

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

W.M., Appellant

and

**DEPARTMENT OF JUSTICE, BUREAU OF
PRISONS, Forest City, AR, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 10-436
Issued: September 27, 2010**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
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 December 7, 2009 appellant filed a timely appeal from the merit decision of the Office of Workers' Compensation Programs dated November 3, 2009 denying wage-loss compensation. 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 is entitled to wage-loss compensation due to his June 14, 2008 employment injury.

FACTUAL HISTORY

The Office accepted that on June 14, 2008 appellant, then a 35-year-old utility systems repairer, sustained a partial distal biceps tendon rupture of his right elbow when he pulled a circuit breaker. Appellant first sought medical treatment on July 10, 2008 and stopped work on

July 22, 2008. In late July 2008, he returned to work in a light-duty position for the employing establishment with no wage loss.¹

In a March 12, 2009 report, Dr. Michael Moore, an attending Board-certified orthopedic surgeon, noted that, when appellant was examined on March 12, 2009, he exhibited minimal pain in his right elbow upon flexion, supination and pronation motions. He stated that appellant might benefit from reinsertion of the right elbow biceps tendon in the radial tiberosity. Dr. Moore found, however, that appellant was able to return to his regular work as a utility systems repairer for the employing establishment. In late March 2009, appellant returned to work at no wage loss in a job with duties similar to those of his utility systems repairer job. On April 7, 2009 Dr. Moore reported the findings of his examination on that date and stated that appellant “will continue regular work activities.”

In a May 8, 2009 decision, the Office found that appellant was not entitled to wage-loss compensation after March 12, 2009 due to his June 14, 2008 employment injury. It noted that Dr. Moore had determined that appellant could return to regular duty effective March 12, 2009. The Office indicated that appellant would continue to be entitled to receive medical benefits from the Office related to the treatment of his June 14, 2008 employment injury as he still had residuals of that injury.

Appellant requested a hearing before an Office hearing representative. At the August 10, 2009 hearing, he was represented by his counsel who advised that appellant did not disagree with the factual basis for the Office’s decision but rather questioned the wording of the decision. Counsel stated that appellant had returned to full duty with no wage loss. He agreed that at the present time there was no temporary total disability for wage loss. Counsel argued that the May 8, 2009 decision implied that appellant had no permanent impairment and that the issue of permanent impairment had not been raised.

In a November 3, 2009 decision, the Office hearing representative affirmed the May 8, 2009 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act² has the burden of establishing the essential elements of his claim including the fact that the individual is an “employee of the United States” within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the

¹ The Office did not pay wage-loss compensation to appellant, although he received medical benefits related to the treatment of his June 14, 2008 injury. Appellant used leave to cover his brief period of total disability and did not file a claim for disability compensation.

² 5 U.S.C. §§ 8101-8193.

performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³

ANALYSIS

The Office accepted that on June 14, 2008 appellant sustained a partial distal biceps tendon rupture of his right elbow when he pulled a circuit breaker. After a brief work stoppage, he returned to work in a light-duty position for the employing establishment with no wage loss. In late March 2009 appellant returned to work, still with no wage loss, in a job with duties that were very similar to those of his utility systems repairer job.

The Board finds that appellant is not entitled to wage-loss compensation due to his June 14, 2008 employment injury. On March 12, 2009 Dr. Moore, an attending Board-certified orthopedic surgeon, determined that appellant could return to regular duty effective that day.⁴ At the time, appellant was working at the employing establishment in a position with no wage loss relative to his date-of-injury job. Shortly after March 12, 2009 he returned to regular duty again with no wage loss. For these reasons, the Office properly found that appellant is not entitled to wage-loss compensation.⁵

CONCLUSION

The Board finds that the Office properly determined that appellant is not entitled to wage-loss compensation due to his June 14, 2008 employment injury.

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989). Disability means the incapacity, because of an employment injury, to earn wages the employee was receiving at the time of the injury. It may be partial or total. *See* 20 C.F.R. § 10.5(f).

⁴ On April 7, 2009 Dr. Moore reported the findings of his examination on that date and stated that appellant “will continue regular work activities.”

⁵ The Board notes that this decision does not preclude appellant from seeking a schedule award for permanent impairment related to the 2008 right elbow injury.

ORDER

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

Issued: September 27, 2010
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