

sprain/strain and supraspinatus muscle cyst. It authorized arthroscopic surgery which was performed on January 9, 2007.

Appellant came under the treatment of Dr. Mark C. Winslow, an osteopath, who treated her from June 22 to September 27, 2006. On July 6, 2006 Dr. Winslow recommended modified duty with limited use of the left arm and on July 20, 2006 he returned appellant to regular duty without restrictions. In a September 27, 2006 report, he diagnosed left shoulder strain and determined that appellant reached maximum medical improvement on July 20, 2006. Dr. Winslow released her to regular duty without restrictions. Appellant submitted reports from Dr. Paul D. Fournier, a Board-certified family practitioner, dated August 31 to September 11, 2006. Dr. Fournier noted appellant's complaints of neck and left arm pain with paresthesias in the right thumb after gardening. He diagnosed nonwork-related cervical radiculitis. Dr. Fournier determined that appellant's left shoulder strain and bicipital tendinitis resolved September 11, 2006 and released her to work with restrictions on the left hand. An x-ray of the right shoulder dated August 29, 2006 revealed no fracture, dislocation or focal bone destruction.

On October 20, 2006 Dr. Winslow again noted that appellant reached maximum medical improvement and released her to work full duty with restrictions on her shoulder. In reports dated November 15 and 30, 2006, he treated appellant for increasing shoulder pain and diagnosed shoulder strain/tendinopathy with possible labral tear, cyst, suprascapular nerve injury and rotator cuff injury. Appellant submitted reports from Dr. Mark S. Failing, a Board-certified orthopedic surgeon, dated November 8 to 29, 2006, who noted a history of injury and diagnosed left shoulder, rotator cuff strain, probable labral tear and rule out suprascapular neuropathy with spinoglenoid notch cyst. Dr. Failing recommended an electromyograph (EMG) which was performed on November 22, 2006. It revealed findings consistent with left suprascapular nerve injury affecting the infraspinatus muscles with early effort towards neurological recovery and entrapment of the nerve at the spinoglenoid. Dr. Failing recommended arthroscopic subacromial decompression.

On December 13, 2006 the Office expanded appellant's claim to include rotator cuff capsule sprain and strain and cyst of the supraspinatus muscle.

On January 8, 2007 appellant filed a Form CA-7, claim for compensation, for partial disability for the period May 31 to November 29, 2006. The employing establishment provided a CA-7a form time analysis noting 4.27 hours of leave without pay for May 31, 2006, 3.27 hours for October 7, 2006, 8 hours for October 11, 12 and 13, 2006, 3.42 hours for October 18, 2006, 3.41 hours for October 28, 2006, 8 hours for November 8, 22, 2006 and 2 hours for November 29, 2006.

Appellant submitted a November 30, 2006, prescription note from Dr. Winslow who indicated that appellant did not work on November 22, 2006 due to her illness and diagnostic testing. On November 30, 2006 Dr. Winslow diagnosed nerve entrapment and a cyst and released appellant to work full time with restrictions on the left arm. On January 23, 2007 he indicated that appellant was out of work partial days on October 7 and 28, 2006 due to her work injury. In an undated attending report, Dr. Winslow diagnosed status post surgery for rotator cuff tear and noted with a checkmark "yes" that appellant's condition was caused or aggravated

by an employment activity. On January 9, 2007 Dr. Failinger performed a left shoulder arthroscopic subacromial decompression and diagnosed left shoulder torn posterior labrum, chondromalacia of the posterior glenoid, spinoglenoid notch cyst, suprascapular neuropathy and impingement syndrome.

In letters dated January 30 and February 7, 2007, the Office requested that appellant submit additional medical evidence addressing her disability for the period claimed.

On January 18, 2007 Dr. Failinger indicated that appellant was progressing well postoperatively and would be in a sling for six weeks. On March 5, 2007 he noted that appellant was neurovascularly intact with good external rotation. In a report dated April 18, 2007, Dr. Failinger noted slow improvement in appellant's condition with some weakness in abduction. Appellant submitted physical therapy notes from February 2 to 12, 2007.

On February 20, 2007 appellant filed a Form CA-7, claim for compensation, for partial disability for the period February 3 to 16, 2007. The employing establishment provided a CA-7a time analysis form.

In a February 13, 2007 report, Dr. Barry A. Ogin, Board-certified in physical medicine and rehabilitation, diagnosed rotator cuff tendinopathy. He released appellant to return to work four hours per day with restrictions on lifting and overhead activity. Appellant submitted reports from Dr. Winslow dated February 20 and March 14, 2007, noting postsurgical shoulder pain. Dr. Winslow diagnosed postoperative shoulder, torn labrum, impingement syndrome sphinoglenoid notch cyst and suprascapular neuropathy. In an activity status report dated February 20, 2007, he released appellant to a modified position with restrictions of no repetitive lifting, pushing or pulling, no driving and required use of a sling. In a duty status report dated March 14, 2007, Dr. Winslow released appellant to work with no use of the left arm and no driving.

On March 8, 2007 appellant filed a Form CA-7, claim for compensation, for partial disability for the period February 17 to March 2, 2007. The employing establishment provided a CA-7a time analysis form noting eight hours of leave without pay for February 17, 21, 22, 23, 24, 25, 28 and March 1 and 2, 2007.

On March 14, 2007 Dr. Winslow treated appellant for postsurgical shoulder pain and noted diagnoses. He advised that appellant could continue working with a restriction of no use of the left arm.

On April 2, 2007 appellant filed a Form CA-7, claim for compensation, for partial disability for the period March 3 to 14, 2007. The employing establishment provided a CA-7a time analysis form noting eight hours of leave without pay for March 3, 4, 7, 8, 9, 10, 11, 14, 15 and 16, 2007.

In a decision dated April 2, 2007, the Office denied appellant's claim for compensation for partial disability, 3.27 hours for October 7, 2006 and 3.41 hours for October 28, 2006, on the grounds that the medical evidence did not establish that appellant's disability was due to her accepted work injury.

In an April 27, 2007 letter, appellant provided a history of her injury. She submitted reports from Dr. Winslow dated March 30 to April 27, 2007. Dr. Winslow diagnosed status post rotator cuff repair and cyst excision. He released appellant to modified duty on March 30, 2007 with restrictions of no repetitive lifting over five pounds on the right, no use of the left arm and no driving. Appellant submitted physical therapy notes from March 28 to May 11, 2007.

In a decision dated May 25, 2007, the Office denied appellant's claim for compensation for total disability, eight hours per day, for the period February 21 to March 16, 2007 on the grounds that the medical evidence was not sufficient to establish disability due to her accepted work injury.

LEGAL PRECEDENT

A claimant has the burden of proving by a preponderance of the evidence that he or she is disabled for work as a result of an accepted employment injury and submit medical evidence for each period of disability claimed.¹ Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues.² The issue of whether a particular injury causes disability for work must be resolved by competent medical evidence.³

The Board will not require the Office to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify his or her disability and entitlement to compensation. For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.⁴

ANALYSIS

The Office accepted appellant's claim for sprain of the left shoulder/upper arm, left rotator cuff capsule sprain/strain and supraspinatus muscle cyst. Appellant claimed wage-loss compensation for partial disability: 3.27 hours for October 7, 2006 and 3.41 hours for October 28, 2006; and for total disability for the period February 21 to March 16, 2007. The Board finds that the medical evidence of record is insufficient to establish that the claimed periods of disability were caused or aggravated by the accepted employment injury.

On September 27, 2006 Dr. Winslow opined that appellant reached maximum medical improvement on July 20, 2006 and that she could return to regular duty without restrictions. On October 20, 2006 he discharged appellant from his care noting that she could work full duty with restrictions on her shoulder. Dr. Winslow did not specifically address whether appellant had any

¹ See *Fereidoon Kharabi*, 52 ECAB 291 (2001).

² *Id.*

³ See *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁴ *Sandra D. Pruitt*, 57 ECAB ____ (Docket No. 05-739, issued October 12, 2005).

employment-related disability on October 7 or 28, 2006 causally related to her May 26, 2005 employment injury. These reports do not address whether appellant was disabled on those dates or that she was undergoing medical treatment for her accepted condition for the claimed hours.⁵ In a prescription note dated January 23, 2007, Dr. Winslow indicated that appellant was out of work partial days for her work injury on October 7 and 28, 2006. Although he indicated that appellant was partially disabled from work on certain days, the physician failed to adequately address the reason for appellant's partial disability or the causal relationship between the claimed disability and the accepted employment injury of May 26, 2005.

In reports dated February 20 to April 27, 2007, Dr. Winslow treated appellant for postsurgical shoulder pain and advised that she could return to work within restrictions. In activity status reports dated February 20 and March 14, 2007, he noted that appellant could return to modified work with restrictions of no repetitive lifting, pushing or pulling, no driving and use of a sling. Although Dr. Winslow noted that appellant was still experiencing symptoms of left shoulder pain, he did not address whether she had any employment-related disability on October 7 or 28, 2006 or from February 21 to March 16, 2007 causally related to her May 26, 2005 employment injury. Rather, he opined that appellant could return to work subject to restrictions. However, Dr. Winslow attributed appellant's disability to the diagnosed conditions of a torn labrum and impingement syndrome. The Office has not accepted that appellant developed a torn labrum and impingement syndrome as a result of her May 26, 2005 work injury.⁶ Therefore, these reports are insufficient to establish appellant's disability for these periods.

Reports from Dr. Failinger dated from November 8, 2006 to April 18, 2007 noted appellant's status but did not address whether she had any employment-related disability on October 7 or 28, 2006 or from February 21 to March 16, 2007 due to her May 26, 2005 employment injury. Therefore, these reports are insufficient to establish appellant's claim. The remainder of the medical evidence fails to provide any opinion on causal relationship between the claimed period of partial and total disability and the accepted employment injury of May 26, 2005. Consequently, the medical evidence of record does not establish that the claimed period of disability is due to appellant's accepted injury or to residuals of surgery.

CONCLUSION

The Board finds that appellant has failed to establish that her condition during the claimed period of disability is causally related to the accepted employment injury of May 26, 2005.

⁵ See *Amelia S. Jefferson*, 57 ECAB ____ (Docket No. 04-568, issued October 26, 2005).

⁶ For conditions not accepted by the Office as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not the Office's burden to disprove such relationship. *Alice J. Tysinger*, 51 ECAB 638 (2000).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 25 and April 2, 2007 are affirmed.

Issued: April 22, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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