United States Department of Labor
Employees' Compensation Appeals Board

R.H., Appellant	)	
and	)	**Docket No. 09-258**
	)	**Issued: August 12, 2009**
U.S. POSTAL SERVICE, BULK MAIL CENTER, Dallas, TX, 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
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 4, 2008 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated August 14, 2008 denying his claim for intermittent disability from September 28, 2006 to March 22, 2007. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether appellant has established intermittent disability during the period September 28, 2006 to March 22, 2007 causally related to his accepted employment injury.

FACTUAL HISTORY

On August 30, 2006 appellant, then a 58-year-old sack sorting machine operator, filed an occupational disease claim alleging that on August 5, 2006 he first realized that his right arm and upper shoulder conditions were employment related. The Office accepted the claim for right shoulder impingement syndrome and disorder of the bursae and tendons.

On December 22, 2006 the Office received progress notes dated August 17 to November 8, 2006 from Dr. E. Olayinka Ogunro, a treating Board-certified orthopedic surgeon, who noted restricted right shoulder motion and diagnosed tendinitis with a possible rotator cuff tear.

On September 20, 2006 Dr. Bryon E. Strain, a treating physiatrist, diagnosed right shoulder rotator cuff impingement syndrome. On October 4, 2006 he noted that appellant had undergone one week of therapy. In a July 9, 2007 attending physician's report (Form CA-20), Dr. Strain diagnosed right shoulder impingement syndrome due to heavy lifting. He advised that appellant had been totally disabled from August 20, 2006 to January 28, 2007 and partially disabled from January 29 to March 28, 2007.

On August 14, 2007 appellant filed a claim for 737.50 hours of wage-loss compensation (Form CA-7) for leave without pay used August 9, 2006 to March 22, 2007.

In a letter dated August 28, 2007, the Office noted receipt of appellant's request for wage-loss compensation and requested that he submit additional medical documentation.

In response, appellant submitted reports from Dr. Strain who again advised that appellant was disabled for work from August 9, 2006 to January 28, 2007 and returned to light-duty work for the period January 29 to March 28, 2007. On September 19, 2007 Dr. Strain stated that appellant did not always work as "[l]ight duty was not always available and on some days he was sent home and some days he did not work his full shift."

By decision dated November 1, 2007, the Office denied appellant's claim for wage-loss compensation for the period August 9, 2006 to March 22, 2007.

On November 16, 2007 appellant requested a review of the written record.

By decision dated March 27, 2008, the Office hearing representative affirmed the denial of appellant's claim for wage-loss compensation from August 6 to 16, 2006 finding that medical evidence was not sufficient to establish disability for work. She found the record required further development with respect to whether appellant had intermittent wage-loss compensation for the period August 17, 2006 to March 22, 2007. The Office hearing representative noted that appellant's physician released him to light-duty work, but the record contained no evidence of any modified job offer. The case was remanded to the Office to obtain information from the employing establishment as to whether light-duty work consistent with appellant's restrictions was made available.

On May 28, 2008 the Office received evidence from the employing establishment. In a September 28, 2006 request for temporary light duty, the employing establishment offered appellant a job working in the flats culling area. It noted that he would be able to work this job whenever mail was available to be worked. In a February 28, 2007 request for light-duty, the employing establishment offered appellant a job scanning, time and date stamping mail in the west inbound when available. In a note dated February 28, 2007, the employing establishment informed appellant that his light-duty request had been approved and that the "assignment is contingent upon the availability of work." The employing establishment noted that the light-duty

offers were in response to the September 8, 2006 and February 26, 2007 medical notes of Dr. Ogunro.

On June 27, 2007 appellant submitted another claim for wage-loss compensation (Form CA-7) for 657.58 hours of leave without pay from August 17, 2006 to March 22, 2007.

By decision dated August 14, 2008, the Office found that the medical evidence supported disability from August 17 to September 27, 2006. However, the evidence was insufficient to establish his disability for the period September 28, 2006 to March 22, 2007. The Office found that the employing establishment offered appellant light-duty work consistent with his medical restrictions from September 28, 2006 to March 22, 2007.

LEGAL PRECEDENT

Under the Federal Employees' Compensation Act, the term disability is defined as an inability, due to an employment injury, to earn the wages the employee was receiving at the time of the injury, *i.e.*, an impairment resulting in loss of wage-earning capacity.[1] 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.[2] 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 probative and reliable medical opinion evidence.[3] The fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[4]

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 her disability and entitlement to compensation.[5]

ANALYSIS

The Office accepted that appellant sustained right shoulder impingement syndrome and disorder of the bursae and tendons in the performance of duty. On August 16, 2007 and June 27, 2008 appellant filed claims for compensation for intermittent disability during the period August 9, 2006 through March 22, 2007. By decision dated August 14, 2008, the Office accepted that appellant was disabled for work from August 9 to September 27, 2006. However, it denied compensation from September 28, 2006 to March 22, 2007. The Office found that

[1] *See S.F.*, 59 ECAB ___ (Docket No. 08-426, issued July 16, 2008); *Prince E. Wallace*, 52 ECAB 357 (2001).

[2] *Sandra D. Pruitt*, 57 ECAB 126 (, 2005); *Dennis J. Balogh*, 52 ECAB 232 (2001).

[3] *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008); *Gary J. Watling*, 52 ECAB 278 (2001).

[4] *D.I.*, 59 ECAB ___ (Docket No. 07-1534, issued November 6, 2007); *Manuel Garcia*, 37 ECAB 767 (1986).

[5] *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

appellant had been offered light-duty work consistent with his restrictions for this period and thus was not entitled to wage-loss compensation.

The relevant evidence to appellant's claim includes requests for temporary light-duty forms dated September 28, 2006 and February 28, 2007 and the September 19, 2007 report by Dr. Strain. The employing establishment noted in both forms that work within appellant's restrictions was available but contingent upon the availability of such work. Dr. Strain's September 19, 2007 report noted that appellant was not always able to perform light-duty work due to the unavailability of such work. The time analysis sheets for the relevant period noted that appellant worked some days during the period September 28, 2006 through March 22, 2007 and used leave, including leave without pay, for other days.

It is well established that proceedings under the Act[6] are not adversarial in nature. While appellant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.[7] It has an obligation to see that justice is done.[8] In this case, the Office hearing representative instructed the Office to obtain information from the employing establishment as to whether light-duty work consistent with appellant's restrictions was made available. The employing establishment provided light-duty forms dated September 28, 2006 and February 28, 2007 which noted appellant's instructions, his job duties and that work was contingent upon availability of work within appellant's restrictions. Since the Office undertook development of the factual evidence it should have obtained information from the employing establishment as to whether the light-duty work was available on the dates appellant did not work.[9] The record contains no evidence from the employing establishment as to whether work within appellant's restrictions was or was not available to appellant on the dates he claimed wage-loss compensation. Moreover, Dr. Strain's September 19, 2007 report is supportive that light-duty work was not always available for appellant. The case will be remanded to the Office for appropriate development, including obtaining evidence from the employing establishment as to the availability of light-duty work for appellant on days he did not work. The Office shall then issue an appropriate decision in the case.

CONCLUSION

The Board finds that this case is not in posture for decision regarding whether appellant is entitled to wage-loss compensation for the period September 28, 2006 through March 22, 2007.

[6] 5 U.S.C. §§ 8101-8193.

[7] *Phillip L. Barnes*, 55 ECAB 426 (2004); *Dorothy L. Sidwell*, 36 ECAB 699 (1989).

[8] *R.E.*, 59 ECAB ___ (Docket No. 07-1604, issued January 17, 2008); *Donald R. Gervasi*, 57 ECAB 281 (2005).

[9] *Peter C. Belking*, 56 ECAB 580 (2005) (Once the Office has begun an investigation of a claim, it must pursue the evidence as far as reasonably possible. The Office has an obligation to see that justice is done).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 14, 2008 is set aside with respect to the denial of wage-loss compensation for the period September 28, 2006 through March 22, 2007 and remanded for further proceedings consistent with the above opinion.

Issued: August 12, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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