United States Department of Labor
Employees' Compensation Appeals Board

P.T., Appellant	)	
and	)	**Docket No. 06-1857**
	)	**Issued: December 18, 2006**
DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE, COLONIAL NATIONAL HISTORICAL PARK, Yorktown, VA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 8, 2006 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decisions dated January 20 and June 1, 2006, denying his claim for compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has established that he is entitled to compensation for the period January 24 to February 26, 2003; and (2) whether appellant has established that he is entitled to total disability compensation on or after from February 27, 2003.

FACTUAL HISTORY

On January 28, 2003 appellant, then a 52-year-old tractor operator, filed an occupational disease claim alleging that he injured his cervical spine and left shoulder while chopping and shoveling ice in the performance of duty on January 24, 2003.

Appellant sought treatment from Dr. Vaughn H. Howard, a physician Board-certified in emergency medicine, on January 28, 2003. Dr. Howard listed appellant's history as injury to the left shoulder while shoveling ice. He diagnosed left shoulder strain and indicated that appellant could return to light duty on that date. Dr. Howard stated that appellant should wear a sling until cleared by occupational medicine. Dr. Roxanne Deitzler, an osteopath, examined appellant on January 31, 2003 and noted that he attributed his left shoulder condition to a tick bite as well as to a history of injury three weeks earlier while using a leaf blower. She found that appellant had a decreased range of motion of his shoulders and decreased grip strength with poor effort on the left. Dr. Deitzler indicated that appellant could perform light duty.

The Office accepted appellant's claim for left shoulder strain on March 6, 2003. Appellant did not return to work at the employing establishment. The employing establishment terminated appellant on February 27, 2003 for failure to indicate on his application that he had previously been removed from a federal job in the last five years.

Dr. Deitzler examined appellant on April 15, 2003, due to persistent left shoulder and neck pain which he attributed to a tick bite. Dr. Boyd W. Haynes, III, a Board-certified orthopedic surgeon, also examined appellant on April 15, 2003. He diagnosed left shoulder subacromial bursitis with acromioclavicular joint pain. Dr. Haynes noted appellant's history of injury as breaking up some ice on January 24, 2003 and that appellant had intermittent problems with the shoulder when using a leaf blower or backpack blower. He stated that appellant could perform light duty.

Appellant completed a claim for compensation on November 8, 2005 and requested wage-loss compensation from January 24, 2003 to the present. In a letter dated November 28, 2005, the Office requested medical documentation to support disability during the period claimed. The Office allowed appellant 30 days to respond.

Dr. Wayne Allgaier, a Board-certified family practitioner, completed a form report on December 8, 2005 and noted that appellant injured his shoulder at work on January 24, 2003. He diagnosed shoulder pain and indicated with a checkmark "yes" that appellant's condition was caused by his employment activity. Dr. Allgaier stated that appellant was totally disabled on January 24, 2003 and that he could perform light-duty work on December 8, 2005.

By decision dated January 20, 2006, the Office denied appellant's claim for compensation from January 24, 2003 to November 8, 2005, on the grounds that the evidence did not establish that his disability was due to his accepted employment injury. The Office stated that appellant received continuation of pay through February 27, 2003[1] and was terminated by the employing establishment on that date for cause.

[1] The record indicates that appellant did not receive continuation of pay.

Dr. Allgaier completed a narrative report on December 8, 2005 and provided a history of injury on January 24, 2003 while chopping ice. He noted that appellant failed to return to work as released on January 31, 2003 because appellant felt unable to work. Dr. Allgaier's findings on examination included limited range of motion of both shoulders more on the left with some slight discomfort on internal and external rotation. He stated: "It was noted that when he put his coat on he seemed to be moving his arms about without any significant discomfort." Dr. Allgaier diagnosed shoulder pain and stated that appellant was capable of performing light-duty work.

Appellant requested a review of the written record on February 18, 2006. He also attributed his left shoulder condition to pulling branches for six months with a heavy leaf blower on his back in the performance of duty. Appellant stated that his duties including using a weed whacker and working behind a tractor blowing leaves. In a statement dated January 28, 2003, appellant stated that he hurt his back using a backpack blower.

Dr. Allgaier completed a report on February 15, 2006 and noted that he first examined appellant in December 2005. He reviewed reports from Drs. Deitzler and Haynes and stated: "Based on these reports, there seems to be a causal relationship between his activity at work in January 2003 and his subsequent neck and shoulder pain." Dr. Allgaier stated that appellant continued to have pain in his shoulder and neck and was capable of working light duty.

By decision dated January 1, 2006, the hearing representative found that appellant had not provided sufficient medical evidence to support entitlement to compensation on and after January 24, 2003 due to his accepted employment injury. The hearing representative noted that all examining physicians found appellant capable of light-duty work. However, appellant did not return to the employing establishment prior to his termination for cause and was not entitled to compensation. The hearing representative found that Dr. Allgaier's reports were not sufficiently detailed and rationalized to meet appellant's burden of proof in establishing total disability due to his employment injury.

LEGAL PRECEDENT -- ISSUE 1

As used in the Federal Employees' Compensation Act,[2] the term disability is defined as the incapacity because of an injury in employment to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in a loss of wage-earning capacity.[3]

Appellant for each period of disability claimed, has the burden of proving by a preponderance of the reliable, probative and substantial evidence that he is disabled for work as a result of his employment injury. Whether a particular injury caused an employee to be disabled for employment and the duration of that disability are medical issues which must be provide by preponderance of the reliable probative and substantial medical evidence.[4]

[2] 5 U.S.C. §§ 8101-8193, § 8102.

[3] *Sean O'Connell*, 56 ECAB ___ (Docket No. 04-1746, issued December 20, 2004).

[4] *Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work. The Board has stated that, when a physician's statements regarding an employee's ability to work consist only of a repetition of the employee's complaints that he or she hurts 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.[5]

ANALYSIS -- ISSUE 1

Appellant stopped work on January 24, 2003 due to his accepted left shoulder strain. However, he has submitted sufficient medical evidence that he was totally disabled due to the accepted employment injury on or after January 24, 2003. Appellant sought treatment from Dr. Howard, a physician Board-certified in emergency medicine, on January 28, 2003. Dr. Howard indicated that appellant could return to light-duty work. Likewise Dr. Deitzler, an osteopath, who examined appellant on January 31, 2003 found that appellant was capable of light-duty work. The medical evidence contemporaneous to the time of injury does not establish appellant's total disability for work.

In regard to the issue of appellant's partial disability for work due to his accepted right shoulder strain, neither Dr. Howard nor Dr. Deitzler provided detailed physical findings in support of appellant's inability to perform his regular-duty work. Dr. Howard merely prescribed a sling. Dr. Deitzler noted loss of range of motion in both shoulders and commented on appellant's poor effort on grip strength testing. There is no detailed medical report with objective findings supporting appellant's partial disability for work from January 24 to February 26, 2003. He is not entitled to compensation benefits for this period.[6]

LEGAL PRECEDENT -- ISSUE 2

When an employee who is disabled from the job he held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that he can perform the limited-duty position, the employee has the burden of establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and to show that he cannot perform such limited-duty work. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty job requirements.[7]

A recurrence of disability is defined as the inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. This term also means an inability to work that takes place

[5] *Id.*

[6] The record is unclear as to whether appellant received continuation of pay from January 24 to February 26, 2003.

[7] *Joseph D. Duncan*, 54 ECAB 471, 472 (2003); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn or when the physical requirement of such an assignment are altered so that they exceed his or her established physical limitations.[8]

ANALYSIS -- ISSUE 2

In the instant case, the employing establishment terminated appellant for misconduct on February 27, 2003 unrelated to his work injury. The Board has held that, when a claimant stops work for reasons unrelated to his accepted employment injury, he has no disability within the meaning of the Act.[9] There is no evidence in the record suggesting that appellant was dismissed for reasons other than misconduct. Appellant did not submit any evidence not establish that his termination was in error or withdrawn. As the withdrawal of his position was premised on his misconduct, the loss of his position under these circumstances does not establish a recurrence of disability. Therefore, the Office properly determined that appellant was not entitled to compensation for total disability after February 27, 2003.

Moreover, the medical evidence from Dr. Allgaier is of diminished probative value. He first examined appellant on December 8, 2005, almost three years after the treatment obtained in January 2003. Dr. Allgaier did not provide any medical rationale to support his finding that appellant was totally disabled as of January 25, 2003. This opinion is not based on a review of the contemporaneous medical evidence.

CONCLUSION

The Board finds that appellant has not established that he is entitled to compensation beginning January 24, 2003 due to his accepted employment injury.

[8] 20 C.F.R. § 10.5(x).

[9] Federal (FECA) Procedural Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(1)(c) (May 1997); *see also John W. Normand*, 39 ECAB 1378 (1988); *Carolyn R. Gray*, (Docket No. 05-1700, issued June 20, 2006).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 1 and January 20, 2006 are hereby affirmed.

Issued: December 18, 2006
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board