the period in question, his reports are of little probative value on the issue in this claim.

By letters dated June 17, 1996 and February 26, 1997, and in its decision dated April 15, 1997, the Office informed appellant of the type of evidence needed to establish his claim, but appellant submitted no rationalized medical evidence addressing his capacity for work during the period January 10 through March 31, 1996. Accordingly, the Board finds that the Office properly determined that appellant has not established any periods of employment-related disability during the interval claimed.

¹ 5 U.S.C. §§ 8101-8193.

² *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ In his initial reports, beginning on April 4, 1996, Dr. Silvera does not discuss appellant's work status. On a Form CA-20 report dated April 16, 1996, he indicated that appellant had not had a period of total disability, but was partially disabled from January 25 through April 16, 1996. Dr. Silvera further indicated that appellant was advised that he could return to work, limited to three hours a day, on January 26, 1996. Finally, he indicated that appellant was able to return to light duty with restrictions, effective April 9, 1996.

The decisions of the Office of Workers' Compensation Programs dated May 29 and April 15, 1997 are affirmed.

Dated, Washington, D.C.
October 4, 1999

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member