

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

J.L., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Englishtown, NJ, Employer**

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**Docket No. 11-1193
Issued: December 9, 2011**

Appearances:

*Robert D. Campbell, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 19, 2011 appellant, through his attorney, filed a timely appeal from an October 21, 2010 decision of the Office of Workers' Compensation Programs (OWCP) denying his disability claim. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 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 met his burden of proof to establish disability for seven intermittent days from September 27 to November 8, 2008.

On appeal his attorney states that appellant has been compensated for all claimed periods but the dates September 27 and 28, October 20, 21 and 22, and November 7 and 8, 2008, and is entitled to wage-loss compensation for these dates due to the accepted employment injuries.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On May 9, 2005 appellant, then a 54-year-old letter carrier, filed an occupational disease claim alleging that his employment duties caused problems in both shoulders and elbows and in the right foot. OWCP accepted an aggravation of bilateral wrist arthritis, tendinitis and bursitis of both shoulders and myositis of the right foot.² On March 9, 2010 appellant was granted a schedule award for an eight percent impairment of the right upper extremity, for a total of 24.96 weeks, to run from April 22 to October 13, 2009.³

Appellant filed claims for intermittent compensation from December 31, 2007 to December 31, 2009. He submitted medical reports from Dr. Edmund R. Kappy, an attending Board-certified orthopedic surgeon. In a July 23, 2007 report, Dr. Kappy described appellant's job duties, stating that he had been put on restrictions but still delivered mail. He diagnosed arthritis of the wrist, shoulder impingement syndrome, carpal tunnel syndrome, ulnar tunnel syndrome and problems with cervical radiculopathy, all caused by overuse syndrome at work. Dr. Kappy opined that appellant would have to take days off from work "in order to be able to get himself through." On January 6, 2009 counsel submitted a single page from a medical report dated December 18, 2008 of Dr. Kappy. Dr. Kappy noted that appellant had chronic and permanent arthritis in multiple joints, tendinitis in the shoulders and neck, shoulder bursitis, neuritis of the wrists caused by arthritis, and myositis in several areas of the upper extremity and foot, all related to work duties. He stated that appellant was disabled from his regular postal duties.

In a March 23, 2009 report, Dr. Kappy stated that he had not seen appellant since July 2007 and could not say whether he was better or worse. In a May 7, 2009 report, he provided examination findings and diagnosed cervical radiculopathy and plantar fasciitis of the right foot. By report dated June 9, 2009, Dr. Kappy advised that he had seen appellant through the years for problems with his hands, shoulder, neck, feet and back, for what had developed into systemic arthritis of different areas. He noted that appellant also had bilateral carpal tunnel syndrome for which he had surgery on the left in March 2004. Dr. Kappy reported that appellant had recently retired and stated that he treated appellant through the years for carpal tunnel syndrome, radicular symptoms from the cervical spine and a tardy ulnar palsy of the left elbow. He concluded that appellant had a multitude of different problems, made worse by his arthritis, and it would be difficult for him to perform heavy repetitive activities at work.

Appellant submitted impairment evaluations from Dr. Nicholas Diamond, an osteopath, dated June 1, 2005 and April 22, 2009.

² The instant claim was initially denied in decisions dated November 9, 2005, February 8 and December 21, 2007, and March 18, 2009.

³ The record indicates that appellant has an accepted left upper extremity claim, adjudicated under file number xxxxxx198, for which he received a schedule award for a 13 percent permanent impairment. He also received a schedule award for three percent impairment of the right upper extremity and three percent impairment of the left upper extremity under file number xxxxxx078, and has an accepted condition of tendinitis of the left wrist under file number xxxxxx819.

By letter dated March 26, 2010, the employing establishment advised that appellant did not notify the employing establishment that any absences were related to an injury, that he worked until the date of his voluntary retirement on December 31, 2008 and that he worked overtime on occasion. It attached letters dated August 15 and September 13, 2005 that indicated that appellant owned a tree and landscape business.

In an April 9, 2010 decision, OWCP denied appellant's claim for intermittent wage loss for the period December 2007 to December 2008 finding that the medical evidence of record did not support the periods of total disability claimed.

On April 26, 2010 appellant requested a hearing, that was held telephonically on August 3, 2010. His attorney stated that appellant was claiming wage loss for the dates August 26, 27 and 28, September 27, 28 and 29, October 20, 21 and 22, and November 7 and 8, 2008 only. Appellant testified that it was difficult to work beginning in August 2008 due to pain in both shoulders, both wrists and his right foot, and that he saw two physicians, a Dr. Costoro and a Dr. Abbasi, who told him not to work. He was given 30 days to submit additional medical information.

On September 2, 2010 the employing establishment advised that September 28 and October 21, 2008 were not scheduled workdays for appellant and that he was on leave-without-pay status on the additional nine days claimed.

In an October 21, 2010 report, Dr. Kappy noted appellant's complaint of multiple joint pain getting worse. He provided physical examination findings and diagnosed systemic arthritis.

By decision dated October 21, 2010, an OWCP hearing representative affirmed the April 9, 2010 decision on the grounds that the medical evidence did not establish that appellant was disabled due to the accepted conditions for the claimed dates.

LEGAL PRECEDENT

Under FECA the term "disability" is defined as incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.⁴ Disability is thus not synonymous with physical impairment which may or may not result in an incapacity to earn the wages. An employee who has a physical impairment causally related to a federal employment injury but who nonetheless has the capacity to earn wages he or she was receiving at the time of injury has no disability as that term is used in FECA,⁵ and whether a particular injury causes an employee disability for employment is a medical issue which must be resolved by competent medical evidence.⁶ Whether a particular injury causes an employee to be disabled

⁴ See *Prince E. Wallace*, 52 ECAB 357 (2001).

⁵ *Cheryl L. Decavitch*, 50 ECAB 397 (1999); *Maxine J. Sanders*, 46 ECAB 835 (1995).

⁶ *Donald E. Ewals*, 51 ECAB 428 (2000).

for work and the duration of that disability, are medical issues that must be proved by a preponderance of the reliable, probative and substantial medical evidence.⁷

The Board will not require OWCP 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 Furthermore, it is well established that medical conclusions unsupported by rationale are of diminished probative value.⁹

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.¹⁰ Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹¹ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹²

ANALYSIS

The accepted conditions in this case are aggravation to bilateral wrist arthritis, tendinitis and bursitis of both shoulders and myositis of the right foot. Appellant is claiming wage loss for the following dates: September 27 and 28, October 20, 21 and 22 and November 7 and 8, 2008. The Board finds that he did not meet his burden of proof to establish that he was totally disabled due to the accepted conditions on the claimed dates because there is no medical evidence to support disability.

In a July 23, 2007 report, Dr. Kappy advised that appellant would have to take days off from work "in order to be able to get himself through." However, he did not provide any rationale to explain this conclusion. The only medical report of record dated in the year 2008 is the third page of a December 18, 2008 report in which Dr. Kappy indicated that appellant had chronic and permanent arthritis in multiple joints in this body, tendinitis in the shoulders and neck, shoulder bursitis, neuritis of the wrists caused by arthritis, myositis in several areas of his upper extremity and foot, all related to his work duties. He stated that appellant was disabled

⁷ *Tammy L. Medley*, 55 ECAB 182 (2003); see *Donald E. Ewals*, *id.*

⁸ *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁹ *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

¹⁰ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹¹ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

¹² *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

from his regular postal duties. This report is dated after the period of claimed wage loss. In a March 23, 2009 report, Dr. Kappy stated that he had not seen appellant since July 2007 and could not say whether he was better or worse. He also reported on June 9, 2009 that it would be difficult for appellant to perform heavy repetitive activities at work, but this too is after the period of claimed intermittent compensation. The Board has long held that medical conclusions unsupported by rationale are of diminished probative value and insufficient to establish causal relationship.¹³ Dr. Kappy's opinion is therefore insufficient to establish that appellant was totally disabled for the claimed seven days.

Appellant referenced two additional physicians at the hearing, Drs. Costoro and Abbasi. The record, however, contains no reports from either physician. Additionally, the medical evidence of record includes impairment evaluations from Dr. Diamond, an osteopath, dated June 1, 2005 and April 22, 2009. The 2005 report predates the period of claimed disability by more than three years and is therefore irrelevant. The 2009 report does not discuss appellant's work capability for the claimed dates or any other period.¹⁴ It too is insufficient to establish entitlement to disability compensation for the claimed dates.

None of the medical reports of record address appellant's ability to work on the seven dates in question. As noted above, the Board will not require OWCP to pay compensation for disability in the absence of medical evidence that directly addresses 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.¹⁵ There is no medical evidence of record in this case that meets this requirement.

As there is no rationalized medical evidence contemporaneous with the periods of claimed disability, appellant failed to meet his burden of proof to establish entitlement to total disability compensation for the dates September 27 and 28, October 20, 21 and 22 and November 7 and 8, 2008.¹⁶

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not establish that he was entitled to wage-loss compensation for the dates September 27 and 28, October 20, 21 and 22 and November 7 and 8, 2008.

¹³ See *Albert C. Brown*, 52 ECAB 152 (2000).

¹⁴ *William A. Archer*, *supra* note 8.

¹⁵ *Id.*

¹⁶ See *Tammy L. Medley*, *supra* note 7.

ORDER

IT IS HEREBY ORDERED THAT the October 21, 2010 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: December 9, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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