United States Department of Labor
Employees' Compensation Appeals Board

CONSTANCE R. SPEED, Appellant	)	
	)	**Docket No. 04-979**
and	)	**Issued: July 16, 2004**
U.S. POSTAL SERVICE, POST OFFICE, Houston, TX, Employer	)	

Appearances:
Constance R. Speed, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On March 3, 2004 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated January 7, 2004 which found that she was not totally disabled for the period October 1 through December 31, 2002. Under 20 C.F.R. §§ 501.2(c), 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she was totally disabled for the period October 1 through December 31, 2002 causally related to her employment injuries.

FACTUAL HISTORY

On November 29, 2000 appellant, then a 42-year-old postal inspector, filed a traumatic injury claim alleging that on November 15, 2000 she injured her neck and left side after firing a gun on a shooting range for approximately four hours. She stopped work on November 29 and returned to work on December 2, 2000. In a decision dated May 15, 2001, the Office accepted

that appellant experienced the incident as claimed but denied that she sustained an injury as the medical evidence was insufficient. On June 14, 2001 Dr. Mark A.S. Stuart, Board-certified in orthopedic surgery, performed right rotator cuff repair for a nonemployment-related condition. On September 7, 2001 appellant was cleared to return to full duty by Dr. David R. Carnow, an employing establishment physician Board-certified in occupational medicine.

Following appellant's timely request for a hearing, in a decision dated March 18, 2002, an Office hearing representative reversed the May 15, 2001 decision and accepted that appellant sustained an employment-related neck sprain and traumatic left shoulder bursitis due to the accepted November 15, 2000 incident. By letter dated April 4, 2002, the Office informed appellant that the conditions of cervical sprain/strain and left disorders of the bursae and tendons in the shoulder regions were accepted as employment related.

On December 21, 2001 appellant was removed from her job due to misconduct. On June 5, 2002 she filed a Form CA-7 claim for compensation for the period December 22, 2001 to May 31, 2002 and received wage-loss compensation for the period December 22, 2001 through January 30, 2002. On November 4, 2002 appellant filed a Form CA-7 claim for compensation for the period October 1 through December 31, 2002. In support of her claim, she submitted treatment notes dated from February 21 to December 16, 2002 from Dr. Sanila Rana who is Board-certified in internal medicine.[1] In a treatment note dated November 4, 2002, the physician noted complaints of shoulder pain and left pain with findings on examination of tense muscles of the left upper trapezius. She diagnosed cervical strain, anxiety and depression, elevated cholesterol and allergies. In a December 6, 2002 treatment note, Dr. Rana advised that appellant was doing well on medication and was in for a cholesterol check.

By letter dated November 19, 2002, the employing establishment controverted the claim. In letters dated November 29 and December 13, 2002, the Office informed appellant of the evidence needed to support her claim for wage-loss compensation and submit to medical evidence with rationale explaining why she could not perform her employment duties.

By decision dated January 22, 2003, the Office found that appellant was not entitled to wage-loss compensation for the period October 1 to December 31, 2002 on the grounds that the medical evidence failed to establish that she was disabled from work for the period claimed.[2]

[1] Dr. Rana submitted an attending physician's report dated April 26, 2002 in which she noted that computerized tomography of the cervical spine was negative and that physical examination demonstrated tightness and tenderness of the left upper trapezius and anterior shoulder especially with flexion and extension. The physician diagnosed left cervical strain and bursitis of the left shoulder and checked the "yes" box indicating that these conditions were employment related, stating that they were secondary to shotgun training at the shooting range. She further advised that appellant was totally disabled from December 22, 2001 to May 31, 2002. In treatment notes dated April 19, June 19 and July 31, 2002, Dr. Rana noted appellant's complaints of left neck pain and diagnosed cervical strain.

[2] The record also contains a May 29, 2003 decision in which the Office denied appellant's claim that she was entitled to compensation at the three-quarter augmented rate. Following her timely request, a hearing regarding this claim was held on February 6, 2004. The record before the Board does not contain a final decision regarding this issue. Therefore, it is in an interlocutory posture and is not before the Board on appeal. *See* 20 C.F.R. § 501.2(c).

On August 12, 2003 appellant requested reconsideration and submitted a Form CA-7, claim for compensation, for the period April 24 through December 31, 2003.

Appellant also submitted additional medical evidence, including an April 24, 2003 treatment note in which Dr. Richard Francis, Board-certified in neurology, noted the history that she developed pain in the left proximal shoulder and neck in November 2000 while firing at the range. He reported that her pain had continued, radiating down the forearm with no numbness, tingling, paresthesias or weakness but with increased pain on lifting the shoulder above her head. On physical examination, Dr. Francis noted a normal range of motion of the cervical spine and of both shoulders but with pain at the extremes of internal and external rotation on the left and tenderness over the acromioclavicular joint with a positive impingement sign on the left. He stated that cervical spine x-rays were normal and recommended orthopedic evaluation of the shoulder. In an attached report also dated April 24, 2003, Dr. Francis opined that appellant's acromioclavicular joint pain "was triggered" by the November 2000 work injury.

In a June 12, 2003 report, Dr. Stuart noted that appellant had been injured "several years ago." On examination he noted findings of tenderness in the coracoacromial area with full range of motion and positive impingement tests with pain on forcible elevation. He recommended a magnetic resonance imaging (MRI) scan. An MRI scan of the left shoulder dated June 19, 2003 was read by Dr. Jeffrey J. Zatorski, Board-certified in diagnostic radiology, as demonstrating suspicion of at least a partial tear involving the bursal surface of the anterior aspect of the supraspinatus tendon, a small amount of fluid present in the subacromial/subdeltoid bursa which could be secondary to a small full-thickness rotator cuff tear or represent bursitis and/or tendinitis and a Type II acromion with mild anterior tilting which could cause impingement syndrome. In a June 30, 2003 report, Dr. Stuart noted the MRI scan findings and discussed treatment options with appellant. By letter dated July 17, 2003, the Office authorized left shoulder arthroscopic surgery.[3] In an operative report dated August 13, 2003, Dr. Stuart provided postoperative diagnoses of torn left rotator cuff, superior labrum anterior-posterior lesion anteriorly, shoulder instability and impingement syndrome.

In an attending physician's report dated September 30, 2003, Dr. Francis diagnosed left acromioclavicular pain and checked the "yes" box indicating that the condition was employment related, stating "rep. [sic] of firing several hours can cause this pain and damage." He advised that appellant was totally disabled from April 24 to August 12, 2003. Dr. Stuart provided an attending physician's report dated October 29, 2003 in which he diagnosed complete rupture of the rotator cuff and checked "no" indicating that the condition was not employment related. He advised that appellant could resume regular duty on November 15, 2003.

On October 31, 2003 appellant was placed on the periodic roll, effective April 24, 2003.

In a decision dated January 7, 2004, the Office denied modification of the January 22, 2003 decision, finding that the medical evidence failed to address why she was disabled from work for the period October 1 through December 31, 2002.

[3] It is, however, unclear from the record whether the Office accepted that the left rotator cuff tear was accepted as employment related.

LEGAL PRECEDENT

Under the Federal Employees' Compensation Act[4] the term "disability" is defined as incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.[5] 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,[6] and whether a particular injury causes an employee disability for employment is a medical issue which must be resolved by competent medical evidence.[7]

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence. 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.[8]

ANALYSIS

The Office accepted that on November 15, 2000 appellant sustained an employment-related cervical sprain/strain and disorders of the bursae and tendons in the left shoulder region when she was injured while repetitively shooting a gun. The Board finds that appellant has failed to establish disability for work for the period October 1 through December 31, 2002. The Office advised her of the nature of the medical evidence required to establish her claim for compensation, which was to include medical evidence with rationale explaining why she was unable to work for the claimed periods due to the accepted work-related conditions. The medical evidence submitted, however, is insufficient to establish disability for the claimed period caused or aggravated by the accepted employment injuries.

The medical evidence most contemporaneous to the claimed period of disability includes treatment notes dated November 4 and December 6, 2002 in which Dr. Rana noted complaints of left neck and shoulder pain and findings on examination of tense muscles in the trapezius region. Dr. Rana, however, did not address whether appellant was disabled for work for the period October 1 through December 31, 2002 causally related to the November 15, 2000 employment

[4] 5 U.S.C. §§ 8101-8193.

[5] *See Prince E. Wallace*, 52 ECAB 357 (2001).

[6] *Cheryl L. Decavitch*, 50 ECAB 397 (1999); *Maxine J. Sanders*, 46 ECAB 835 (1995).

[7] *Donald E. Ewals*, 51 ECAB 428 (2000).

[8] *Claudio Vazquez*, 52 ECAB 496 (2001); *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

injuries. To be of probative value, the medical evidence must contain an opinion, based on a complete factual and medical background and supported by sound medical reasoning, on disability causally related to employment.[9] Dr. Rana did not provide such an opinion.

Similarly, the additional medical reports submitted are insufficient to establish that appellant was disabled from October 1 through December 31, 2002. None of the reports discuss the claimed period of disability. While Dr. Francis submitted an attending physician's report dated September 30, 2003 in which he advised that appellant was totally disabled, he stated that this was for the period April 24 through August 12, 2003. Dr. Stuart, in an attending physician's report dated October 29, 2003, advised that appellant's left shoulder condition was not employment related and that she could return to regular duty on November 15, 2003. These reports therefore have no probative value as to the issue on appeal.

It is appellant's burden of proof to establish that she was totally disabled for the period October 1 through December 31, 2002 due to factors of federal employment.[10] The Board finds that the medical evidence of record is insufficient to meet appellant's burden in the case at hand.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she was entitled to wage-loss compensation for the period October 1 through December 31, 2002.

[9] *Claudio Vazquez, supra* note 8.

[10] *Cheryl L. Decavitch, supra* note 6.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 7, 2004 be affirmed.

Issued: July 16, 2004
Washington, DC

Alec J. Koromilas
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member