



overhead.<sup>1</sup> The Office accepted the claim for aggravation of preexisting right shoulder acromioclavicular (AC) degenerative joint disease.

On August 12, 2004 the employing establishment issued a notice of proposed removal on the grounds of dereliction of duty on July 20, 2004. By letter dated September 7, 2004, the employing establishment finalized the proposed removal effective September 9, 2004.<sup>2</sup>

On September 28, 2004 the Office received a work status report by Dr. Thomas Anderson, a treating Board-certified orthopedic surgeon, who diagnosed a right shoulder AC joint sprain and indicated that appellant was disabled from work for the period September 15 to December 1, 2004. On October 1, 2004 the employing establishment received Dr. Anderson's September 7, 2004 response to its limited-duty assignment letter. Dr. Anderson indicated that appellant was capable of working with restrictions.

In an October 21, 2004 work status report, Dr. Anderson stated that appellant would be out of work for "four months after second surgery." He indicated that she would be out of work for a year. Dr. Anderson indicated that appellant required arthroscopic excision of the distal clavicle surgery for both shoulders. He noted that appellant had been terminated from her employment.

In a report dated November 18, 2004, Dr. Sheldon Kaffen, a second opinion Board-certified orthopedic surgeon, diagnosed aggravated right AC degenerative joint disease. He concluded that appellant was capable of working with restrictions. Dr. Kaffen noted that appellant was not capable of performing the duties of the position she held when she injured her left shoulder, but was capable of performing the duties of the light-duty position she held at the time she injured her right shoulder. In a November 12, 2004 work capacity evaluation (Form OWCP-5c), he listed the applicable work restrictions.

On December 14, 2004 appellant filed a claim for compensation (Form CA-7) for the period September 10, 2004 to January 8, 2005.

By decision dated January 3, 2005, the Office denied appellant's claim for wage-loss compensation.<sup>3</sup>

In a letter dated January 7, 2005, appellant requested an oral hearing before an Office hearing representative, which was held on March 22, 2006.

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<sup>1</sup> This was assigned file number 09-2050819. The record contains evidence that appellant had filed a prior claim for a left shoulder injury which was assigned file number 09-2033619. The Office accepted that she sustained a right rotator cuff tear. Following her left shoulder injury, appellant returned to work with restrictions on December 26, 2003. On February 23, 2005 the Office doubled the two claims with 09-2033619 as the master file number.

<sup>2</sup> Appellant was terminated from the employing establishment effective September 13, 2004.

<sup>3</sup> The Board notes that the Office subsequently approved appellant's claim for wage loss for the period January 12 to May 14, 2005. On May 6, 2005 the Office placed appellant on the periodic rolls for temporary total disability effective May 15, 2005.

By decision dated May 19, 2006, the Office hearing representative affirmed the denial of appellant's claim for wage-loss compensation.

### **LEGAL PRECEDENT**

As used in the Federal Employees' Compensation Act,<sup>4</sup> the term "disability" means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>5</sup> Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.<sup>6</sup> An employee who has a physical impairment causally related to her federal employment, but who nonetheless has the capacity to earn the wages she was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.<sup>7</sup> When, however, the medical evidence establishes that the residuals or sequelae 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 wages.

To meet this burden, a claimant must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factor(s). The opinion of the physician must be based on a complete factual and medical background, 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.<sup>8</sup>

### **ANALYSIS**

The Office accepted appellant's claim for aggravation of preexisting right shoulder AC degenerative joint disease. At the time of her August 15, 2004 employment injury, the record reflects that appellant was performing light-duty work as a result of a prior employment injury. The employing establishment terminated her for cause effective September 13, 2004. The Office found that the medical evidence of record was insufficient to establish that appellant was totally disabled due to her accepted condition for the period in question.

The evidence relevant to the issue of appellant's disability includes reports from Dr. Anderson, a treating Board-certified orthopedic surgeon. In a work status report received on September 28, 2004, Dr. Anderson diagnosed a right shoulder AC joint sprain and indicated that appellant was disabled from work for the period September 15 to December 1, 2004. On

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<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Conard Hightower*, 54 ECAB 796 (2003); 20 C.F.R. § 10.5(f).

<sup>6</sup> *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

<sup>7</sup> *Merle J. Marceau*, 53 ECAB 197 (2001).

<sup>8</sup> *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

October 21, 2004 he noted that appellant required surgery, would be unable to work for “four months after second surgery” and that she would be out of work for a year. However, none of the reports submitted by Dr. Anderson contained any opinion explaining why appellant’s accepted employment injury prevented her from performing the duties of the light-duty position she was working on the dates listed.<sup>9</sup> He did not explain how her accepted condition had changed such that surgery was warranted. The reports merely state conclusions without discussion of how appellant became disabled for the period in question. There also is no clear indication that any time lost from work was due to treatment of her accepted condition. Moreover, Dr. Anderson indicated in response to an inquiry from the employing establishment that appellant was capable of working a light-duty position with restrictions.

The record also contains a November 18, 2004 report and a November 12, 2004 work capacity evaluation form by Dr. Kaffen, a second opinion Board-certified orthopedic surgeon. He also found that appellant was capable of performing light-duty work. Dr. Kaffen did not address whether appellant was disabled from working for the period in question. Thus, these reports are insufficient to meet her burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation or upon appellant’s belief that there is a causal relationship between her condition and her employment.<sup>10</sup> She failed to submit sufficient medical evidence in this case and, therefore, has failed to discharge her burden of proof.

The Board finds that the medical evidence to establish that appellant’s employment-related right shoulder AC degenerative joint disease caused disability for the period September 10, 2004 to January 8, 2005. Therefore, she is not entitled to compensation for total disability for this period.

### **CONCLUSION**

The Board finds that appellant has failed to establish that she is entitled to wage-loss compensation for total disability during the period September 10, 2004 through January 8, 2005 due to her August 15, 2004 employment injury.

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<sup>9</sup> See *Sandra D. Pruitt*, 57 ECAB \_\_\_\_ (Docket No. 05-739, issued October 12, 2005); *Michael E. Smith*, 50 ECAB 313 (1999) (the issue of whether a claimant’s disability is related to an accepted condition is a medical question which must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to employment factors and supports that conclusion with sound medical reasoning).

<sup>10</sup> *Patricia J. Glenn*, 53 ECAB 159 (2001).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated May 19, 2006 be affirmed.

Issued: February 6, 2007  
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