

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

STEPHEN J. VESCELUS, Appellant)

and)

**U.S. POSTAL SERVICE, POST OFFICE,
Carol Stream, IL, Employer**)

**Docket No. 05-183
Issued: May 19, 2005**

Appearances:
Stephen J. Vescelus, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On October 25, 2004 appellant filed a timely appeal of a decision of the Office of Workers' Compensation Programs' September 14, 2004 decision which denied modification of an August 8, 2003 decision, denying his request for disability from 1995. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction.

ISSUE

The issue is whether appellant has met his burden of proof in establishing that he was disabled from 1995 as a result of his employment-related right shoulder strain and right shoulder tendinitis.¹

FACTUAL HISTORY

On October 26, 1993 appellant, then a 48-year-old custodial laborer, filed a traumatic injury claim alleging that he injured his right shoulder while in the performance of duty on

¹ The Board also notes that the record contains a September 9, 2004 decision denying appellant's reconsideration request for an increased schedule award. However, he did not appeal this decision and it is not an issue before the Board.

July 20, 1993.² He did not stop work; but continued working with physical restrictions.³ Appellant resigned on October 25, 1994. On September 27, 1995 the Office accepted the claim for right shoulder strain.⁴

Appellant came under the care of Dr. Jeffrey Garske, a Board-certified orthopedic surgeon who, in an October 15, 1999 report, noted his history of injury and opined that appellant had a snapping scapula, possibly secondary to osteochondroma and advanced multiple level degenerative cervical disc disease and osteoarthritis. He indicated that appellant was unable to do repetitive work and no overhead or heavy lifting.

In a December 17, 1999 report, Dr. Garske repeated his previous findings, including that appellant had limited ability to do overhead pushing, pulling and lifting and that he could only perform light-duty work.

On January 27, 2001 appellant submitted a CA-7 claim requesting wage-loss compensation for disability for the period 1995 to the present. The employing establishment stated that he stopped work on October 25, 1994.

By decision dated December 7, 2001, the Office denied the claim for compensation as the medical evidence failed to show that appellant was disabled for work commencing in 1995, as a result of the accepted work injury of July 20, 1993.

By letter dated December 27, 2001, appellant's representative requested a hearing, which was held April 24, 2002. Counsel submitted a copy of appellant's disability application, a Social Security Administration (SSA) decision, duty status reports, medical treatment notes, hospital records, x-ray reports, diagnostic, clinical test results, a copy of the employing establishment's limited-duty job offer and medical reports from July 1993 to February 2001.⁵

By decision dated August 9, 2002, the Office hearing representative affirmed the Office's December 7, 2001 decision, finding that the medical evidence failed to establish total disability

² This case has previously been on appeal before the Board regarding a separate issue. Docket No. 04-262 (issued May 21, 2004). In a May 21, 2004 decision, the Board vacated an August 8, 2003 decision of the Office, finding that the Office improperly considered appellant's May 31, 2003 request for an increased schedule award as an untimely request for reconsideration. The case was remanded for the Office to consider his request for an increased schedule award.

³ The record reflects that several claim forms were filed for traumatic injury, occupational disease and recurrence of disability. The Office developed the claim for the July 20, 1993 traumatic injury.

⁴ The record reflects that appellant returned to work after the work injury and continued to work his full duties. He alleged that the employing establishment made no effort to reduce or restrict his activities and he resigned on October 25, 1994. Appellant's claim was eventually closed and by letter dated June 25, 1999, he requested that his claim be reopened.

⁵ At the hearing, appellant's attorney noted that the SSA determined that he was totally disabled as a result of the work injury and awarded disability benefits. Appellant indicated that he left work in October 1994 because he felt that he was passed over for a promotion due to his injury.

during the period claimed. The Office hearing representative noted, however, that the Office had denied authorization for an electromyogram (EMG) evaluation and ordered that it be authorized to determine the extent of appellant's July 20, 1993 injury.

In a December 3, 2002 report, Dr. Dominic Cardelli, a Board-certified neurologist, concluded that appellant had "moderate right median neuropathy at the wrist as in carpal tunnel syndrome. In a December 5, 2002 report, Dr. R. Wynn Kearney, a Board-certified orthopedic surgeon, diagnosed carpal tunnel syndrome of the right wrist and opined that the persistent right shoulder symptoms were possibly related to the rotator cuff injury. He requested a magnetic resonance imaging (MRI) scan. In a report of the same date, Dr. Kearney noted that appellant had been unable to work since 1995.⁶

A January 28, 2003 MRI scan read by Dr. Sarah Clauss, a Board-certified diagnostic radiologist, revealed type 2 acromion with inferior spurring at the acromioclavicular (AC) joint and inferolateral acromion, tendinosis/tendinitis of supraspinatus. She also reported tendinitis of bicipital tendon, possibly medially subluxed at the superior aspect of the humerus and a possible partial tear at the anterior bicipital labral complex, a tear at the posterior aspect of the superior glenoid labrum and a possible tear at the anterior glenoid labrum as well. Dr. Clauss noted an impression of a subchondral cyst formation at the anterior superior glenoid labrum, proximal humerus and AC joint along with mild glenohumeral joint effusion and subacromial/subdeltoid bursitis.

In a report dated February 4, 2003, Dr. Kearney reviewed the MRI scan results and recommended subacromial injection with cortisone, which appellant declined. He noted that an arthroscopic procedure of the right shoulder was also discussed with him. In a February 13, 2003 chart note, Dr. Kearney opined that he "could only recount the history that has been provided to me, which is plausible and reasonable."

In a March 27, 2003 report, Dr. Kearney opined that appellant's carpal tunnel syndrome was not related to his shoulder injury and that the shoulder symptoms and neck complaints were not related to neck arthritis as they were related to specific findings revealed by the MRI scan.

By letter dated May 31, 2003, appellant requested reconsideration of the August 9, 2002 decision.

In a June 19, 2003 report, Dr. Kearney indicated that the tingling paresthesias of appellant's right hand had not subsided. He noted changes in the rotator cuff, but no specific tearing, although the glenoid labrum had some changes. Dr. Kearney also submitted prior reports that appear to indicate that appellant was not working as he was retired.

⁶ In a December 20, 2002 report, Dr. Jeffrey Williamson-Link, Board-certified in occupational medicine and an employing establishment physician who had treated appellant in the early 1990's, noted that he had moved and was no longer located near his clinic. He indicated that appellant was subsequently treating with Dr. Kearney. Dr. Williamson-Link requested authorization for an MRI scan.

On August 8, 2003 the Office expanded appellant's claim to include right shoulder tendinitis.

By decision dated August 8, 2003, the Office denied modification of the August 8, 2002 decision denying disability from 1995. The Office found that there was no rationalized medical evidence in support of appellant's contention that his disability from 1995 was causally related to the accepted work injuries.

By letter dated October 2, 2003, appellant requested reconsideration of the August 8, 2003 decision and submitted additional medical evidence. In a September 9, 2003 report, Dr. Kearney noted that he did not have a tear of the rotator cuff, but did have tendinitis and significant abnormalities as revealed by the MRI scan. He advised that injection treatment and arthroscopy were options that could alleviate some symptoms. Dr. Kearney noted that appellant's positive EMG would require wrist surgery for moderate right median neuropathy and recommended carpal tunnel surgery and arthroscopic surgery of the shoulder. He believed that appellant had a work-related injury to his shoulder and right upper extremity 10 years prior and that he believed that he was "unable to perform maintenance and custodial duties since that time." Dr. Kearney related that appellant felt that he "was unable to perform his former duties in building maintenance and custodial duties." Regarding his work abilities, Dr. Kearney explained that there was a difference in opinion between what appellant felt he could do and what he was able to do according to the physician's own observations. He opined that appellant could not engage in multiple repetitive activities, especially at or above shoulder level or in prolonged grasping and power gripping activities.

By decision dated September 14, 2004, the Office denied modification of the August 8, 2003 decision.

LEGAL PRECEDENT

Under the Federal Employees' Compensation Act⁷, 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.⁸ 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.⁹

⁷ 5 U.S.C. §§ 8101-8193.

⁸ Cheryl L. Decavitch, 50 ECAB 397 (1999).

⁹ Fereidoon Kharabi, 52 ECAB 291 (2001).

Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work.¹⁰ The Board has stated that, when a physician's statements regarding an employee's ability to work consists only of a repetition of the employee's complaints that he or she hurt too much to work, without objective signs of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.¹¹ The Board has held that a medical opinion not fortified by medical rationale is of little probative value.¹²

ANALYSIS

In support of his claim, appellant provided several reports from Dr. Garske, a treating orthopedic surgeon. On October 15 and December 17, 1999 he advised that appellant was unable to do repetitive work or heavy lifting but that he could do light duty. Dr. Garske did not provide any indication that appellant was disabled or that his employment-related condition had deteriorated such that he could not work. These reports do not address appellant's claim of totally disability commencing 1995 and do not support his claim that he was disabled such that he could not perform his duties after he resigned from work on October 25, 1994.

While appellant submitted several diagnostic reports from Dr. Cardelli and Dr. Clauss, these reports did not contain any discussion of whether he was disabled for the period commencing 1995 to the present or the issue of, whether the disability was causally related to his accepted employment injuries. The Board has long held that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹³ These reports are not relevant as they did not address the issue of this case.

Appellant provided numerous reports from Dr. Kearney. In a December 5, 2002 report, he diagnosed carpal tunnel syndrome. However, this condition was not accepted by the Office as employment related. In a report also dated December 5, 2002, Dr. Kearney opined that appellant was unable to work since 1995, however, he did not provide a reason to explain why he concluded that appellant was unable to work.¹⁴ In subsequent reports, he discussed his symptoms and possible treatment options and opined that he did not believe the carpal tunnel condition was related to the shoulder injury. However, Dr. Kearney did not discuss the issue of disability commencing in 1995 or provide an opinion on causal relationship.¹⁵ On September 9, 2003 he related that appellant believed that he was "unable to perform maintenance and custodial duties." The belief of a claimant that a condition was caused or aggravated by the employment is

¹⁰ See *Dean E. Pierce*, 40 ECAB 1249 (1989); *Paul D. Weiss*, 36 ECAB 720 (1985).

¹¹ *John L. Clark*, 32 ECAB 1618 (1981).

¹² See *George Randolph Taylor*, 6 ECAB 986, 988 (1954).

¹³ *Michael Smith*, 50 ECAB 313 (1991).

¹⁴ See *id.* See also *Linda I. Sprague*, 48 ECAB 386 (1997) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

¹⁵ *Id.*

not sufficient to establish causal relation.¹⁶ Moreover, in addressing appellant's abilities, Dr. Kearney explained that there was a difference in opinion between what appellant felt that he could do and what the physician believed he was able to do as determined by his observations of him. He explained that appellant could not; engage in multiple repetitive activities, especially at or above shoulder level or in prolonged grasping and power gripping activities. However, he did not find that appellant was disabled from performing his duties, from 1995 to the present due to the affects of his employment injury. Therefore, these reports are not sufficient to support appellant's claim that he was disabled from 1995 due to his employment injury.

Although appellant alleged that his disability commencing from 1995 to the present was due to his accepted employment injury, the medical evidence of record does not establish that he was totally disabled at any time following his retirement on October 25, 1994.¹⁷ The Board finds that appellant has failed to submit rationalized medical evidence establishing that he had disability causally related to his accepted employment injury. Thus, he has not met his burden of proof.

CONCLUSION

The Board finds that appellant failed to establish that he was disabled for the period commencing 1995 to the present as a result of his employment-related right shoulder strain and right shoulder tendinitis.

¹⁶ *Robert A. Boyle*, 54 ECAB ____ (Docket No. 02-2177, issued January 27, 2003).

¹⁷ Appellant has also supported his position by noting that he was found disabled by the SSA. However, the Board has held that a finding of disability under another federal statute does not establish disability under the Act. *John E. Cannon*, 55 ECAB ____ (Docket No. 03-347, issued June 24, 2004).

ORDER

IT IS HEREBY ORDERED THAT the September 14, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 19, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member