

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL L. RODGERS and U.S. POSTAL SERVICE,
POST OFFICE, Middleburg, FL

*Docket No. 02-1999; Submitted on the Record;
Issued May 13, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant is entitled to partial wage-loss compensation between December 21, 1998 and September 21, 1999 due to his accepted injury.

On November 18, 1998 appellant, then a 45-year-old tractor trailer operator, filed a traumatic injury claim alleging that he injured his left shoulder while unloading a truck. In a November 18, 1998 duty status form report (CA-17), Dr. Michael Scharf diagnosed appellant with cervical/thoracic strain and placed appellant on temporary total disability. The claim was accepted for herniated cervical disc and surgery was authorized.

In a December 9, 1998 CA-17 form report, Dr. Scharf indicated that appellant could work six hours per day. In a December 1, 1998 letter, the employing establishment asked Dr. Scharf to confirm a message that it received from his office indicating that appellant could perform sedentary work, with restrictions of no repetitious activity or lifting with his left arm. In a December 3, 1998 letter, Dr. Scharf indicated that appellant could do sedentary work with restrictions.

In a December 10, 1998 letter, the employing establishment offered appellant a limited-duty position, six hours a day with no loss in salary. Appellant accepted the offer the same day.

In a March 12, 1999 note, the Office of Workers' Compensation Programs' medical adviser, interpreting appellant's magnetic resonance imaging scan, wrote that appellant had a cervical disc protrusion at C5-6 and surgery was indicated. In a June 1, 1999 report, Dr. Scharf diagnosed appellant's C5-6 herniation and indicated that appellant had been released to work eight hours per day since December 9, 1998. In a June 4, 1999 report, Dr. Javier Garcia-Bengochea diagnosed appellant with neck pain and mild radiculopathy secondary to a T5-6 disc herniation and recommended surgery.

In a June 7, 1999 form report, Dr. Scharf indicated that appellant could return to work eight hours per day with no restrictions. In that same report, Dr. Scharf indicated that appellant

could not reach or work above the shoulder. In a June 30, 1999 CA-20 form report, Dr. Scharf indicated that appellant was totally disabled from November 23 to December 9, 1998 and was then partially disabled until February 12, 1999 when he was able to resume light-duty work. In a July 8, 1999 report, Dr. Scharf indicated that appellant could work eight hours a day with restrictions.

In an August 23, 1999 report, the employing establishment offered appellant a modified distribution clerk position consistent with his light-duty restrictions. On September 21, 1999 appellant underwent surgery on his left shoulder and received total temporary disability. On June 29, 2000 appellant filed a claim for compensation (Form CA-7) for the two hours he missed daily between December 21, 1998 and September 21, 1999. The employing establishment controverted appellant's claim, stating that he was offered work eight hours per day, but he refused to work more than six hours. The employing establishment submitted records for the period in question showing that appellant worked six hours per day and claimed two hours leave without pay.

In a July 17, 2000 letter, the Office notified appellant of the information he needed to submit. Appellant did not respond. In a January 14, 2002 decision, the Office denied appellant's claim.

The Board finds that appellant has not met his burden of proof to establish partial disability between December 21, 1998 and September 21, 1999. An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim, including the fact that an injury was sustained in the performance of duty as alleged and that any disability for which compensation is claimed is causally related to the employment injury.¹ The evidence required to establish causal relationship is rationalized medical evidence, based on complete factual and medical background, showing a causal relationship between the claimed medical condition and the identified factors.²

In the present case, the medical evidence of record is inconclusive, contradictory and of diminished probative value on the issue of whether or not appellant could work full time between December 21, 1998 and September 21, 1999. In a December 9, 1998 form report, Dr. Scharf indicated that appellant could work only six hours per day. Yet in a June 1, 1999 report, Dr. Scharf indicated that appellant was released to work eight hours per day on December 9, 1998. In his June 7, 1999 report, Dr. Scharf indicated that appellant could work without restrictions. In that same report, he indicated that appellant could not do work that required reaching above his head. This evidence from Dr. Scharf is not sufficient to establish that appellant was partially disabled for the period commencing December 21, 1998.

Appellant has not met his burden of proof to establish that he was partially disabled between December 21, 1998 and September 21, 1999. In its July 17, 2000 letter, the Office notified appellant of the deficiencies in his claim but appellant did not respond.

¹ *Duane B. Harris*, 49 ECAB 170 (1997).

² *Id.*, *Dennis Mascarenas*, 49 ECAB 215 (1997).

The January 14, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
May 13, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member