

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

S.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
St. Paul, KS, Employer**

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**Docket No. 10-922
Issued: November 18, 2010**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 18, 2010 appellant filed a timely appeal from a January 19, 2010 merit decision of the Office of Workers' Compensation Programs. 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 employment-related total disability from May 26 to 29, 2009.

FACTUAL HISTORY

On February 19, 2009 appellant, then a 25-year-old officer in charge, filed a traumatic injury claim (Form CA-1) alleging she sustained a right shoulder injury as a result of lifting a mail tub on February 19, 2009. The claim was accepted for right supraspinatus tendinitis.¹

¹ On July 15, 2009 the Office advised appellant that the claim was also accepted for other acquired deformities of other parts of limbs, right. On October 30, 2009 it accepted nontraumatic rupture of other tendon, right.

Appellant stopped work on February 21, 2009 and returned on March 6, 2009. The record contains a March 10, 2009 job offer for a modified position that was accepted by appellant.² In a report dated May 21, 2009, Dr. Brad Meister, an orthopedic surgeon, reported that examination showed no change and appellant still had scapular winging on the right side. He stated that this was potentially related to either carrying a mailbag or the lifting incident at work.

Appellant filed a claim for compensation (Form CA-7) for the period May 26 to 29, 2009. With respect to medical evidence, she submitted a May 26, 2009 form report from a local emergency department. Appellant was seen for right shoulder pain since the injury at work on February 19, 2009. She was provided medication and advised to follow up with Dr. Meister. The form noted she should be excused from work May 26 to 28, 2009. The signatures on the form are illegible.

In a note dated May 28, 2009, Dr. Meister stated “no use” of right arm until appointment with another specialist.

On June 19, 2009 Dr. Erich Lingenfelter, an orthopedic surgeon, obtained a history that appellant was injured in February when she lifted some heavy boxes. He provided results on examination and diagnosed “persistent scapular winging failing nonoperative measures.” In a June 26, 2009 report, Dr. Lingenfelter stated the diagnosis was “scapular winging secondary to serratus anterior dysfunction/long thoracic nerve dysfunction. The secondary manifestation of that is that if there is scapular dyskinesia this typically does cause rotator cuff tend[i]nitis.”

In a report dated July 9, 2009, Dr. Bradley Davis, a physiatrist, obtained a history of a heavy lifting incident on February 19, 2009. He provided results on examination and diagnosed medial scapular winging, possible back packer’s palsy “secondary to occupation” and possible occipital neuralgia. He stated that if the scapular winging was secondary to a back packer’s palsy due to appellant’s history of carrying a 75-pound satchel for two hours a day, she would benefit from discontinuing this activity.

By decision dated July 28, 2009, the Office denied appellant’s claim for compensation from May 26 to 29, 2009.

Appellant requested a telephonic hearing with an Office hearing representative, which was held on November 18, 2009. At the hearing appellant stated that on May 26, 2009 she was driving home on her lunch break when she experienced severe pain in her neck, right shoulder and arm. She received treatment at a local emergency room on that date and clarified that she was seen by a physician’s assistant. Appellant was scheduled for treatment by Dr. Meister on May 28, 2009, but his office cancelled the appointment. On May 30, 2009 she received the note from Dr. Meister stating she should not use her right arm. Following the hearing, appellant submitted medical evidence pertaining to right shoulder surgery on October 30, 2009.

² A June 25, 2009 memorandum of phone call indicated that appellant had been temporarily assigned as officer in charge (OIC) in January 2009 while the permanent OIC was on a temporary detail.

In a decision dated January 19, 2010, the hearing representative affirmed the July 28, 2009 decision. She found the medical evidence was insufficient to establish employment-related disability for the dates claimed.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act³ has the burden of establishing the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁴ 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.⁵

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.⁶ Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work. When a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that she hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.⁷ 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.⁸

To establish a causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.⁹ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.¹⁰ The opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship.¹¹

³ 5 U.S.C. §§ 8101-8193.

⁴ *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ 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).

⁶ *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁷ *Id.*

⁸ *Id.*

⁹ *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

¹⁰ *Elizabeth Stanislav*, 49 ECAB 540 (1998).

¹¹ *Leslie C. Moore*, 52 ECAB 132 (2000).

ANALYSIS

Appellant sustained injury to her right shoulder on February 19, 2009 accepted for tendinitis. On May 26, 2009 she experienced sharp right shoulder pain. Appellant went to the emergency department of her health care provider and she received treatment from a physician's assistant. The treatment records advised that she should be off work on May 26, 27 and 28, 2009.

In order to meet appellant's burden of proof to establish the claimed disability is employment related, there must be probative medical evidence on the issue of causal relationship between her disability and the employment injury. The treatment records from the physician's assistant does not constitute competent medical evidence as a physician's assistant is not a "physician" as defined under 5 U.S.C. § 8101(2).¹² Appellant submitted a note dated May 28, 2009 from Dr. Meister, but he provided only a brief statement that she should not use her right arm. He did not provide a history or a rationalized medical opinion on the issue of her disability for the dates claimed. Moreover, appellant indicated that she did not actually see Dr. Meister on May 28, 2009.

There is no other medical evidence of record that addresses her disability from May 26 to 29, 2009. None of appellant's attending physicians provided a rationalized medical opinion relating her disability on the claimed dates to the February 19, 2009 employment injury. It is appellant's burden of proof to establish the period of disability. She did not meet her burden of proof in this case.

CONCLUSION

The Board finds that appellant did not establish an employment-related total disability from May 26 to 29, 2009.

¹² *George H. Clark*, 56 ECAB 162 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 19, 2010 is affirmed.

Issued: November 18, 2010
Washington, DC

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

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

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