

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRANCES NG and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Palo Alto, CA

*Docket No. 02-1460; Submitted on the Record;
Issued December 5, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established disability from work for the periods October 2, 2000 to March 14, 2001 and May 14 to June 13, 2001 causally related to her accepted right shoulder tendinitis and cervical radiculopathy.

On March 5, 2001 appellant, then a 47-year-old pharmacist, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that she sustained a stiff painful neck plus a painful right shoulder commencing in October 2000 as a result of her handling prescriptions in an "improper ergonomic setting of the computer and chair." By letter dated April 11, 2001, the Office of Workers' Compensation Programs accepted the claim for cervical radiculopathy and right shoulder tendinitis.

Meanwhile, on April 10, 2001 appellant filed a claim for compensation (Form CA-7) for the period October 2, 2000 through March 14, 2001.

By letter dated April 20, 2001, appellant's supervisor set forth a plan for appellant to engage in light-duty work with restrictions of "no repetitive motion for greater than four hours." Appellant agreed to the assignment the same day.

On June 13, 2001 appellant completed another claim for compensation (Form CA-7) requesting compensation from May 14 to June 13, 2001.

Appellant sought medical treatment from Dr. Norman J. Kahan, a Board-certified physiatrist. In a report dated February 7, 2001, Dr. Kahan noted that appellant had right shoulder impingement, rule out adhesive capsulitis, mild and suboccipital neck pain. In a duty status report of the same date, he limited appellant to intermittent walking for eight hours a day, sitting for two hours a day, fine manipulation intermittently for one to two hours a day and reaching above shoulder intermittently for one hour a day. On February 23, 2001 Dr. Kahan referred appellant for a magnetic resonance imaging (MRI) scan which was conducted by Dr. Murray A. Solomon, a Board-certified radiologist, on March 2, 2001. In a report dated March 12, 2001,

Dr. Kahan noted that the MRI scan of the right shoulder showed some signs of impingement. In a medical report dated May 30, 2001, he noted that appellant came in claiming disability for her shoulder impingement, but did not want medical care. Dr. Kahan indicated that, although he did not think that her diagnosis warranted disability, he would give her “two weeks to find a new doctor and give her some disability in the meantime.” In an attending physician’s report dated June 15, 2001, he indicated that he believed appellant’s condition was caused or aggravated by her employment activity as the MRI scan shows a right shoulder impingement. Appellant had surgery on her right shoulder on November 26, 2001.

In a decision dated March 13, 2002, the Office denied appellant’s claim for disability compensation for the periods October 2, 2000 to March 14, 2001 and May 14 through June 13, 2001. The Office found that no medical evidence was provided to support that appellant was disabled from work on the dates claimed or that any disability was caused by the accepted work injury.

The Board finds that appellant has failed to establish that she was entitled to compensation for total disability during the period October 2, 2000 to March 14, 2001 and May 14 to June 13, 2001.

An employee seeking benefits under the Federal Employees’ Compensation Act¹ has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, 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 or specific condition for which compensation is claimed are causally related to the employment injury.²

In the instant case, although the medical evidence establishes and the Office accepted that appellant sustained right shoulder tendinitis and cervical radiculopathy as a result of her federal employment, there is no evidence that appellant sustained a disability as a result of this condition. On April 20, 2001 appellant was placed on light-duty work within the restrictions of her doctor, Dr. Kahan. In his May 30, 2001 report, Dr. Kahan noted that he did not believe that appellant’s diagnosis warranted disability, but he placed her on disability for two weeks so that she could find another doctor. Therefore, although he did place appellant on disability for two weeks commencing May 30, 2001, he did not link the disability to her employment. Furthermore, there is no evidence in the record that appellant was disabled at all from October 2, 2000 to March 14, 2001. The evidence does not establish that appellant was unable to perform her light-duty work. Accordingly, the Board finds that appellant has not met her burden to prove that she was disabled for the aforementioned dates.

¹ 5 U.S.C. §§ 8101-8193.

² *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

The decision of the Office of Workers' Compensation Programs dated March 13, 2002 is hereby affirmed.

Dated, Washington, DC
December 5, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member