

December 3, 2003 he reported: “Patient’s most recent episode of incapacity November 5, 2003 [to] November 18, 2003; likely duration and frequency of episodes undeterminable, possibly [one to seven] days per episode, up to [six] episodes per year approximately.” He noted that appellant’s condition began approximately in 1998.

On January 27, 2004 the Office accepted appellant’s claim for the condition of right shoulder strain and advised her that, if she lost time from work, she could claim disability compensation.

Appellant claimed compensation for leave without pay beginning November 2003. She thereafter claimed compensation during the period November 3, 2003 to December 3, 2004.

On December 8, 2004 the Office asked appellant to submit additional information to support her claims: “At this time we have no basis on which to consider authorization of medical service or payment of compensation.” The Office asked appellant to submit, among other things, her physician’s documentation of medical treatment, including the dates of treatment or if the time lost was due to temporary total disability, her physician’s explanation, supported by objective medical findings, as to why she was unable to perform light sedentary work for eight hours a day.

In a February 14, 2005 attending physician’s report, Dr. Wong diagnosed right shoulder strain and related the condition to appellant’s employment: “Work required carrying mailbag over right shoulder, casing required overhead work.” He indicated that he first examined appellant on July 15, 2003. Dr. Wong listed 11 subsequent dates of treatment and reported that appellant was totally disabled from September 30 through October 11, 2004 and was partially disabled beginning October 12, 2004. He released her to work with restrictions beginning November 2, 2004.

In a decision dated March 1, 2005, the Office denied compensation from November 3, 2003 through December 19, 2004.¹ The Office explained that in any approved claim time lost for any date must have medical support showing that there was an examination or treatment or disability related medically to the allowed condition. The Office stated that it received no response to its December 8, 2004 request for additional information and noted that there was no medical evidence in the file to support any disability or medical treatment since November 2003.

Appellant requested an oral hearing before an Office hearing representative, which was held on March 22, 2006. Appellant submitted, through her attorney, medical progress notes and work status forms.

In a decision dated May 19, 2006, the hearing representative affirmed the denial of compensation from November 3, 2003 through December 19, 2004. The hearing representative found that appellant failed to provide any clarification concerning her intermittent wage loss for the period, while the medical evidence supported her ability to perform restricted duty.

¹ The Office mistakenly indicated that leave analysis forms listed dates through December 19, 2004. They list dates only through November 19, 2004, the date on which the forms were signed.

LEGAL PRECEDENT

A claimant seeking benefits under the Federal Employees' Compensation Act² has the burden of proof to establish the essential elements of her claim by the weight of the evidence,³ including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.⁴

As used in the Act, the term "disability" means incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.⁵ When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in her employment, she is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.⁶

For each period of disability claimed, appellant has the burden of proving that she was disabled for work as a result of her accepted employment injury.⁷ Whether a particular injury causes an employee to become 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 evidence.⁸

Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work.⁹ The Board has held that when a physician's statements regarding an employee's ability to work consist only of a repetition of the employee's complaints that 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.¹⁰

² 5 U.S.C. §§ 8101-8193.

³ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

⁴ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.5(17).

⁶ *Bobby W. Hornbuckle*, 38 ECAB 626 (1987).

⁷ *David H. Goss*, 32 ECAB 24 (1980).

⁸ *Edward H. Horton*, 41 ECAB 301 (1989).

⁹ *See Dean E. Pierce*, 40 ECAB 1249 (1989); *Paul D. Weiss*, 36 ECAB 720 (1985).

¹⁰ *John L. Clark*, 32 ECAB 1618 (1981).

ANALYSIS

Dr. Wong, the internist who first examined appellant on July 13, 2003, reported that appellant was incapacitated from November 3 to 18, 2003. He noted shoulder pain as a current symptom but did not explain why appellant had become totally disabled for work on November 3, 2003.

Dr. Wong later reported that appellant was totally disabled from September 30 through October 11, 2004 and was partially disabled beginning October 12, 2004. But he reported no findings and again did not explain why appellant had become disabled for work.

Without objective findings on examination and her physician's explanation for the disability reported, appellant has not met her burden of proof to establish that her accepted employment injury caused disability for work on or after November 3, 2003. The Board will affirm the Office's May 19, 2006 decision, denying compensation for the disability claimed.

The employee is entitled to receive all medical services, appliances or supplies that a qualified physician prescribes or recommends and which the Office considers necessary to treat the work-related injury. The employee need not be disabled to receive such treatment.¹¹ Further, if a claimant has returned to work following an accepted injury or the onset of an occupational disease and must leave work and lose pay to undergo treatment, examination or testing, compensation should be paid for wage loss under 5 U.S.C. § 8105 while undergoing the medical services and for a reasonable time spent traveling to and from the location where services were rendered.¹²

In his February 14, 2005 report, Dr. Wong indicated that he saw appellant 12 times for her accepted right shoulder strain. He first examined her on July 15, 2003 and he identified 11 subsequent dates of treatment. The Office should either pay appropriate compensation for pay lost on those dates or, if necessary, further develop the evidence and make a final decision on this aspect of her claim.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that her accepted employment injury caused disability for work from November 3, 2003 through December 3, 2004. Her physician did not explain the reason she became disabled for work from November 3 through 18, 2003 or from September 30 through October 11, 2004. He did, however, list 12 dates of examination and treatment for the accepted condition, so further action is warranted on appellant's entitlement to compensation for pay lost on those specific dates.

¹¹ 20 C.F.R. § 10.310(a) (1999); *see* 5 U.S.C. § 8103(a).

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computation of Compensation*, Chapter 2.900.17.a (January 1991).

ORDER

IT IS HEREBY ORDERED THAT the May 19, 2006 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for further action consistent with this opinion.

Issued: November 17, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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