

Appellant underwent right shoulder arthroscopic surgery on May 21, 2007. She returned to light duty in June 2007, and resumed full-time regular employment on August 28, 2007.

In a report dated November 28, 2007, Dr. Robert McBride, an attending orthopedic surgeon, reported that appellant stated she “started getting a ‘hot’ sensation in the right scapula region. She has pain from her right elbow into her right hand.” Dr. McBride provided results on examination, noting a positive Tinel’s sign over the ulnar nerve and negative impingement sign for the right shoulder. He diagnosed cubital tunnel syndrome, right elbow.

On June 27, 2008 appellant filed a claim for compensation (Form CA-7) for intermittent dates from November 13 to December 11, 2007, including eight hours on November 28, 2007 and four hours on December 11, 2007. She also filed a CA-7 for intermittent dates from February 13 to May 29, 2008, including four hours on March 25, 2008 and four hours on May 19, 2008.

By decision dated September 8, 2008, the Office denied claims for compensation on November 28 and December 11, 2007, as well as the claimed compensation from February 13 to May 29, 2008.¹ It noted that appellant had a pending claim for a new right arm injury on January 24, 2008.

Appellant, through her representative, requested a telephonic hearing with an Office hearing representative by letter dated September 17, 2008.² On October 22, 2008 appellant submitted treatment notes from Dr. Christopher Nagy, an orthopedic surgeon. In a note dated March 25, 2008, Dr. Nagy stated that appellant continued to have problems with her right upper extremity and chest wall. He reported he did not feel any evidence of muscular tightness or swelling, and recommended that appellant start therapy.

By decision dated April 3, 2009, the hearing representative modified the September 8, 2008 Office decision. The hearing representative found that appellant was entitled to compensation for certain dates claimed as the record established treatment for the accepted right shoulder condition. There were four specific dates claimed that remained denied: eight hours on November 28, 2007; four hours on December 11, 2007; four hours on March 25, 2008; and four hours on May 19, 2008.

LEGAL PRECEDENT

Section 8103(a) of the Federal Employees’ Compensation Act states in pertinent part: “The United States shall furnish to an employee who is injured while in the performance of duty the services, appliances and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability or aid in lessening the amount of the monthly compensation.” The Office’s obligation

¹ While the Office stated the claim for December 11, 2007 was for eight hours, the time analysis form (Form CA-7a) reported four hours of compensation claimed for that date.

² A January 21, 2009 Office letter indicated the request had been changed to a request for a review of the written record.

to pay for medical treatment under this section extends only to treatment of employment-related conditions and appellant has the burden of establishing that the treatment is for the effects of an employment injury.³

With respect to disability for work, the term disability is defined as the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.⁴ 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.⁵ The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.⁶

ANALYSIS

In the present case, the Office denied compensation with respect to four specific dates: eight hours on November 28, 2007; four hours on December 11, 2007; four hours on March 25, 2008; and four hours on May 19, 2008. As to the dates appellant claimed only four hours, it appears her primary claim is that the treatment she received on those dates was for an employment-related condition and, therefore, she is entitled to compensation for the time off work to receive medical treatment.⁷ The claim for eight hours on November 28, 2007 presumably includes a claim for disability for work on that date.

As noted above, it is appellant's burden of proof to establish entitlement to compensation for the specific dates claimed. With respect to November 28, 2007, appellant was treated by Dr. McBride on that date. While Dr. McBride briefly noted that appellant reported a "hot" sensation in the scapula region, he primarily discussed the right elbow and diagnosed cubital tunnel syndrome. For the right shoulder, he noted only that impingement sign was negative. The accepted conditions were a right ankle fracture, cervical strain and right shoulder impingement syndrome. The November 28, 2007 report from Dr. McBride does not establish that the treatment was for an accepted condition from the June 26, 2006 employment injury. In addition, he did not discuss disability for work on that date due to an accepted condition.

With respect to the remaining dates, the Board notes that no medical evidence was presented regarding treatment on December 11, 2007 or May 19, 2008. Appellant did receive

³ *Dale E. Jones*, 48 ECAB 648, 649 (1997).

⁴ 20 C.F.R. § 10.5(f); *see, e.g., Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury but no loss of wage-earning capacity).

⁵ *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁶ *Id.*

⁷ An employee who receives treatment for an employment-related condition may be paid wage-loss compensation while obtaining medical services and for a reasonable time traveling to and from the medical provider's location. *See Amelia S. Jefferson*, 57 ECAB 183, 188 (2005).

treatment on March 25, 2008 from Dr. Nagy, but it is not clear from his brief note that treatment was causally related to a June 26, 2006 employment injury. He noted only right upper extremity and chest wall problems, without discussing the right shoulder or the accepted employment injury. The Board accordingly finds that, based on the evidence of record, appellant has not established entitlement to compensation for the claimed hours on November 28 and December 11, 2007, or March 25 and May 19, 2008.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish the claimed hours of compensation on November 28 and December 11, 2007, or March 25 and May 19, 2008.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 3, 2009 is affirmed.

Issued: April 5, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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