

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LORI A. DUFFICY and U.S. POSTAL SERVICE,
POST OFFICE, Portland, OR

*Docket No. 02-1126; Submitted on the Record;
Issued October 8, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant was disabled for the period September 27 through December 1, 2000, causally related to her accepted employment-related injury.

The Office of Workers' Compensation Programs accepted that on September 24, 2000 appellant, then a 51-year-old casual clerk sustained a left upper arm contusion when she was poked by a coworker. She also alleged that the coworker poked the bottom half of her right arm once and grabbed her right breast.

Appellant stopped work on September 27, 2000 and did not return.

In support of her absence, appellant submitted a September 29, 2000 form report from Kaiser Permanente with an illegible physician's signature, which noted "assault essentially" and that appellant had a "bruise on her left deltoid area." Diagnosis was noted as "situational anxiety, arm." The form indicated that left humeral x-rays revealed a humeral head opacity of unknown etiology.

By letter dated October 19, 2000, the Office advised appellant that additional factual and medical evidence was necessary to support her claimed absence.

In response, appellant submitted a September 27, 2000 report from Dr. Jock T. Pribnow, a physician Board-certified in occupational medicine, from Kaiser Permanente, which described the alleged assault, indicated that she was in tears and distressed and indicated that she had a 2½ by 1-inch bruise on the left lateral upper arm. Dr. Pribnow noted that x-rays of the left arm showed a blotchy opaque area in the left humeral head. He diagnosed situational anxiety as well as a contusion of the left upper arm and noted that this was simply a bruise, but that there could be "something significant" going on in appellant's humeral head unrelated to her work injury. Dr. Pribnow indicated that appellant wanted to be off work and was looking into legal action, that she was already on antidepressants from her internist and that time loss authorized was from September 27 through September 29, 2000, but that was probably less than 50 percent the result

of her industrial exposure. He opined only that appellant “would probably benefit from some time away from work” and on the form indicated that she was not eligible for modified work.

A September 29, 2000 return to work form completed by Dr. Adrienne C. Feldstein, a physician of unlisted specialty, from Kaiser Permanente, indicated that appellant was released to return to work that date on regular duty with no permanent injury identified.

In a September 29, 2000 narrative report, Dr. Feldstein noted appellant’s history of arm contusion and possible acute reaction to stress, indicated her allegations of assault, stated that findings upon x-ray in the left arm were unrelated to the bruise on her arm and noted that she had undergone prior prolonged treatment for depression. She diagnosed arm contusion which would resolve without residuals or impairment and acute reaction to stress and she noted that any work-related component has resolved.

On October 5, 2000 appellant was referred for an occupational mental health consultation evaluation by Dr. Donald E. Lange, a Kaiser Permanente physician of unlisted specialty. He reviewed appellant’s factual and medical history that date, noted that she had experienced a similar incident on a previous job and noted that she had a significant prior history of depression and anxiety. He diagnosed major depressive disorder, recurrent, preexisting but exacerbated by the work incident and opined that appellant very likely suffered from a mixed personality disorder and was still complaining of a bruised arm. Dr. Lange indicated that it was in appellant’s best interest to return to work under modified conditions, but that she still refused.

Appellant further submitted an October 21, 2000 report from Dr. Aaron Markovich, a physician of unlisted specialty, who noted her complaints, found a decreased range of left shoulder motion without crepitus, swelling or significant tenderness on palpation and diagnosed “left shoulder contusion.” Disability was not discussed and Dr. Markovich referred appellant to Dr. Mai P. Leopold, an osteopath, for follow-up.

In an October 26, 2000 follow-up report, Dr. Leopold noted examination results of appellant’s left upper extremity, indicated that there was not much anybody could do for her left upper arm pain as there was nothing there to treat, opined that any soft tissue injury most likely had resolved completely at that time, diagnosed “no current evidence of soft tissue trauma, injury or swelling,” noted that x-ray findings were incidental and nonwork related and referred appellant to Dr. Roy R. Rusch, a Board-certified orthopedist.

Appellant submitted a lengthy statement postmarked October 31, 2000 about the September 24, 2000 incident, but in a follow-up statement advised that she was not filing a stress claim.

The employing establishment submitted a statement from Tammy Rogers, an investigating official, which indicated that the individual appellant alleged assaulted her denied touching her breast, but admitted that he touched her upper arm to get her attention as she was wearing headphones.

On November 27, 2000 appellant filed a Form CA-7, claiming compensation from September 27 through December 1, 2000.

In support of her claim, appellant submitted a Form CA-20, attending physician's report dated December 4, 2000 from Dr. Rusch, which noted a diagnosis of adhesive capsulitis, checked "yes" to the question of whether the condition was caused or aggravated by an employment activity and checked "no" to the question of whether appellant had been advised that she could return to work.

By decision dated February 15, 2001, the Office denied appellant's compensation claim finding that the medical evidence failed to support injury-related disability for the claimed period.

Appellant disagreed with this decision and requested an oral hearing before an Office hearing representative. The hearing took place on December 5, 2001 at which appellant testified that had she not been injured she would have worked until December 31, 2000, that following the injury she returned to work in order to fill out paperwork for her claim and that she had been referred for treatment to Dr. Rusch. Appellant claimed that the September 2000 incident was a sexual assault, that management did nothing to remove the implicated person from the employing establishment, that she stayed off work following her injury, because the person who had assaulted her was still there and because her arm was in bad shape. Appellant indicated that none of treating physicians discussed her disability for work or told her to stay off work. She also submitted copies of previously submitted medical reports, October 30 and December 4, 2000 office notes from Dr. Rusch, which reiterated her history, reported physical examination results and diagnosed "left shoulder pain due to moderate to severely established adhesive capsulitis." Dr. Rusch opined that appellant was unable to engage in any form of repetitive or stressful activity which required use of her left arm, but he did not discuss causation, nor did he address whether or not the diagnosed condition of adhesive was in any way related to the September 24, 2000 incident.

By decision dated February 22, 2002, the hearing representative affirmed the February 15, 2001 Office decision, finding that the medical evidence did not support that appellant was ever disabled for any period due to her left upper arm contusion or to factors related to the September 24, 2000 work incident.

The Board finds that appellant has not established that she was disabled for the period September 27 through December 1, 2000 causally related to her accepted employment-related injury.

As used in the Federal Employees' Compensation Act,¹ the term "disability" means incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.² Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.³ An employee who has a physical impairment

¹ 5 U.S.C. §§ 8101-8193.

² *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).

³ See *Fred Foster*, 1 ECAB 21 at 24-25 (1947) (finding that the Act provides for the payment of compensation in disability cases upon the basis of the impairment in the employee's capacity to earn wages and not upon physical impairment as such).

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 as that term is used in the Act and is not entitled to compensation for loss of wage-earning capacity.⁴ When, however, the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.⁵ Compensation for loss of wage-earning capacity is based upon loss of the capacity to earn, not upon actual wages lost.⁶ The Board has further explained that every injury does not necessarily cause disability for employment. Whether a particular injury causes disability for employment is a medical issue, which must be resolved by competent medical evidence.⁷

In this case, the Office accepted that on September 24, 2000 appellant sustained a left upper arm bruise and contusion. However, even though the Office accepted appellant's claim that she sustained a contusion injury, she still has the burden of proof to establish that the accepted condition resulted in disability for work.⁸ Appellant has not met this burden.

In the instant case, appellant has not submitted any rationalized medical evidence identifying or describing any injury-related disability for work.

Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. Such an opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.⁹ Most of the medical evidence submitted does not even address injury-related disability for work and none of it contains the required rationale.

In the Kaiser Permanente form reports from Dr. Pribnow, he indicated time off from work to be from September 27 through September 29, 2000 but noted that the absence was probably less than 50 percent the result of appellant's industrial exposure. He provided no physical basis for her disability for that period, finding only a bruise upon examination and referred to her situational anxiety state regarding her benefiting from time away from work, noting that she was not eligible for modified work. Dr. Pribnow's reports do not, therefore,

⁴ See *Gary L. Loser*, 38 ECAB 673 (1987) (although the evidence indicated that appellant had sustained a permanent impairment of his legs because of work-related thrombophlebitis, it did not demonstrate that his condition prevented him from returning to his work as a chemist or caused any incapacity to earn the wages he was receiving at the time of injury.)

⁵ *Bobby W. Hornbuckle*, 38 ECAB 626 (1987).

⁶ *George W. Coleman*, 38 ECAB 782 (1987).

⁷ *Patrick H. Hall*, 48 ECAB 514 (1997).

⁸ *Yvonne R. McGinnis*, 50 ECAB 272 (1999).

⁹ See *Donna Faye Cardwell*, 41 ECAB 730 (1990); *Lillian Cutler* 28 ECAB 125 (1976).

support that appellant was out of work for the period September 27 through 29, 2000 causally related to her accepted left upper extremity contusion.

Dr. Feldstein indicated in her report that any work-related component had resolved and that appellant was released to regular duty on September 29, 2000. This report, therefore, does not support that appellant was disabled due to her left upper extremity contusion for the period claimed.

Dr. Lange diagnosed only psychological conditions and found no physical disability or component and he opined that it was in appellant's best interest to return to work. This report, also, does not support appellant's claimed period of disability due to her left arm contusion.

The October 21, 2000 report from Dr. Markovich did not address any period of disability or any disabling conditions and referred appellant to Dr. Leopold. Consequently, this report does not support appellant's claimed period of disability.

Dr. Leopold examined appellant and opined that there was nothing there to treat, finding no evidence of any remaining soft tissue injury. She did not find any disability and, therefore, her report does not support appellant's claimed period of disability.

Dr. Rusch opined that appellant had left shoulder adhesive capsulitis, which he indicated by checking "yes" was related to her employment, but he failed to provide any rationale to support this opinion on causal relation. He further checked "no" regarding whether appellant had been advised to return to work, but again he failed to provide any rationale on causal relation. The Board has frequently explained that when a physician's opinion on causal relation consists only of checking "yes" to a form question, without further explanation or supporting rationale, that opinion has little probative value and is insufficient to establish causal relationship.¹⁰ As Dr. Rusch did not provide any medical rationale explaining how the incident of September 24, 2000 caused or aggravated appellant's left shoulder adhesive capsulitis, his opinion on causal relation as indicated on the attending physician's form report by checking "yes" is insufficient to establish any work relationship.

In his later submitted office treatment notes, Dr. Rusch again diagnosed left shoulder pain due to moderate to severe adhesive capsulitis, but he again failed to provide any explanation or rationale supporting causal relation with the events of September 24, 2000. He opined that appellant should not perform repetitive activities with her left arm, but he did not relate this restriction to appellant's accepted left upper arm contusion injury. Therefore, these office notes are insufficient to establish that appellant's diagnosed left shoulder adhesive capsulitis is in any way related to the poking incident of September 24, 2000 and consequently, any disability due to the diagnosed adhesive capsulitis would not be compensation under the Act.

Appellant, therefore, has not met her burden of proof to establish that the accepted condition, left upper arm contusion, resulted in disability for the period September 27 through December 1, 2000.

¹⁰ *Ruth S. Johnson*, 46 ECAB 237 (1994); *William C. Thomas*, 45 ECAB 591 (1994).

Accordingly, the decision of the Office of Workers' Compensation Programs dated February 22, 2002 is hereby affirmed.

Dated, Washington, DC
October 8, 2002

Alec J. Koromilas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member