

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

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S.M., Appellant

and

U.S. POSTAL SERVICE, PROCESSING &  
DISTRIBUTION CENTER, Indianapolis, IN,  
Employer

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**Docket No. 06-308  
Issued: August 10, 2006**

*Appearances:*

*Maria F. Freed-Offutt*, for the appellant  
*Miram D. Ozur, Esq.*, for the Director

Oral Argument July 5, 2006

**DECISION AND ORDER**

Before:

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

**JURISDICTION**

On November 23, 2005 appellant, through her representative, filed a timely appeal from January 10 and August 31, 2005 merit decisions of the Office of Workers' Compensation Programs denying her claim for compensation for intermittent periods of disability from March 27, 2002 through July 20, 2003. 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 is whether appellant has established that she sustained intermittent periods of disability from March 27, 2002 through July 20, 2003 due to her accepted right shoulder employment injury.

**FACTUAL HISTORY**

On April 27, 2002 appellant, a 27-year-old mail handler, filed an occupational disease claim alleging that on April 11, 2002 she first realized her right shoulder tendinitis was due to

uncasing letter trays. On September 23, 2004 the Office accepted appellant's claim for right rotator cuff tendinitis.<sup>1</sup>

On December 2, 2004 the Office received appellant's claim for compensation (Form CA-7) for intermittent periods of disability from March 27, 2002 to July 20, 2003. An accompanying time analysis form reflected that she took 34.02 hours of leave without pay, 5.98 hours of sick leave and 24 hours of annual leave from March 29 to April 2, 2002; 28 hours of leave without pay, 12 hours of sick leave and 16 hours of annual leave from May 11 to 19, 2002; 56 hours of leave without pay from June 21 to 30, 2002; 44 hours of leave without pay and 12 hours of sick leave from October 4 to 14, 2002; 114.50 hours leave without pay, 5.50 hours sick leave and 48 hours of annual leave from January 27 to February 26, 2003; 4 hours of leave without pay and 4 hours of sick leave from October 10 to 11, 2003, 72 hours of leave without pay, 9 hours of sick leave and 39 hours of annual leave from March 18 to April 7, 2003 and 53.29 hours of leave without pay and 5.59 hours of sick leave from July 8 to 20, 2003, for a total of 405.81 hours of leave without pay for the period.

The medical evidence pertaining to this period includes various disability certificates and reports. In a May 10, 2002 disability certificate, Dr. Thomas E. Moran stated that appellant was totally "incapacitated and unable to work due to [Family and Medical Leave Act] (FMLA)" for the period May 10 to 20, 2002. In an August 27, 2002 disability certificate, he again indicated that she was currently incapacitated, but would be able to return to work on August 31, 2002. Dr. Moran stated, in a February 6, 2003 disability certificate, that appellant was incapacitated due to her FMLA condition beginning January 27, 2003 and could return to work on February 8, 2003. In a February 26, 2003 disability certificate, he opined that she was disabled due to shoulder pain beginning January 27, 2003 and could return to work on February 26, 2003. In the August 13, 2003 disability certificate, Dr. Moran opined that appellant was incapacitated since August 3, 2003 due to her "FMLA shoulder condition" and could return to work on August 16, 2003. In the April 7, 2003 disability certificate, he indicated that he saw her on March 28, 2003 and that appellant has been disabled from working for the period March 21 to April 7, 2003 "due to her FMLA condition." In an August 20, 2003 disability certificate, Dr. Moran opined that she "was incapacitated and will return to work on August 31, 2002."

In an August 27, 2002 health care provider form, Dr. Moran diagnosed shoulder pain which began in May 2002 and that she was currently incapacitated and would be so for three to five days. He diagnosed right shoulder pain in the April 8, 2002 and July 16, 2003 patient summary forms. The July 16, 2003 patient summary form contained a notation by appellant that she was off work from July 8 to 16, 2003.

In an August 11, 2003 attending physician's report (Form CA-20), Dr. Greg T. Hardin diagnosed right shoulder rotator cuff tendinitis and noted periods of partial disability for the period July 11 to December 31, 2003.

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<sup>1</sup> The Board notes that in accepting appellant's claim, the Office vacated a June 13, 2002 decision initially denying her claim for an occupational disease.

In an August 11, 2003 Form CA-20, Dr. Rokindo Quilaton, a Board-certified orthopedic surgeon, diagnosed cervical trapezius strain and noted that appellant related “missing six weeks of work because of the shoulder problem.”

In a letter dated December 8, 2004, the Office noted that it had received appellant’s CA-7 claim form for compensation for the period March 27, 2002 to July 20, 2003. The Office advised her that the medical evidence was insufficient to support total disability for the dates claimed, informed her of the factual and medical evidence needed to establish a recurrence claim and provided 30 days to submit such evidence.

By decision dated January 10, 2005, the Office denied appellant’s claim for intermittent wage-loss compensation for the period March 27, 2002 to July 20, 2003. It found the medical evidence of record did not establish that she was totally disabled for work.

On January 10, 2005 the Office received the January 7, 2005 report of Dr. Moran. He stated that appellant “has been incapacitated and unable to perform the duties of her job due to the severity of her injury.” Dr. Moran then provided a list of visits when he saw appellant in his office during the period March 29, 2002 to July 20, 2003. He stated that the visits on the dates mentioned “were due to severe pain caused by untreated tendinitis and caused the patient to be incapacitated.”

Appellant requested reconsideration and submitted reports dated April 11, 2002 and July 29, 2004 from Dr. Hardin. In an April 11, 2002 report, he noted her “symptoms tend to come and go” and diagnosed right shoulder rotator cuff tendinitis and multi-directional instability. In the July 29, 2004 report, Dr. Hardin attributed appellant’s right shoulder condition to her employment duties and noted that “all of her care visits from April 11, 2002 to that date have been” due to her employment-related condition.

By decision dated August 31, 2005, the Office denied modification of the denial of appellant’s intermittent wage-loss claim. It found that the medical evidence of record did not establish that she was totally disabled for work.

### **LEGAL PRECEDENT**

The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.<sup>2</sup>

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.<sup>3</sup> Findings on examination are generally needed to support a physician’s opinion that an employee is disabled for work. When a

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<sup>2</sup> 20 C.F.R. §10.5(f). *See e.g.*, *Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury but no loss of wage-earning capacity).

<sup>3</sup> *See Paul E. Thams*, 56 ECAB \_\_\_\_ (Docket No. 04-1019, issued April 26, 2005); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that she hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.<sup>4</sup>

In this case, appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed disability for 405.81 hours of leave without pay during the period March 27, 2002 to July 20, 2003 and her accepted right rotator cuff tendinitis.<sup>5</sup> The Board has held that the mere belief that a condition was caused or aggravated by employment factors or incidents is insufficient to establish a causal relationship between the two.<sup>6</sup> The Board will not require the Office to pay compensation for disability in the absence of medical evidence directly addressing the particular period of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.<sup>7</sup>

### ANALYSIS

The Office accepted appellant's claim for right rotator cuff tendinitis. She filed a claim for wage-loss compensation for intermittent periods from March 27, 2002 through July 20, 2003 noting annual leave, sick leave and leave without pay were utilized during the period. The Office advised appellant that to claim lost time from work she must file a CA-7 and support her disability for work with medical evidence. In order to establish disability for the periods claimed from March 27, 2002 through July 20, 2003 she must submit rationalized medical evidence demonstrating that she was disabled for work due to her employment injury.<sup>8</sup>

Appellant submitted various disability notes and reports by Dr. Moran, a treating physician, Dr. Hardin, a treating orthopedic surgeon, and Dr. Quilaton, a Board-certified orthopedic surgeon. None of the reports by these physicians contain any rationale explaining why she was disabled on the dates she claimed due to her accepted right rotator cuff tendinitis.

Dr. Moran opined that appellant was totally disabled or incapacitated in disability certificates dated May 10 and August 27, 2002, February 6 and 26, April 7, August 13 and 20, 2003. In disability certificates dated May 10, 2002, February 6, April 7 and August 13, 2003,

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<sup>4</sup> *Fereidoon Kharabi, supra* note 3.

<sup>5</sup> *Sandra D. Pruitt*, 57 ECAB \_\_\_\_ (Docket No. 05-739, issued October 12, 2005); *Alfredo Rodriguez*, 47 ECAB 437 (1996).

<sup>6</sup> *Alfredo Rodriguez, supra* note 5.

<sup>7</sup> *Fereidoon Kharabi, supra* note 3.

<sup>8</sup> *Donald E. Ewals*, 51 ECAB 428 (2000).

he indicated that her disability was due to the FMLA.<sup>9</sup> In a February 26, 2003 disability note, Dr. Moran opined that she was disabled due to shoulder pain beginning January 27, 2003 and could return to work on February 26, 2003. In a January 7, 2005 report, he indicated that appellant “has been incapacitated and unable to perform the duties of her job due to the severity of her injury.” Dr. Moran then provided a list of visits when he saw appellant in his office during the period March 29, 2002 to July 20, 2003. He stated that the visits on the dates mentioned “were due to severe pain caused by untreated tendinitis and caused the patient to be incapacitated.” Dr. Moran provided no findings on examination or an opinion explaining how appellant’s incapacity on the dates indicated was causally related to the accepted right rotator cuff tendinitis. He did not report any findings on physical examination of appellant. Dr. Moran merely reported periods that she was incapacitated with no explanation as to how the disability was due to her accepted right rotator cuff tendinitis. As he failed to list any findings on examination, provide a diagnosis or address causation, Dr. Moran’s opinion is insufficient to meet appellant’s burden of proof.<sup>10</sup>

In an August 11, 2003 attending physician’s report, (Form CA-20), Dr. Hardin diagnosed right shoulder rotator cuff tendinitis and noted periods of partial disability for the period July 11 to December 31, 2003. In an April 11, 2002 report, Dr. Hardin noted appellant’s “symptoms tend to come and go” and diagnosed right shoulder rotator cuff tendinitis and multi-directional instability. In the July 29, 2004 report, Dr. Hardin attributed her right shoulder condition to her employment duties and noted that “all of her care visits from April 11, 2002 to date have been” due to her employment-related condition. Dr. Quilaton, in an August 11, 2003 Form CA-20, diagnosed cervical trapezius strain and noted that appellant related “missing six weeks of work because of her shoulder problem.” Neither physician provided finding on physical examination of her or explained how her disability for the claimed dates were due to the accepted tendinitis condition. As noted, the Board does not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the period of disability for which disability is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.<sup>11</sup>

Appellant had the burden of proving by the preponderance of the reliable, probative and substantial evidence that she was disabled for work as a result of her employment injury. For the reasons stated above, the Board finds that she failed to sustain her burden of proof in establishing

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<sup>9</sup> Appellant contended that since her disability was approved under the FMLA the Office should approve her claim for wage-loss compensation. However, approval for disability under the FMLA is not relevant to the issue of whether she has established disability due to her accepted employment injury. In determining whether an employee is disabled under the Federal Employees’ Compensation Act, approval under the FMLA is not determinative of disability under the Federal Employees’ Compensation Act. Disability approved under the FMLA and claims brought under the Federal Employees’ Compensation Act have different evidentiary standards. Therefore, disability under one statute does not establish disability under the other statute. *See James Robinson, Jr.*, 53 ECAB 417 (2002); *Daniel Deparini*, 44 ECAB 657 (1993) (disability approved by the Department of Veterans Affairs did not establish disability under the Federal Employees’ Compensation Act).

<sup>10</sup> *See Allen C. Hundley*, 53 ECAB 551 (2002); *Fereidoon Kharabi*, *supra* note 3.

<sup>11</sup> *See Amelia S. Jefferson*, 57 ECAB \_\_\_\_ (Docket No. 04-568, issued October 26, 2005); *Fereidoon Kharabi*, *supra* note 3.

that she was totally disabled due to her accepted employment condition for intermittent periods from March 27, 2002 to July 20, 2003.

**CONCLUSION**

The Board finds that appellant has not established that she sustained intermittent periods of disability from March 27, 2002 through July 20, 2003 due to her accepted right shoulder employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated January 10 and August 31, 2005 are affirmed.

Issued: August 10, 2006  
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