

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVID C. EDWIN and U.S. POSTAL SERVICE,
POST OFFICE, San Francisco, CA

*Docket No. 02-2015; Submitted on the Record;
Issued March 27, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant established that he was totally disabled from work on and after June 1, 2002 due to a work-related injury.

On August 13, 2001 appellant, then a 37-year-old part-time flexible letter carrier, filed a notice of occupational disease claim alleging that he sustained a left shoulder and lower back injury in the performance of duty. He stated that he suffered from lower back and left shoulder pain due to lifting and carrying mailbags in excess of 50 pounds. The employing establishment verified that appellant was hired as a probationary employee on April 21, 2001 and resigned from his job effective June 1, 2001.

The record indicates that appellant received treatment on June 18, 2001 for left shoulder pain and lumbar pain radiating down from the lower back to the left leg. He was told not to perform any further heavy lifting. A sciatica examination along with a left shoulder and lumbar magnetic resonance imaging (MRI) scan was ordered.

In a July 9, 2001 note, Dr. Dean L. Rider, an internist, stated that appellant had a herniated lumbar disc with sciatica. He further noted on that date that appellant could perform none of the following activities; lifting, sitting, bending, twisting, squatting, climbing, pushing, pulling, standing, walking or driving.

An MRI of the left shoulder dated June 27, 2001 showed osteoarthritis of the acromioclavicular joint with slight hypertrophy, but no evidence of a rotator cuff tear.

In a Form CA-20, attending physician's report, dated October 12, 2001, Dr. Scott Bradley, a general practitioner, listed a date of injury as May 14, 2001. He diagnosed that appellant had a low back injury or L5-S1 herniated disc with radiculopathy. The period of total disability was listed as beginning May 14, 2001 and continuing. Dr. Bradley check marked a box indicating that appellant could not return to work.

In a work status report dated October 12, 2001, Dr. Bradley advised that appellant was totally disabled from work October 11, 2001 to February 2002.

On December 28, 2001 the Office of Workers' Compensation Programs accepted the claim for a lower back sprain with left radiculopathy.

In a report dated January 23, 2002, Dr. Joseph R. Myers, a Board-certified orthopedic surgeon, indicated that he had had an initial consultation with appellant and related the following work history:

“[Appellant] states that he was working at his usual occupation as a mail carrier on May 14, 2001. He states that the requirement of his job was that he lifts up to 35 pounds. [Appellant] was working a route on Geary Street, where quite often, he would have to lift and carry up to 50 pounds, while going up and down many stairs, because of the design of the homes on the route that he had.”

Dr. Myers noted that appellant had developed increasing pain and discomfort in his lower back and left shoulder and had been seen by an orthopedic surgeon, Dr. Ryder. The results of the June 21, 2001 lumbar MRI and left shoulder MRI were discussed. He further reported physical findings for the left shoulder and back. The diagnosis was listed as a disc herniation at L5-S1 with radiculopathy, partial rotator cuff tear of the left shoulder, left shoulder strain and left shoulder impingement syndrome. Dr. Ryder concluded that appellant was totally disabled from working as a letter carrier.

In a February 19, 2002 report, Dr. Myers indicated that appellant had pain associated with lifting or twisting of the left shoulder and lower back pain with forward bending or twisting. Physical findings of the lumbar spine were listed and it was reported that appellant had a positive impingement test of the left shoulder. Dr. Myers opined that appellant remained totally disabled for his usual employment.

In a May 21, 2002 report, Dr. Myers noted that appellant was improved with less lower back pain than at his last visit. He related that appellant still complained of moderate left shoulder discomfort but had been performing his exercises as recommended. Physical findings were listed with right and left lateral flexion and rotation present to 10 and 20 degrees. Dr. Myers indicated that extension beyond neutral was painful for appellant. He stated that appellant remained symptomatic and was temporarily disabled from work.

On May 21, 2002 appellant filed a CA-7 claim for compensation for lost wages beginning June 1, 2001.

In an attending physician's report received by the Office on May 28, 2002 Dr. Myers noted that appellant had injured his left shoulder and lower back following lifting up to 35 to 50 pounds and going up and down stairs while working as a postal employee. The dated of injury was listed as May 14, 2001. The findings were listed as impingement syndrome of the left shoulder, a herniated disc at L5-S1 with left radiculopathy and partial rotator cuff tear, left shoulder. Dr. Myers advised that the period of total disability was May 14, 2001 to the present. He check marked a box stating that appellant could not return to work. Under remarks, Dr. Myers advised that appellant was limited to lifting 5 pounds with no prolonged sitting more

than 60 minutes without a 10 minute break. He concluded that appellant might require surgery in the future to repair his rotator cuff tear and that he should have epidural injections for his lumbar disc condition.

In a decision dated June 27, 2002, the Office denied compensation for lost wages on or after June 1, 2002 as a result of his accepted work-related injury. The Office specifically noted that appellant had voluntarily retired on June 1, 2002 and that there was insufficient medical evidence from which to conclude that he was totally disabled due to a work injury at the time of his retirement.

The Board finds that this case is not in posture for a decision.¹

Under the Federal Employees' Compensation 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. Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn the wages. An employee who has a physical impairment causally related to a federal employment injury, but who nonetheless has the capacity to earn wages he or she was receiving at the time of injury, has no disability as that term is used in the Act.² Whether a particular injury causes an employees disability for employment is a medical issue, which must be resolved by competent medical evidence.³ An employee bears the burden of establishing that he or she is disabled for work and that any disability for which compensation is claimed is causally related to an employment injury.⁴

In this case, the Office accepted that appellant sustained a lumbar strain with radiculopathy as a result of lifting and carrying heavy mailbags in the performance of duty. Appellant retired from work on June 1, 2001 and is seeking compensation for wage loss from that date.

The Board notes that the October 12, 2001 attending physician's report prepared by Dr. Bradley is the only medical report close in time to appellant's retirement. He indicated that appellant had been totally disabled for work due to a herniated disc beginning May 14, 2001. Although Dr. Bradley did not offer an explanation as to why appellant was disabled for work or adequately discuss the nature of appellant's diagnosed condition, his opinion cannot be completely disregarded based on these deficiencies. Dr. Bradley's opinion, even if it is insufficient to discharge appellant's burden of proof, is uncontradicted in the record and creates an inference that appellant was temporarily disabled for work due to the accepted work injury at the time of his retirement on June 1, 2001. His opinion is further supported by the medical reports from Dr. Meyers finding that appellant is unable to return to work as a letter carrier due

¹ The Board's jurisdiction is limited to evidence that was before the Office at the time it issued the decision of June 27, 2002; *see* 20 C.F.R. § 501.2(c).

² *Maxine J. Sanders*, 46 ECAB 835 (1995).

³ *Patrick H. Hall*, 48 ECAB 514 (1997); *Maxine J. Sanders*, *supra* note 2.

⁴ *See generally*, *Charles E. Evans*, 48 ECAB 692 (1997); *Patrick C. Hall*, *supra* note 3; *Shirley A. Temple*, 48 ECAB 404 (1997).

to a left shoulder impingement and a herniated disc with radicular pain. Dr. Meyers has maintained appellant's disability from January through May 28, 2002.

In the absence of opposing medical evidence, the reports of Drs. Bradley and Myers, while lacking in adequate rationale, are sufficient to require further medical development. On remand, the Office should send appellant for a second opinion evaluation to ascertain whether or not he was disabled for work on or after June 1, 2001 as a result of the accepted work injury. The medical specialist should also address whether or not appellant has a herniated disc or left shoulder impingement due to work factors.

The Board notes that the Office issued another decision on December 5, 2002 that is duplicative of the June 27, 2002 decision. The Board has held that decisions issued while an appeal is pending are null and void where they attempt to change the status of the decision on appeal.⁵ Because the Office issued the December 5, 2002 decision while appellant's case was pending on appeal, the Board considers the December 5, 2002 decision to be null and void. On remand, following such further medical development as the Office deems necessary, it shall issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs dated June 27, 2002 is hereby vacated and the case is remanded for further consideration consistent with this opinion.

Dated, Washington, DC
March 27, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁵ *Douglas E. Billing*, 41 ECAB 880 (1990).