

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

E.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Baltimore, MD, Employer**

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**Docket No. 09-54
Issued: March 12, 2009**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 6, 2008 appellant filed a timely appeal from an August 1, 2008 decision of the Office of Workers' Compensation Programs denying her claim for wage-loss compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction to review the merits on appeal.

ISSUE

The issue is whether appellant established that she was totally disabled beginning March 22, 2008 due to her accepted employment injury.

FACTUAL HISTORY

On January 14, 2008 appellant, then a 51-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that on December 21, 2007 she realized that her work factors were causing right shoulder pain. She stopped work on January 9, 2008 and sought medical treatment. In a statement dated February 3, 2008, appellant contended that her work duties, including constantly reaching and lifting her arm into the air to case mail, caused her

shoulder and arm pain. The Office accepted appellant's claim for resolved sprain of the right shoulder and upper arm.¹

Beginning April 16, 2008 appellant filed a series of claims for wage-loss compensation (Form CA-7) for the period March 22 through August 15, 2008.²

In a medical report dated March 21, 2008, appellant's treating physician, Dr. Chaitanya K. Ravi, noted that appellant experienced severe shoulder pain. In an attending physician's report (Form CA-20) dated April 2, 2008, she found soft tissue swelling in the shoulder joint and osteoarthritis at the acromioclavicular joint. Dr. Ravi diagnosed osteoarthritis of the shoulder, indicating that the condition was caused or aggravated by appellant's continuous shoulder movement related to her employment. She noted that appellant was totally disabled from January 18, 2008 through present.

By letters dated April 24 and May 20, 2008, the Office notified appellant that she was required to submit medical evidence supporting her claimed period of disability.

In a medical report dated June 6, 2008, Dr. Ravi stated that appellant was under her care for a shoulder condition first occurring on October 24, 2007. She stated that appellant had been completely off work since January 18, 2008 and that she was still attending physical therapy.

On June 16, 2008 Dr. Ravi referred appellant to Dr. William I. Smulyan, a Board-certified orthopedic surgeon, for a consultation. Dr. Smulyan diagnosed supraspinatus tendinitis of the right shoulder, which he opined was the cause of appellant's symptoms. He also noted evidence of a preexisting anatomic impingement.

On July 15, 2008 the Office referred appellant, together with a statement of accepted facts and the medical records, to Dr. Robert Draper, a Board-certified orthopedic surgeon, for a second opinion evaluation. It requested that Dr. Draper provide an opinion regarding whether appellant's current condition could be attributed to her work injury, whether the effects of the work injury were still present and whether she was totally or partially disabled for employment.

In a medical report dated July 15, 2008, Dr. Draper summarized appellant's medical history and performed a medical examination. He diagnosed right shoulder strain, which he attributed to the work injury by direct cause and preexisting osteoarthritis of the right acromioclavicular joint, unrelated to the employment injury. Dr. Draper opined that the strain of the right shoulder had resolved and that her continuing symptoms were caused by the unrelated osteoarthritis. He found that appellant was capable of returning to duty, but with a 75-pound lifting restriction due to the nonemployment-related osteoarthritis.

¹ The record reveals that appellant sustained three other employment injuries, including a laceration of the arm in 2003, a strain of the right shoulder in 2005 and a left ankle strain in 2006.

² It is unclear from the record whether appellant returned to work between January 9, 2008 and the beginning of her claimed period of disability on March 22, 2008.

By decision dated August 1, 2008, the Office denied appellant's claim for disability compensation commencing March 22, 2008, finding that the weight of medical evidence was represented by Dr. Draper who stated that appellant's work-related injury was resolved.

LEGAL PRECEDENT

Under the Federal Employees' Compensation Act,³ 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.⁴ 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.⁵ 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.⁶ 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.⁷

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 disability and entitlement to compensation.⁸

ANALYSIS

The issue is whether appellant established that she was totally disabled beginning March 22, 2008 as a result of her accepted employment injury. The Board finds this case is not in posture for decision.

The Office referred appellant to a second opinion physician, Dr. Draper, to develop the medical evidence and clarify the cause and extent of any injury-related disability. In a July 15, 2008 medical report, Dr. Draper determined that appellant's right shoulder sprain had completely resolved and that she was capable of returning to employment. The Office found that the weight of the medical evidence rested with Dr. Draper and, based on the July 15, 2008 report, it denied wage-loss compensation from March 22, 2008 to present.

The Board finds that Dr. Draper did not address the claimed periods of disability, thus his medical report did not sufficiently clarify the issue of appellant's alleged disability beginning March 22, 2008. Dr. Draper merely opined that, as of the date of appellant's examination, on

³ 5 U.S.C. §§ 8101-8193.

⁴ See *S.F.*, 59 ECAB ____ (Docket No. 08-426, issued July 16, 2008); *Prince E. Wallace*, 52 ECAB 357 (2001).

⁵ *Sandra D. Pruitt*, 57 ECAB 126 (2005); *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁶ *G.T.*, 59 ECAB ____ (Docket No. 07-1345, issued April 11, 2008); *Gary J. Watling*, 52 ECAB 278 (2001).

⁷ *D.I.*, 59 ECAB ____ (Docket No. 07-1534, issued November 6, 2007); *Manuel Garcia*, 37 ECAB 767 (1986).

⁸ *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

July 15, 2008 her shoulder sprain was resolved and she was not totally disabled. He did not provide an estimated date of when her injury would have resolved, therefore, the only conclusion that can be drawn from his report is that appellant was not disabled after July 15, 2008. The report fails to establish that appellant was not disabled from March 22 through July 15, 2008.

Once the Office selects a physician to render an opinion on causal relationship, it has the obligation to secure clarification of that specialist's opinion and have a proper evaluation made.⁹

Because Dr. Draper did not sufficiently address the issue of appellant's disability commencing March 22 through July 15, 2008, the case will be remanded for further medical development. On remand, the Office should request that Dr. Draper clarify whether appellant had any employment-related disability beginning March 22, 2008 and, if so, the extent and duration of the disability. After such further development as it may deem necessary, the Office should issue a *de novo* decision.¹⁰

CONCLUSION

The Board finds that this case is not in posture for decision.

⁹ *Joseph Anthony Picca*, 36 ECAB 318 (1984).

¹⁰ *See Phillis Redfearn*, Docket No. 94-1541 (issued May 23, 1996) (where the Office denied disability benefits based on the report of a second opinion physician, who opined that appellant did not presently have any residuals due to her work-related incident, however, did not provide an opinion regarding the claimed period of disability. Board remanded the case, finding that the Office had the duty to develop the medical evidence regarding the extent and duration of appellant's disability).

ORDER

IT IS HEREBY ORDERED THAT the August 1, 2008 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development not inconsistent with this opinion.

Issued: March 12, 2009
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