

**United States Department of Labor
Employees' Compensation Appeals Board**

CASSANDRA D. STANLEY, Appellant)

and)

DEPARTMENT OF DEFENSE, DEFENSE)
COMMISSARY AGENCY SOUTHWEST)
REGION, KANOEHE BAY COMMISSARY,)
Kanaoeha Bay, HI, Employer)

**Docket No. 05-951
Issued: August 17, 2005**

Appearances:
Cassandra D. Stanley, *pro se*
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 17, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated January 24, 2005. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained disability beginning September 14, 2003 due to her January 4, 2003 employment injury.

FACTUAL HISTORY

On January 4, 2003 appellant, then a 34-year-old store worker, injured her right arm when she was lifting potatoes. The Office accepted that she sustained a right shoulder strain. Appellant stopped work on January 5, 2003 and returned to light-duty work on January 10, 2003.

She continued to work until September 14, 2003 when her husband was relocated to North Carolina.

Appellant sought treatment from Dr. Geoffrey Keenan, a Board-certified family practitioner, on January 5, 2003. He noted that appellant was treated for a right shoulder injury which occurred at work when she was lifting. He diagnosed probable labral tear of the right shoulder and recommended a sling for four days. Appellant came under the treatment of Dr. Robert E. Atkinson, a Board-certified orthopedic surgeon, who noted treating appellant on June 19 and July 10, 2003 for a right shoulder injury sustained at work while lifting potatoes. He noted that the etiology of appellant's pain was unclear and advised that she could return to work light duty subject to various lifting restrictions. Dr. Atkinson's report dated August 21, 2003, advised that appellant continued to complain of right shoulder and arm pain and diagnosed multilevel degenerative disc disease, and probable rotator cuff tendinitis of the right shoulder, mild to moderate in degree. He advised that appellant was transferring to North Carolina and could continue to work modified duty subject to a lifting restriction of 15 pounds. Dr. Atkinson indicated on September 15, 2003 that appellant's shoulder pain improved and that physical examination revealed forward elevation of 160 degrees and abduction of 160 degrees. He noted that the magnetic resonance imaging (MRI) scan of the shoulder dated March 10, 2003 was consistent with supraspinatus tendinosis and an intrasubstance tear of the supraspinatus tendon with chronic tendinosis. Dr. Atkinson noted that appellant should continue with treatment in North Carolina and restricted her to lifting 25 pounds. In a September 15, 2003 attending physician's report, Dr. Atkinson noted a history of appellant's injury and diagnosed multilevel cervical disc disease with bulging cervical disc and a right small suprapinatus tendon tear. He noted with a check mark "yes" that appellant's condition was caused or aggravated by her employment duties. Dr. Atkinson indicated that appellant was partially disabled from June 19 to August 21, 2003 and could work light duty lifting no more than 25 pounds.

Appellant submitted transfer papers dated October 28, 2003 which revealed that her husband was reassigned to Camp Lejuene, North Carolina, effective November 10, 2003.

Appellant came under the treatment of Dr. Noel B. Rogers, a Board-certified orthopedic surgeon, who, on November 5, 2003, noted a history of injury and advised that appellant experienced pain with lifting. She was tender over the biceps tendon but range of motion was described as reasonably good. Dr. Rogers diagnosed tendinopathy of the rotator cuff on the right and advised that appellant could work with restrictions of no lifting over 15 pounds and no continuous overhead lifting or reaching.

Dr. Roger's reports of December 9, 2003 to January 16, 2004 diagnosed tendinopathy of the right rotator cuff. He noted that appellant was working light duty at the commissary when she left Hawaii and had not worked since. Dr. Rogers advised that appellant could work with restrictions on lifting over 5 pounds and no reaching over head. He noted in reports dated February 27 and April 27, 2004 that appellant complained of numbness in her right hand, thumb and index fingers and opined that this could be an unrelated carpal tunnel condition. Dr. Rogers noted that appellant was seen by a neurologist and an orthopedic surgeon in consultation and "neither of the doctors found a great deal." He stated that he "had no explanation for her as to what is causing her problem." Dr. Rogers noted on a work capacity evaluation that appellant was able to return to work full time with restrictions of no overhead reaching, pushing, pulling

and lifting of one to two hours per day, up to five pounds per day and no climbing. On June 16, 2004 Dr. Rogers diagnosed tendinopathy of the right rotator cuff and possible suprascapular bursitis on the right and confirmed her lifting restrictions.

Dr. Spero G. Karas, a Board-certified orthopedic surgeon, noted seeing appellant in consultation on February 25, 2004. He diagnosed right shoulder pain and disability secondary to rotator cuff tendinosis. Appellant was also seen in consultation with Dr. George V. Huffmon, III, a Board-certified neurologist, on April 8, 2004, who diagnosed mild cervical disc bulge. He noted that appellant's pain was originating from her shoulder; however, he could not offer an opinion as to the cause of her discomfort and could not provide any work restrictions.

On June 14, 2004 appellant filed a Form CA-7, claim for wage-loss compensation for the period September 2003 to March 2004. The employing establishment noted on the CA-7 form that, after appellant's injury of January 4, 2003, she worked full-time light duty until her husband was transferred to North Carolina.

By letter dated August 26, 2004, the Office requested additional factual and medical evidence from appellant, stating that the information submitted was insufficient to establish that she was employed by the employing establishment during the period set forth in the CA-7 form or that she missed time from work due to medical appointments.

In an electronic mail dated August 25, 2004, Alan T. Miyahira, the employing establishment store manager, noted that prior to appellant relocating she was working full-time duty with limitations. Mr. Miyahira noted that appellant was no longer working for the employing establishment due to her husband's transfer and not because her light-duty restrictions could not be accommodated.

Appellant submitted a notification of personnel action which indicated that her extension of leave without pay effective December 19, 2003 was approved on January 13, 2004. Also submitted was a SF-50 form, employee resignation and retirement, which noted that appellant requested leave without pay commencing September 14, 2003. Appellant also submitted an MRI scan of the spine which revealed no abnormalities. Additional medical reports from Dr. Rogers dated March 26 to November 22, 2004, noted appellant's diagnoses and work restrictions.

In a decision dated January 24, 2005, the Office denied appellant's claim for compensation on the grounds that the medical evidence of record did not establish that she was totally disabled for the period claimed.

LEGAL PRECEDENT

A claimant has the burden of proving by a preponderance of the evidence, that he or she is disabled for work as a result of an accepted employment injury and submit medical evidence for each period of disability claimed.¹ Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues.² The issue of

¹ See *Fereidoon Kharabi*, 52 ECAB 291 (2001).

² *Id.*

whether a particular injury causes disability for work must be resolved by competent medical evidence.³

ANALYSIS

Appellant has not submitted sufficient medical evidence to support that she was disabled for work beginning September 14, 2003 as a result of an accepted employment injury.

Appellant submitted numerous reports from Dr. Atkinson indicating that she was being treated for right shoulder problems sustained in the work-related accident of January 4, 2003. However, none of Dr. Atkinson's reports contemporaneous with the period of claimed disability noted that appellant was totally disabled for work due to residuals of the employment injury. He noted that she was not prevented from performing her light-duty position. Dr. Atkinson indicated on September 15, 2003 that appellant's shoulder pain improved and increased her lifting restriction from 15 pounds to 25 pounds. Additionally, he noted that appellant was relocating to North Carolina and advised that she could continue to work her modified duty. Dr. Atkinson did not find that appellant was totally disabled as to September 14, 2003 due to her employment injury. Similarly, Dr. Rogers did not provide an opinion that appellant was totally disabled due to residuals of her employment injury. Rather, he found that appellant could work within specified physical restrictions. Medical reports from the other physicians do not address any total disability beginning September 14, 2003 causally related to the accepted employment injury.

Moreover, the evidence does not establish that the employing establishment removed appellant's light duty or that her light-duty requirements changed. The record establishes that appellant worked at light duty until she left her light-duty job in Hawaii. The light-duty position would have remained available had she not to relocated. The light-duty position performed by appellant was in conformance with the medical restrictions set forth by Dr. Atkinson. The record does not establish that she was required to perform duties which exceeded her medical restrictions. Appellant left her light-duty position with the employing establishment based on her husband's job transfer to North Carolina. Mr. Miyahira noted that, prior to relocating, appellant was working full-time duty with limitations and that light duty would have remained available to her had she chosen not to relocate. The evidence does not establish that her disability commencing September 14, 2003 was due to residuals of her accepted injury.

CONCLUSION

Appellant has not established that her disability beginning September 14, 2003 is causally related to her January 4, 2003 employment injury.

³ See *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

ORDER

IT IS HEREBY ORDERED THAT the January 24, 2005 decision of the Office of Worker' Compensation Programs is affirmed.

Issued: August 17, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board