

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVID T. TRACY and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Florissant, MO

*Docket No. 00-2179; Submitted on the Record;
Issued June 18, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant is entitled to wage-loss compensation for the period October 20 through November 3, 1997.

On January 25, 1997 appellant, then a 47-year-old full-time postal carrier, filed a traumatic injury claim (Form CA-1) for an injury sustained when he fell on the sidewalk and hit his right upper shoulder. The Office of Workers' Compensation Programs accepted the claim for right shoulder strain.

Appellant filed a recurrence claim on April 14, 1997, which was denied by the Office in a decision, dated July 22, 1997. Appellant requested a hearing, which was held on May 28, 1998. In a decision dated July 28, 1998, the hearing representative set aside the July 22, 1997 decision and remanded the case for payment of appropriate compensation. On remand, the Office, in a letter dated August 18, 1998, accepted the claim for the right shoulder rotator cuff tear, authorized a magnetic resonance imaging test of the right shoulder and right shoulder rotator cuff repair.¹ The Office also authorized physical therapy for the period April 14 through May 28, 1997 and July 21 through October 19, 1997. Appellant returned to full-duty work effective November 4, 1997.

On January 24, 1999 appellant filed a claim for wage-loss compensation (Form CA-7) for the period May 8 through November 3, 1997.

In a disability slip dated October 30, 1997, Dr. Gary W. Farley, appellant's attending physician, checked that he was disabled from work for the period October 13 through November 3, 1997.

In a June 29, 1998 report, Dr. Farley diagnosed right shoulder impingement syndrome with rotator cuff tear, which was due to the January 25, 1997 employment injury. He indicated

¹ Appellant resigned from the employing establishment effective February 28, 1998.

that appellant was able to return to limited-duty work effective October 20, 1997 with restrictions of no lifting more than 10 pounds and no work above shoulder level. Lastly, Dr. Farley indicated that he had not seen appellant since his last office visit on October 13, 1997.

By decision dated September 17, 1999, the Office denied appellant's request for wage-loss compensation during October 20 through November 3, 1997 on the basis that the medical evidence was insufficient to support that he was totally disabled during this period.²

The Board finds that appellant is entitled to wage-loss compensation for the period October 20 through November 3, 1997.

An employee seeking benefits under the Federal Employees' Compensation Act³ has the burden of establishing the essential elements of his or her claim including the fact that the injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁴ As used in the Act, the term "disability" means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁵ Disability is thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.⁶ Whether a particular injury caused an employee disability from employment is a medical issue which must be resolved by competent medical evidence.⁷

In the instant case, the Office accepted that appellant sustained a right rotator cuff tear due to his accepted January 25, 1997 employment injury and authorized right rotator cuff repair. The Office denied appellant's claim for compensation based on Dr. Farley's June 29, 1998 report which released appellant to light duty effective October 20, 1997. Appellant did not return to work until he was released to full duty on November 4, 1997. The record contains no evidence that the employing establishment had light-duty work available consistent with the restrictions noted by Dr. Farley between October 20, 1997 and November 3, 1997. As appellant was medically unable to return to full duty during this time period, and the record does not establish that the employing establishment provided light duty within appellant's medical restrictions, appellant was disabled during this time period. Appellant was unable to earn the wages he was receiving at the time of injury because of the residuals of his accepted condition. The Board therefore finds that the Office improperly determined that appellant was not entitled to wage-loss compensation on the grounds that appellant was not disabled.

² On appeal, appellant only contests the Office's denial of compensation for lost wages for the period October 20 through November 3, 1997. Furthermore, appellant in an undated letter received July 20, 1999, which responded to an Office letter dated June 16, 1999, specifically requested payment for lost wages for the period October 20 through November 3, 1997.

³ 5 U.S.C. §§ 8101-8193.

⁴ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *Patricia A. Keller*, 45 ECAB 278 (1993); *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.5(17).

⁶ See *Fred Foster*, 1 ECAB 21 (1947).

⁷ See *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

The September 17, 1999 decision of the Office of Workers' Compensation Programs is hereby reversed.⁸

Dated, Washington, DC
June 18, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

⁸ The Board notes that appellant submitted additional medical evidence to the Office subsequent to its September 19, 1999 decision. The Board cannot consider this evidence submitted after the Office's decision, as its review is limited to the evidence, which was before the Office at the time of its final decision; *see Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35 (1952); 20 C.F.R. § 501.2(c).