

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**S.M., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Philadelphia, PA, Employer**

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**Docket No. 09-17  
Issued: March 5, 2009**

*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  
COLLEEN DUFFY KIKO, Judge

**JURISDICTION**

On October 1, 2008 appellant filed a timely appeal from a July 3, 2008 decision of an Office of Workers' Compensation Programs' hearing representative's decision affirming a January 29, 2008 decision denying his claim for intermittent wage loss. 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 established that he was disabled for the intermittent periods between June 27 and November 25, 2006 as a result of his October 8, 2005 employment-related shoulder condition.<sup>1</sup>

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<sup>1</sup> The Board notes that appellant's August 22, 2007 CA-7 form indicated intermittent periods of disability between June 6 and November 25, 2006. However, on the time analysis form (CA-7a) he claimed compensation for intermittent periods between June 27 and November 25, 2006. On these facts the Board accepts that appellant intends to claim only the intermittent time period commencing June 27 rather than June 6, 2006.

## **FACTUAL HISTORY**

Appellant, then a 48-year-old mail processor, filed an occupational disease claim on June 26, 2006 that was accepted by the Office on October 18, 2006, for right shoulder impingement and right shoulder aggravation of labrum tear. On January 31, 2007 he filed a claim for recurrence of disability beginning October 8, 2005 causally related to his accepted employment injury. The Office accepted appellant's recurrence claim.

On January 10, 2008 appellant filed a claim (Form CA-7) for lost wages for the intermittent periods between June 27 and November 25, 2006 due to his accepted employment injury.

Medical evidence pertaining to this period of alleged disability consisted of three medical notes signed by Dr. Gregory M. Lehman, a Board-certified internist, excusing appellant from work. The first note is dated June 17, 2006, which predated the period of disability. Dr. Lehman's note of July 5, 2006 excused appellant from work from June 27 through July 1, 2006. He did not proffer a reason for this medical excuse. Dr. Lehman's third note, which was undated, excused appellant from work November 24 and 25, 2006 for acute illness.

By decision dated January 29, 2008, the Office denied appellant's intermittent wage-loss claim, finding insufficient information had been submitted to determine his entitlement to wage-loss compensation.

By request dated February 12, 2008, appellant requested review of the written record.

Appellant submitted a time analysis form (CA-7a) dated January 10, 2008. He noted using a total of 160 hours of leave without pay for work-related pain during the period June 27 to November 25, 2006.

By decision dated July 3, 2008, the Office hearing representative affirmed the prior determination that appellant was not entitled to compensation for the periods claimed. The hearing representative noted that, although appellant claimed he had medical appointments on June 27 through 30, October 13, 14 and November 24 and 25, 2006, the record lacked medical reports supporting office visits for the dates claimed. The hearing representative also noted the absence of medical evidence establishing that appellant was disabled July 1 through August 26 and October 21 through November 9, 2006.

## **LEGAL PRECEDENT**

For each period of disability claimed, the employee has the burden of proving that he or she was disabled for work as a result of the accepted employment injury.<sup>2</sup> As used in the Federal Employees' Compensation Act, 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>3</sup> Disability is

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<sup>2</sup> *William A. Archer*, 55 ECAB 674 (2004).

<sup>3</sup> *Patricia A. Keller*, 45 ECAB 278 (1993); 20 C.F.R. § 10.5(f).

thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.<sup>4</sup> 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.<sup>5</sup> The Board will not require the Office to pay compensation in the absence of medical evidence directly addressing the particular period of disability for which compensation is sought. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.<sup>6</sup>

With respect to claimed disability for medical treatment, section 8103 of the Act provides for medical expenses, along with transportation and other expenses incidental to securing medical care for injuries.<sup>7</sup> Appellant would be entitled to compensation for any time missed from work due to medical treatment for an employment-related condition.<sup>8</sup> However, the Office's obligation to pay for medical expenses and expenses incidental to obtaining medical care, such as loss of wages, extends only to expenses incurred for treatment of the effects of any employment-related condition. Appellant has the burden of proof which includes the necessity to submit supporting rationalized medical evidence.<sup>9</sup>

### ANALYSIS

Appellant has an accepted injury for right shoulder impingement and aggravation of labrum tear, right shoulder. He claims compensation for intermittent periods between June 27 and November 25, 2006 due to medical appointments. Appellant bears the burden to establish through medical evidence that he was disabled or attending medical appointments during the claimed time periods and that this was causally related to his accepted injury. The Board finds that appellant has not established that he was disabled or attending medical appointments during the claimed intermittent periods as a result of his employment injury.

The record contains notes from Dr. Lehman, a Board-certified internist, excusing appellant from work for the periods June 27 through July 1 and November 24 through 25, 2006. However neither of these notes addressed whether appellant's disability was due to his accepted right shoulder condition or what medical services were rendered on these dates. As Dr. Lehman fails to offer any opinion on whether appellant was disabled on those dates, these medical excuse notes are of diminished probative value.<sup>10</sup> There also is no clear indication if any time was lost from work due to treatment for the accepted conditions and the record does not contain progress reports from examination on those dates.

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<sup>4</sup> See *Fred Foster*, 1 ECAB 21 (1947).

<sup>5</sup> *Fereidoon Kharabi*, 52 ECAB 291 (2001); see also *Edward H. Horton*, 41 ECAB 301 (1989).

<sup>6</sup> *Sandra D. Pruitt*, 57 ECAB 126 (2005); *William A. Archer*, *supra* note 2.

<sup>7</sup> 5 U.S.C. § 8103(a).

<sup>8</sup> *Vincent E. Washington*, 40 ECAB 1242 (1989).

<sup>9</sup> *Dorothy J. Bell*, 47 ECAB 624 (1996); *Zane H. Cassell*, 32 ECAB 1537 (1981).

<sup>10</sup> See *Sandra D. Pruitt*, 57 ECAB 126 (2005).

The record also contains Dr. Lehman's June 17, 2006 medical report. However, this report predates the claimed period at issue and is of no probative value. There is no other medical evidence of record that addresses the dates claimed or whether he lost any time from work due to treatment for accepted conditions.

The Board finds that appellant has failed to submit sufficient rationalized medical evidence to establish that he was unable to work on the specified intermittent days.

**CONCLUSION**

The Board finds that appellant has not established entitlement to wage-loss benefits for intermittent periods from June 27 through November 25, 2006.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 3 and January 29, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 5, 2009  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board