

August 2003 and returned to light duty on August 28, 2003. Appellant was again off work from September 15 to December 5, 2003.

On December 3, 2003 appellant filed a claim (Form CA-7) for total disability compensation for the period September 15 to December 2, 2003. In support of his claim, he submitted reports from Dr. Donald A. Schmidt, an attending Board-certified orthopedic surgeon. In a July 17, 2003 note, he provided a history of injury and obtained x-rays showing arthritic changes in the right acromioclavicular joint. Dr. Schmidt diagnosed acromioclavicular arthritis of the right shoulder with impingement, due to repetitive motion at work and carrying a mail satchel. He recommended anti-inflammatory medication and carrying the mail satchel on the left shoulder. In an August 21, 2003 note, Dr. Schmidt noted work restrictions and that he administered a cortisone injection. In an August 28, 2003 report, he opined that the acromioclavicular arthritis was not occupationally related. Dr. Schmidt provided restrictions against lifting more than 30 pounds, pulling, pushing and reaching above the shoulder. He renewed these restrictions on September 26, 2003.

In a September 22, 2003 report, Dr. Schmidt observed “a more superiorly prominent right distal clavicle” and a positive impingement test. He explained that “repetitive motion, lifting and overhead reaching” at work “contribut[ed] to his impingement problems by keeping his rotator cuff tendons inflamed and irritated. The subacromial spurring ma[d]e this worse by narrowing the space and ‘pinching’ the inflamed rotator cuff tendons.” Although appellant carried his mail satchel on his left shoulder beginning in mid-July 2003, his right shoulder symptoms persisted through September 2003. Dr. Schmidt recommended medication, injections and physical therapy.¹

In December 2, 2003 reports, Dr. Schmidt noted that physical therapy improved appellant’s range of motion although there was still pain over the distal clavicle. He held appellant off work and renewed previous work restrictions.

In a December 4, 2003 form report, Dr. Schmidt found appellant totally disabled for work due to right shoulder impingement syndrome and acromioclavicular arthritis from an illegible date in 2003² to December 2, 2003. He released appellant to light duty on December 4, 2003. Appellant returned to work in a light-duty capacity on December 5, 2003.

In a December 11, 2003 letter, the Office advised appellant of the additional evidence needed to support his claim for total disability. The Office requested that he submit contemporaneous medical documentation for the claimed period of disability. The Office noted that the medical record indicated that appellant required duty restrictions but not that he was totally disabled for the claimed period. The Office afforded appellant 30 days in which to submit additional evidence.

¹ Appellant participated in physical therapy in September and October 2003. Appellant received medical management services from an Office field nurse from November 2003 to April 2004.

² The copy of the December 4, 2003 form report of record has a dark smudge over the first date, obliterating the month and largely obscuring the date, which may contain the numeral “3.” The year notation “03” is clearly visible.

A December 11, 2003 magnetic resonance imaging (MRI) scan of the right shoulder was interpreted by Dr. Ronald J. Ruff, a Board-certified radiologist, demonstrating no definitive full thickness tears of the rotator cuff. Dr. Ruff diagnosed “[s]uspect very small focal partial tear of the supraspinatus, extending to the bursal surface at the myotendinous junction, underlying the critical zone,” “[a]ssociated minimal joint effusion and inferolateral down sloping acromion,” and “[m]oderate acromioclavicular joint arthritic changes” with “bone spurring, cyst formation, and some edema in the distal clavicle and anterior acromion.”

In a December 16, 2003 report, Dr. Schmidt opined that the December 11, 2003 MRI scan “showed a focal partial tear of the supraspinatus extending to the bursal surface at the myotendinous junction a Type II acromion, some moderate AC [acromioclavicular] joint changes, and a tear of the superior third of the anterior labrum.” Dr. Schmidt opined that appellant required arthroscopic surgery.

In a December 22, 2003 letter, appellant advised the Office that, although he attempted part-time light-duty work on August 29 and 30, 2003 and from December 3 to 15, 2003, he stopped work as his assigned duties aggravated his right shoulder.

Dr. Schmidt performed arthroscopic surgery of appellant’s right shoulder on December 30, 2003, including chondroplasty of the glenoid labrum and subacromial decompression. He provided postoperative diagnoses of a torn glenoid labrum, chondromalacia of the glenoid and a Type II down-sloping or lateral acromion. The Office authorized this surgery.

By decision dated January 26, 2004, the Office denied appellant’s claim for compensation for total wage loss for the period September 15 to December 2, 2003 on the grounds that the medical evidence did not establish that he was totally disabled for that period. The Office found that Dr. Schmidt noted duty restrictions for this period but did not hold appellant off work or otherwise find him totally disabled for work.³

Effective April 24, 2004, appellant resigned his federal employment to pursue private sector employment that he believed would allow his right shoulder to recover. On April 26, 2004 he began work as a purchasing agent for a private sector company.

In a January 19, 2005 letter and form, appellant requested reconsideration. He also asserted that the rotator cuff tear documented on the December 11, 2003 MRI scan was related to unspecified work factors. He submitted copies of medical evidence previously of record.

By decision dated February 24, 2005, the Office denied modification of the January 26, 2004 decision. The Office found that appellant submitted insufficient evidence to establish that he sustained a rotator cuff tear of the right shoulder in the performance of duty. The Office stated that Dr. Ruff’s December 11, 2003 report was too speculative to meet appellant’s burden of proof as he diagnosed a “possible” rotator cuff tear.

³ Dr. Schmidt submitted progress notes and work restrictions through February 23, 2004. These notes do not address the claimed period of total disability or the causal relationship of the glenoid labrum tear to appellant’s federal employment.

LEGAL PRECEDENT -- ISSUE 1

A claimant seeking benefits under the Federal Employees' Compensation Act⁴ has the burden of establishing the essential elements of his claim, including that any specific condition for which he claims wage-loss compensation is causally related to the employment injury.⁵ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁶

Whether a particular injury causes an employee to be disabled for work and the duration of that disability, are medical issues that must be proved by a preponderance of the reliable, probative and substantial medical evidence.⁷

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained right shoulder impingement syndrome in the performance of duty on or before July 17, 2003. On December 3, 2003 appellant filed a claim for total disability for the period September 15 to December 2, 2003. The Office denied this claim by decisions dated January 26, 2004 and February 24, 2005, on the grounds that he submitted insufficient medical evidence to establish that he was totally disabled for work for the claimed period.

In support of his claim for total disability, appellant submitted reports from Dr. Schmidt who prescribed work restrictions from August 21, 2003 through February 23, 2004 related to the accepted right shoulder impingement syndrome. However, he found appellant totally disabled for work only on December 2, 2003. In a December 2, 2003 report, Dr. Schmidt held appellant off work that day due to prominence and discomfort at the right distal clavicle. In a December 4, 2003 report, he noted that he had found appellant totally disabled for work on December 2, 2003. The Board finds that Dr. Schmidt's December 2 and 4, 2003 reports are sufficient to establish that appellant was totally disabled for work on that day. The medical evidence from Dr. Schmidt does not establish total disability for work for other dates between September 15 and December 1, 2003. He did not provide medical rationale explaining how or why the accepted right shoulder impingement syndrome totally disabled appellant for work for any portion of that period. Therefore, appellant has failed to meet his burden of proof in establishing that he was totally disabled for work from September 15 to December 1, 2003.

LEGAL PRECEDENT -- ISSUE 2

In order to determine whether an employee sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered in

⁴ 5 U.S.C. § 8101 *et seq.*

⁵ *Tammy L. Medley*, 55 ECAB ____ (Docket No. 03-1861, issued December 19, 2003).

⁶ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁷ *Tammy L. Medley*, *supra* note 5; *Fereidoon Kharabi*, 52 ECAB 291 (2001).

conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.⁸ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁹ The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medial 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.¹⁰

ANALYSIS -- ISSUE 2

In its February 24, 2005 decision, the Office found that Dr. Ruff's report was too speculative to establish the existence of a rotator cuff tear as he diagnosed a suspected tear of the supraspinatus. The Board finds that Dr. Ruff's language is speculative and that his report is insufficient to meet appellant's burden of proof in establishing the presence of a rotator cuff tear.¹¹

The Board notes that Dr. Schmidt's December 20, 2003 surgical report found a torn glenoid labrum in the right rotator cuff, as he visualized and described this lesion during the procedure. Although appellant has a glenoid labrum tear, the Board finds that he submitted insufficient evidence to establish that this injury was caused by his federal employment. Dr. Schmidt did not provide any medical rationale explaining how the tear was related to repetitive work factors or the accepted impingement syndrome. Dr. Schmidt's mere observation and diagnosis of the glenoid labrum tear is insufficient to establish a causal connection to factors of appellant's federal employment.¹²

As appellant submitted insufficient rationalized medical evidence, he has not established that the diagnosed right glenoid labrum tear was related to factors of his federal employment.

CONCLUSION

The Board finds that appellant has not established that he was totally disabled for work from September 15 to December 1, 2003 as he submitted insufficient medical evidence demonstrating that he was totally disabled for work during that period. The Board finds that appellant was totally disabled for work on December 2, 2003 due to the accepted right shoulder impingement syndrome. The Board further finds that appellant has not established that he sustained a tear of the right glenoid labrum in the performance of duty as he submitted insufficient rationalized medical evidence to establish the claimed causal relationship.

⁸ *Gary J. Watling*, 52 ECAB 278 (2001).

⁹ *Deborah L. Beatty*, 54 ECAB ____ (Docket No. 02-2294, issued January 15, 2003).

¹⁰ *Solomon Polen*, 51 ECAB 341 (2000).

¹¹ *Kathy A. Kelley*, 55 ECAB ____ (Docket No. 03-1660, issued January 5, 2004).

¹² *Brenda L. DuBuque*, 55 ECAB ____ (Docket No. 03-2246, issued January 6, 2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 24, 2005 is affirmed as modified, to reflect appellant's entitlement to wage-loss compensation for December 2, 2003. In all other respects, the February 24, 2005 decision is affirmed.

Issued: September 13, 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