United States Department of Labor
Employees' Compensation Appeals Board

ROBERT J. CORDOVA, Appellant	)	
and	)	**Docket No. 03-2127**
	)	**Issued: January 28, 2004**
U.S. POSTAL SERVICE, BELMONT STATION, Pueblo, CO, Employer	)	

Appearances:
John S. Evangelisti, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On August 29, 2003 appellant, through his attorney, filed a timely appeal of a merit decision of a hearing representative of the Office of Workers' Compensation Programs dated September 4, 2002. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue on appeal is whether appellant has met his burden of proof to establish that he sustained disability from February 8 to July 12, 2001 causally related to his October 26, 1999 employment injury.

FACTUAL HISTORY

On October 26, 1999 appellant, then a 45-year-old letter carrier at the employing establishment, sustained employment-related neck and bilateral shoulder sprains when putting mail in a relay box. He did not stop work but began limited duty, based on the restrictions provided by Dr. Mary Dickson, a Board-certified family practitioner. On December 6, 1999 he

accepted a limited-duty position. On January 4, 2000 appellant began treatment with Dr. G. Thomas Morgan, who is Board-certified in physical medicine and rehabilitation. Electromyogram and nerve conduction studies performed on January 17, 2000 were interpreted as normal. In a February 15, 2000 report, Dr. Morgan advised that appellant should be permanently restricted from carrying a shoulder bag with heavy mail. In March 1, 2000 reports, Dr. Daniel A. Olson, a Board-certified internist, provided restrictions to appellant's physical activity and advised that he could probably do his regular route if provided with a push cart. Appellant also submitted reports from Dr. Ronald Peveto, Board-certified in family practice, who on April 25, 2000 advised that appellant was permanently restricted from carrying a shoulder bag and should limit a waist bag to 20 pounds. In a June 26, 2000 report, Dr. Olson agreed with Dr. Peveto's restrictions.

On October 3, 2000 appellant accepted a position at the Midtown Station, where he answered the telephone, retrieved accountable mail and small parcels for customers, filed reports, counted money for change and deposit, and performed other duties within his restrictions which were that he was to perform no lifting or reaching above his shoulders, carry, push or pull or operate a vehicle with his left upper extremity.

In a report dated January 26, 2001, Dr. David S. Gibbons, an osteopathic physician who is Board-certified in family practice, diagnosed a probable rotator cuff tear. Dr. Harold M. Frost, Board-certified in orthopedic surgery, provided a January 29, 2001 report in which he advised that appellant was working and had returned for routine follow up. He advised that appellant was "doing fairly well" and saw no need to continue follow-up appointments.

Appellant stopped work on February 8, 2001, stating that he was ordered to report to the employing establishment on February 10, 2001 to case mail, the job that caused his injury.[1] In a February 9, 2001 report, Dr. James A. Sewell, a psychiatrist, advised that appellant was applying for disability retirement based on physical and psychiatric difficulties. Dr. Sewell stated:

> "Today, he had a note on his time card ordering him back to the job that he had been taken off of due to an injury. This reassignment has exacerbated his psychiatric symptoms, where now he is having extreme difficulties with concentration, focus as well as some paranoia. His ability to function at this time is nonexistent. Therefore, the treatment team at this facility [sic] are of the opinion that until the issues related to the disability retirement are completely resolved[,] this veteran should be off work."

[1] The instant case was adjudicated by the Office under file number 1201185395. On October 25, 2000 appellant was granted a schedule award for a 10 percent permanent impairment of the left arm, for a total of 31.2 weeks, to run from May 9 to December 13, 2000. The record does not indicate that appellant appealed this decision. The record also contains a decision dated April 16, 2003 approving attorney's fees in the amount of $34,500.00. Appellant has not filed an appeal with the Board regarding the April 16, 2003 decision. Finally, the Board notes that on August 25, 2003, appellant filed a schedule award claim that is under development by the Office, which has not issued a final decision in that regard. Appellant also filed a claim for an employment-related emotional condition, that was adjudicated by the Office under file number 122003601. After denial by the Office, he filed an appeal with the Board, Docket No. 03-2181, which is being adjudicated separately.

On February 10, 2001 appellant was offered a position at the employing establishment, in which he was to sort mail four hours per day, answer telephones, retrieve certified and registered mail for windows, be a lobby greeter and provide other postal duties within his restrictions. The restrictions were no lifting or operating a vehicle, carrying or reaching above his shoulders, with grasping and fine manipulation restricted to four hours per day.[2]

In a duty status report dated February 13, 2001, Dr. Gibbons advised that appellant could work with restrictions of no satchel carrying and no lifting, pushing, pulling, grasping, fine maneuvering, reaching above the shoulder or driving. By reports dated February 23, 2001, Dr. Sewell diagnosed recurrent major depression, gastroesophageal reflux disease, chronic left shoulder and neck injury secondary to severe muscle strain and nerve injury, hypercholesterolemia, elevated liver enzymes and advised that appellant could not work. Dr. Sewell stated that appellant had "repetitive" shoulder injuries at work which had resulted in permanent damage that he was then incapable of performing. "He has not received support from supervision regarding his restrictions and this had led to a lack of trust on his part. He feels that management at his previous duty station (Belmont) does not have his best interest or health needs in mind." Dr. Sewell recommended that appellant not return to the employing establishment "as there has been irreparable harm done to [appellant's] ability to trust supervision and thus his ability to perform adequately has been compromised."

On February 23, 2001 the employing establishment again offered appellant a position at the employing establishment. He was to answer telephones, act as lobby director, retrieve accountable mail for the windows and perform other postal duties within his restrictions, which were given as no lifting, carrying, pushing, pulling, reaching above the shoulders, performing fine manipulation or operating a vehicle.

In a memorandum dated February 27, 2001, the employing establishment advised that appellant's restrictions indicated that he could case mail for four hours per day, and after informing appellant that on February 10, 2001 his duties would be changed, he went home sick. Appellant was then mailed a limited-duty job offer. By report dated March 1, 2001, an employing establishment health unit nurse, Mary Leonard, advised that appellant needed a permanent transfer from the employing establishment, based on the restrictions provided by Dr. Sewell, a psychiatrist. On March 5, 2001 the Office referred appellant to the nurse intervention program.

In reports dated April 4, 2001, Dr. Olson diagnosed chronic left shoulder/cervical pain and situational anxiety and depression and referred appellant for pain management and to have his shoulder evaluated. In a work capacity evaluation also dated April 4, 2001, Dr. Olson further advised that appellant could not work at the employing establishment and stated that appellant's restrictions were the same as "submitted last June [20]00." By report dated April 10, 2001, Dr. David S. Matthews, a Board-certified orthopedic surgeon, noted appellant's history of injury to his left shoulder girdle with possible rotator cuff damage. He recommended a magnetic resonance imaging (MRI) scan.

[2] There is no indication in the record that appellant accepted this position.

An MRI scan of the left shoulder performed on April 16, 2001 demonstrated supraspinatus tendinosis with a small intrasubstance tear at the insertion, fluid in the subacromial bursa, and a moderate-sized spur in the lateral aspect of the acromion with tendinosis of the subscapularis tendon and degenerative changes of the glenohumeral joint. There was no evidence of full-thickness or labral tear. Dr. Morgan provided an April 17, 2001 report in which he noted that appellant had been injured on October 26, 1999 and provided findings on examination of decreased range of motion of the cervical spine and a slightly positive Spurling's sign on the left with impingement signs but no global instability. He diagnosed persistent neck pain radiating to the left shoulder, rule-out internal shoulder pathology or cervical radiculopathy, and NSAID-induced gastritis. In reports dated April 18, 2001, Dr. Olson noted the MRI scan findings and provided restrictions to appellant's physical activity, to include no over-the-shoulder satchels with lifting and carrying restricted to 20 pounds at the waist level and 70 pounds pushing and pulling. Dr. Olson diagnosed chronic cervical strain and left shoulder strain with possible impingement which he indicated by a check mark was employment related.

On April 18, 2001 the employing establishment offered appellant a modified letter carrier position at the employing establishment, advising him that the only restrictions referred to his accepted conditions of neck and shoulder strains. The duties included case route and perform duties of a letter carrier, delivering mail on the street with the restrictions of no over-the-shoulder satchel, use of a waist bag not to exceed 20 pounds and pushing and pulling not to exceed 70 pounds. The physical requirements portion indicated 4 to 6 hours of lifting 0 to 25 pounds, and intermittent lifting of 26 to 40 pounds, 3 hours intermittent standing, 5 hours intermittent walking, 1 hour intermittent stooping, 1 hour intermittent bending, 2 hours intermittent sitting, 6 hours operating a vehicle, 2 hours intermittent twisting, 1 hour intermittent kneeling, 1 hour intermittent climbing, 4 to 6 hours carrying with the above restriction, 4 hours pushing/pulling with the above restriction and 2 hours reaching above the shoulders. Appellant refused the position on April 19, 2001, stating that it was outside the restrictions provided by Dr. Olson, specifically advising that his weight restriction was 20 pounds and that he was not to reach above his shoulders. He added that the waist bag had been "refused by [m]anagement due to safety reasons."

Appellant was subsequently reoffered the modified letter carrier position with the additional modification that the employee was to be accommodated with a platform to avoid overhead reaching, the waist bag was authorized and dog spray was provided for his protection. On April 30, 2001 appellant again refused a job offer, reiterating that his lifting was limited to 20 pounds, that the postmaster or supervisor had not approved the waist bag and the platform had not been inspected or approved by the Occupational Safety and Health Administration.

In a treatment note dated May 8, 2001, Dr. Matthews noted the MRI scan findings and diagnosed long-term shoulder pain correlating with MRI scan findings and failure of conservative treatment. He stated that he had discussed the possibility of arthroscopic surgery with appellant. On May 9, 2001 Dr. Olson approved the position offered by the employing establishment, which the employing establishment then reoffered to appellant on May 14, 2001.

On May 21, 2001 the Office authorized left shoulder subacromial decompression surgery, scheduled for May 30, 2001. Also on May 21, 2001 appellant refused the offered position, again stating it was outside his restrictions.

By reports dated May 21, 2001, Dr. Olson reiterated his diagnoses and conclusions and reported that appellant was to have surgery on May 30, 2001. In a report dated May 24, 2001, Dr. Morgan repeated his diagnoses with the addition that appellant was suffering an acute, recent and severe depression. Appellant was admitted to the Veterans Administration Hospital that day for suicidal depression. On August 1, 2001 he submitted a Form CA-7, claim for compensation, for the period February 8 through July 12, 2001. On August 6, 2001 Dr. Matthews performed arthroscopic subacromial decompression of the left shoulder for impingement syndrome.

By decision dated September 26, 2001, the Office determined that appellant was not entitled to wage-loss compensation for the period February 8 through July 12, 2001 on the grounds that the medical evidence did not establish that he was totally disabled for the claimed periods due to the accepted employment conditions. On October 15, 2001 appellant, through his attorney, requested a hearing that was held on May 14, 2002. At the hearing, appellant reiterated that the offered position was outside his restrictions. In a decision dated September 4, 2002, an Office hearing representative affirmed the prior decision.

LEGAL PRECEDENT

Under the Federal Employees' Compensation Act,[3] the term "disability" means the 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 wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless 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.[4] Furthermore, whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.[5]

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.[6] Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The 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 the claimant.[7] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the

[3] 5 U.S.C. §§ 8101-8193.

[4] *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

[5] *Fereidoon Kharabi*, 52 ECAB 291 (2001).

[6] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[7] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[8]

ANALYSIS

In the instant case, appellant has not shown a change in the nature and extent of his injury-related condition or of the light-duty requirements. The record shows that appellant had been working light duty at the Midtown Station and on February 8, 2001 was notified that he was to be reassigned to a light-duty position at the employing establishment, his original place of employment, effective February 10, 2001. The Board finds that, while the location of appellant's light-duty assignment was to change, the record does not indicate that there would be a change in the "nature and extent" of his light-duty requirements.

When appellant, who had accepted neck and bilateral shoulder sprains, was told to report back to the employing establishment, he stopped work. The physical restrictions that were in place at the time he stopped work were that he was to perform no lifting or reaching above his shoulders, carry, push or pull or operate a vehicle with his left upper extremity. The record also indicates that he was permanently restricted from carrying a shoulder bag with heavy mail, and should limit a waist bag to 20 pounds. On March 1, 2000 appellant's treating Board-certified internist, Dr. Olson, advised that appellant could probably do his regular route if provided with a push cart. In a January 29, 2001 report, Dr. Frost, an attending Board-certified orthopedic surgeon, advised that appellant was doing fairly well and saw no need for further follow up. In a February 8, 2001 report, Dr. Sewell, a psychiatrist, advised that working at the employing establishment exacerbated appellant's psychiatric symptoms.

On February 10, 2001 the employing establishment offered appellant a position at the employing establishment in which he was to sort mail four hours per day, answer telephones, retrieve certified and registered mail for windows, be a lobby greeter and provide other postal duties within his restrictions. The restrictions were no lifting or operating a vehicle, carrying or reaching above his shoulders, with grasping and fine manipulation restricted to four hours per day. On February 13, 2001 Dr. Gibbons, appellant's attending osteopath, provided restrictions of no satchel carrying and no lifting, pushing, pulling, grasping, fine maneuvering, reaching above the shoulder or driving. On February 23, 2001 the employing establishment reoffered essentially the same job to appellant with the change that he was no longer required to sort mail for four hours per day.

The Board finds that none of the medical reports indicate that appellant could not perform the offered position. Furthermore, the Board has long held that disability is not compensable when it results from an employee's frustration in not being able to work in a particular environment.[9]

[8] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[9] *James E. Norris*, 52 ECAB 93 (2000).

In a February 23, 2001 report, Dr. Sewell noted appellant's history of injury and advised that he had not received management support regarding his restrictions at employing establishment. Dr. Sewell again stated that appellant should not work there because his ability to trust had been compromised. While the employing establishment health unit nurse advised that appellant should not be assigned to the employing establishment, this was based on the restrictions provided by Dr. Sewell, which were psychiatric in nature and not in reference to the accepted conditions in the instant appeal, neck and bilateral shoulder sprains.[10] On April 4, 2001 Dr. Olson, appellant's treating Board-certified internist, advised that appellant was permanently restricted from carrying a shoulder bag and should limit a waist bag to 20 pounds. He also advised that appellant should not work at the employing establishment. An April 16, 2001 MRI scan of the left shoulder demonstrated a small intrasubstance tear and a moderate-size spur but no evidence of a full-thickness or labral tear. After noting the MRI scan findings, in an April 18, 2001 report, Dr. Olson provided restrictions of no over-the-shoulder satchels and lifting and carrying were restricted to 20 pounds at the waist level and 70 pounds pushing and pulling. On April 18, 2001 the Office again offered appellant a limited-duty position at the employing establishment which was later modified to state that he was to be accommodated with a platform to avoid overhead reaching, the waist bag was authorized, and dog spray was provided for his protection. On May 9, 2001 Dr. Olson approved the offered position, which the employing establishment reoffered on May 14, 2001. While the Office subsequently authorized left shoulder surgery, that was performed on August 6, 2001, there is nothing in the record to indicate that appellant could not perform the light-duty requirements of any of the offered positions at the employing establishment for the period in question in the instant claim.

CONCLUSION

Under the circumstances described above, the Board finds that appellant has not established that he sustained disability from February 8 to July 12, 2001 causally related to his October 26, 1999 employment injury.

[10] *See supra* note 1.

ORDER

IT IS HEREBY ORDERED THAT the September 4, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 28, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member