United States Department of Labor
Employees' Compensation Appeals Board

C.C., Appellant **and** **U.S. POSTAL SERVICE, POST OFFICE, Miami, FL, Employer**	)	**Docket No. 06-1236** **Issued: November 27, 2006**

Appearances:
Appellant, 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 May 9, 2006 appellant filed a timely appeal from a March 30, 2006 merit decision of the Office of Workers' Compensation Programs denying his claim for compensation from March 10, 2003 to December 2, 2005. 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 he is entitled to compensation for total disability from March 10, 2003 to December 2, 2005 due to his November 5, 1999 employment injury.

FACTUAL HISTORY

On November 6, 1999 appellant, then a 39-year-old letter carrier, filed a claim for a traumatic injury to his right shoulder which occurred on November 5, 1999 when he lifted a tray to a ledge. The Office accepted his claim for a sprain of his shoulder and arm and a right rotator cuff tear.

On August 11, 2000 Dr. Richard L. Levitt, a Board-certified orthopedic surgeon, performed a right shoulder arthroscopy with a debridement and partial synovectomy of the undersurface of the rotator cuff tear, a resection of the distal clavicle and a subacromial decompression. The Office placed appellant on the periodic rolls effective August 12, 2000. He returned to full-time limited-duty employment on May 7, 2001.[1]

By decision dated June 4, 2002, the Office terminated appellant's compensation on the grounds that he had no further disability causally related to his accepted employment injury. It found that the opinion of Dr. Howard Kurzner, a Board-certified orthopedic surgeon and impartial medical specialist, represented the weight of the evidence and established that appellant had no further employment-related disability. The Office also found, in decisions dated June 4, 2002, that appellant was not entitled to compensation from October 11 to 22, 2001 and had not established that he sustained either a left shoulder or neck condition due to his employment injury.

In a decision dated November 5, 2002, a hearing representative set aside the June 4, 2002 decisions and remanded the case for further development. He found that Dr. Kurzner's opinion required clarification and instructed the Office to request a supplemental report addressing whether appellant's employment injury aggravated a preexisting condition.

By decision dated January 22, 2003, the Office terminated appellant's compensation effective January 21, 2003, after finding that Dr. Kurzner's supplemental report established that he had no further disability due to his employment injury. His claim remained open for medical treatment. In decisions dated January 22, 2003, the Office denied appellant's claim for compensation for disability from October 11 through 22, 2001 and denied expansion of his claim to include a left shoulder and neck condition. In a December 22, 2003 decision, an Office hearing representative affirmed the January 22, 2003 decisions.

On August 15, 2005 appellant filed a claim for compensation (Form CA-7) requesting compensation from March 10, 2003 to September 30, 2005. In a statement dated October 10, 2005, he related that the employing establishment refused his request for light duty. Appellant submitted denials by the employing establishment of his requests for light duty.

In a form report dated September 25, 2005, Dr. Miguel Tabaro, a Board-certified physiatrist, diagnosed bilateral impingement syndrome and checked "yes" that the condition was caused or aggravated by employment. He noted that appellant informed him that his condition began after "lifting a heavy object." Dr. Tabaro opined that he was totally disabled beginning June 10, 2002.

By letter dated January 30, 2006, the Office requested that appellant submit further medical evidence supporting that he was totally disabled for the period claimed.

Appellant submitted form reports dated March 10, 2003 from Dr. Levitt who listed findings of right shoulder pain and noted that he was status an injury to the acromioclavicular

[1] A magnetic resonance imaging (MRI) scan of appellant's cervical spine obtained on May 4, 2001 showed a small disc herniation at C6-7.

(ACV) joint ligament of the right shoulder. He found that appellant could perform sedentary work without restrictions. In a progress report of the same date, Dr. Levitt discussed appellant's complaints of bilateral shoulder pain and found his condition unchanged. In a progress report dated November 20, 2003, he asserted that appellant could "return to full work" and required no further treatment.

In a disability certificate dated March 12, 2004, Dr. Rene Rodriguez, an orthopedic surgeon, diagnosed a bilateral shoulder injury/impingement, rotator cuff syndrome, shoulder pain and weakness. He found that appellant could work light duty beginning March 12, 2004.[2] In a disability certificate dated November 23, 2004, Dr. Seymour S. Feld, a Board-certified internist, diagnosed a bilateral shoulder injury and found that appellant could perform light-duty work effective November 23, 2004. In an undated response to a December 6, 2004 inquiry into appellant's work status by the employing establishment, Dr. Feld listed work restrictions of three hours pushing and pulling, four hours grasping, four hours fine manipulation and three hours reaching above the shoulder.

A functional capacity evaluation dated March 30, 2005 showed that appellant could perform medium level work. In a form report dated August 1, 2005, a physician diagnosed biceps tendinitis and found that appellant could perform light duty effective July 27, 2005.

In a form report dated December 1, 2005, Dr. Tabaro diagnosed bilateral biceipital tendinitis, listed findings of tenderness and opined that appellant's prognosis was "guarded."

By decision dated March 30, 2006, the Office denied appellant's claim for total disability from March 10, 2003 to December 2, 2005, finding that the medical evidence was insufficient to establish that he was disabled during that period due to his employment injury.

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.[3] 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.[4] Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work. When a 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.[5] The Board will not require

[2] In a form report dated February 9, 2004, a physician diagnosed rotator cuff syndrome and found *that* appellant's prognosis was "fair." The name of the physician is not legible.

[3] 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).

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

[5] *Id*.

the Office to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.[6]

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.[7] Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical 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.[8] Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[9]

ANALYSIS

The Office accepted appellant's claim for a sprain of the right shoulder and arm and a rotator cuff tear of the right shoulder. Dr. Levitt performed an athroscopy of the right shoulder with a subacromial decompression, partial synovectomy and a resection of the distal clavicle on August 11, 2000. Appellant returned to part-time limited-duty employment on January 2, 2001 and to full-time limited-duty employment May 7, 2001. By decision dated January 22, 2003, the Office terminated his compensation on the grounds that the weight of the medical evidence, as represented by the opinion of the impartial medical examiner, established that he had no further employment-related disability. The Office also denied expansion of his claim to include a left shoulder and neck injury and denied his claim for compensation from October 11 to 22, 2001.

On August 15, 2005 appellant filed a claim for compensation from March 10, 2003 to September 30, 2005.[10] The medical evidence, however, is insufficient to establish that he was disabled from March 10, 2003 to September 30, 2005 due to his accepted right shoulder injury. Appellant has the burden to establish causal relationship between his claimed disability and his employment injury through the submission of rationalized medical opinion evidence.[11] In form reports dated March 10, 2003, Dr. Levitt listed findings of right shoulder pain and noted that he was status an injury to his right shoulder ACV joint ligament. He found that appellant could perform sedentary work without restrictions. In a progress report of the same date, Dr. Levitt

[6] *Id*.

[7] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[8] *Leslie C. Moore*, 52 ECAB 132 (2000).

[9] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[10] As the Office terminated appellant's compensation, he has the burden of proof to establish entitlement to any further disability. *See John F. Glynn*, 53 ECAB 562 (2002).

[11] *Richard O'Brien*, 53 ECAB 234 (2001).

discussed appellant's complaints of bilateral shoulder pain and found his condition unchanged. He did not, however, address the cause of his condition. The Board has held that 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.[12]

In a progress report dated November 20, 2003, Dr. Levitt found that appellant could "return to full work" and required no further treatment. As he determined that appellant was not disabled from his regular employment, Dr. Levitt's opinion does not support appellant's claim for compensation.

In a disability certificate dated March 12, 2004, Dr. Rodriguez diagnosed a bilateral shoulder injury/impingement, rotator cuff syndrome, shoulder pain and weakness and found that appellant could work light duty beginning March 12, 2004. However, he did not address the cause of his condition and work restrictions and thus, Dr. Rodriguez' opinion is of little probative value.[13]

In a disability certificate dated November 23, 2004, Dr. Feld diagnosed a bilateral shoulder injury and found that appellant could perform light-duty work effective November 23, 2004. In an undated response to a December 6, 2004 request for appellant's work status by the employing establishment, Dr. Feld listed work restrictions of three hours pushing or pulling, four hours grasping, four hours fine manipulation and three hours reaching above the shoulder. Dr. Feld, however, did not address the cause of the work restrictions; consequently, as previously discussed, his opinion is of little probative value.[14] Additionally, he did not list any findings on physical examination. Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work.[15]

In a form report dated September 25, 2005, Dr. Tabaro diagnosed bilateral impingement syndrome, found appellant totally disabled beginning June 10, 2002 and checked "yes" that the condition was caused or aggravated by employment. He provided as a rationale that appellant had informed him that his condition began after "lifting a heavy object." A physician's report is of little probative value, however, when it is based on a claimant's belief regarding causal relationship rather than a doctor's independent judgment.[16] Further, the fact that a disease or condition manifests itself during a period of employment or the belief that the disease or condition was caused or aggravated by employment factors or incidents is insufficient to establish causal relationship.[17]

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[12] *Conrad Hightower*, 54 ECAB 796 (2003).

[13] *Id*.

[14] *Id*.

[15] *Fereidoon Kharabi*, *supra* note 4.

[16] *Earl David Seal*, 49 ECAB 152 (1997).

[17] *Allen C. Hundley*, 53 ECAB 551 (2002).

In a form report dated December 1, 2005, Dr. Tabaro diagnosed bilateral biceipital tendinitis, listed findings of tenderness and opined that appellant's prognosis was guarded. He did not address causation, however, and his opinion is insufficient to meet appellant's burden of proof.

In a form report dated August 1, 2005, a physician diagnosed biceps tendinitis and found that appellant could perform light duty effective July 27, 2005. The name of the physician, however, is not legible. As the report lacks proper identification, it cannot be considered as probative evidence in support of appellant's claim.[18]

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is causal relationship between his claimed condition and his employment.[19] To establish causal relationship, appellant must submit a physician's report in which the physician reviews the employment factors identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination, state whether the employment injury caused or aggravated the diagnosed conditions and present medical rationale in support of his or her opinion.[20] Appellant failed to submit such evidence in this case and, therefore, has failed to discharge his burden of proof to establish that he was disabled from March 10, 2003 to September 30, 2005 due to his November 5, 1999 employment injury

CONCLUSION

The Board finds that appellant has not established entitlement to compensation from March 10, 2003 to December 2, 2005 due to his November 5, 1999 employment injury.

[18] *Richard F. Williams*, 55 ECAB 343 (2004).

[19] *Robert A. Boyle*, 54 ECAB 381 (2003); *Patricia J. Glenn*, 53 ECAB 159 (2001).

[20] *Calvin E. King*, 51 ECAB 394 (2000).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 30, 2006 is affirmed.

Issued: November 27, 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