

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SANDRA K. ROBERTS and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Norwalk, CT

*Docket No. 97-2218; Submitted on the Record;
Issued October 31, 2000*

DECISION and ORDER

Before DAVID S. GERSON, PRISCILLA ANNE SCHWAB,
VALERIE D. EVANS-HARRELL

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's claim for continuation of pay for the period August 8 to 12, 1996.

On August 7, 1996 appellant, then a 47-year-old clerk, filed a traumatic injury claim alleging that on that date she sustained a right shoulder strain in the performance of duty when she lifted a 35-pound box. She stopped work on August 8, 1996 and returned to work on August 13, 1996. By decision dated December 6, 1996, the Office accepted appellant's claim for a right shoulder strain.

In a report dated August 7, 1996, Dr. R. Gabriel, a physician specializing in emergency medicine, related that appellant was lifting a heavy box on that date when she heard a snap in her right shoulder. He diagnosed a right shoulder strain, indicated by a checkmark that the condition was related to the August 7, 1996 employment injury and further indicated that appellant was able to return to work in a light-duty capacity on that date.

In a note dated August 7, 1996 from Dr. Gabriel's office, Karen Kane, R.N. and the office manager, related that appellant telephoned on August 7, 1996 complaining of increased pain and that a Dr. Diggs advised her to apply ice and heat and take a pain pill and to return in the morning to see Dr. Gabriel if the pain was still increasing.

In a note dated August 9, 1996, Ms. Kane related that appellant telephoned and requested a note excusing her absence from work because the pain medication made her too sleepy to drive. She advised appellant that Dr. Gabriel had instructed her to take her pain medication only at night after work. Ms. Kane noted that appellant was not provided with a medical excuse from work as "transportation is not our issue." She added that appellant then told her to cancel her physical therapy session and her next appointment with Dr. Gabriel.

By decision dated May 16, 1997, the Office denied appellant's claim for continuation of pay for the period August 8 to 12, 1996 on the grounds that the medical evidence of record failed to establish that she was disabled from work as a result of her accepted employment injury.

The Board finds that the Office properly denied appellant's claim for continuation of pay for the period August 8 to 12, 1996.

The Federal Employees' Compensation Act,¹ 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 a traumatic injury with [her] immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title."²

An employee seeking benefits under the Act has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury.³

As used in the Act the term "disability" means incapacity because of an employment injury to earn wages which the employee was receiving at the time of injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.⁴ The general test for determining loss of wage-earning capacity is whether an injury-related impairment prevents the employee from performing the kind of work he was performing when injured.⁵ In other words, if an employee is unable to perform the required duties of the job in which she was employed when injured, the employee is disabled.

In his report dated August 7, 1996, Dr. Gabriel, a physician specializing in emergency medicine, related that appellant was lifting a heavy box when she heard a snap in her right shoulder. He diagnosed a right shoulder strain resulting from the August 7, 1996 employment injury and indicated that appellant was able to return to work in a light-duty capacity on the same day she injured her shoulder. Therefore, this report does not establish that appellant was disabled from work as a result of her accepted employment injury.

As appellant failed to provide medical evidence establishing that her claimed disability from work for the period August 8 to 12, 1996 was causally related to her August 7, 1996 employment injury, the Office properly denied her claim for continuation of pay.

¹ 5 U.S.C. §§ 8101-8193.

² 5 U.S.C. § 8118(a).

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *See Debra A. Kirk-Littleton*, 41 ECAB 703, 706 (1990).

⁵ *See Gary L. Loser*, 38 ECAB 673, 679 (1987).

The decision of the Office of Workers' Compensation Programs dated May 16, 1997 is affirmed.⁶

Dated, Washington, DC
October 31, 2000

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member

Valerie D. Evans-Harrell
Alternate Member

⁶ Appellant's appeal was filed on July 1, 1997. By letter dated February 19, 1999, she requested an oral argument, which was scheduled for December 9, 1999. On December 2, 1999 appellant requested that the argument be rescheduled. Argument was reset for November 1, 2000 but appellant requested that it be cancelled in October 2000.