

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

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M.S., Appellant )

and )

DEPARTMENT OF AGRICULTURE, )  
NATIONAL FOREST SERVICE, )  
Fort Bragg, CA, Employer )

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**Docket No. 10-2122  
Issued: June 3, 2011**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
ALEC J. KOROMILAS, Judge  
COLLEEN DUFFY KIKO, Judge

**JURISDICTION**

On August 13, 2010 appellant filed a timely appeal from a March 12, 2010 merit decision of the Office of Workers' Compensation Programs denying his claim for disability compensation. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> 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 has established that he was disabled from November 22 to December 2, 2009 due to his accepted left shoulder condition.

**FACTUAL HISTORY**

On October 16, 2009 appellant, then a 44-year-old primary firefighter, filed an occupational disease claim alleging that he developed shoulder impingement as a result of

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

working as a firefighter for 17 years. He first realized his condition and related it to his employment on September 9, 2009. In a supplemental statement, appellant explained that he first experienced shoulder problems around 2003, which progressed to the point that certain overhead motions caused him extreme pain. He opined that his rotator cuff impingement was caused by working as a firefighter and engine captain for over 17 seasons.

By decision dated November 3 and 12, 2009, the Office accepted appellant's claims for a left shoulder sprain and bursae and tendons disorder. On December 3, 2009 appellant filed a claim for compensation for the period November 22 to December 19, 2009.

Appellant provided medical reports from Dr. Brian Cable, a Board-certified orthopedic surgeon. In a September 23, 2009 medical report, Dr. Cable stated that appellant had been a firefighter for over 17 years and experienced persistent shoulder problems since 2003. Appellant described the pain as sharp and located anteriorly with some radiation down the biceps to the deltoid insertion. He further explained that activities of daily living, particularly at work, aggravated his shoulder with reflexive overhead motion being bothersome. Dr. Cable reported that the pain was work related, specifically the activity of pulling heavy fire hose. He further noted that appellant's work involved upper body repetitive activities requiring upper body strength such as laying fire lines and using a chain saw. Dr. Cable also conducted a physical examination and observed no significant asymmetry or atrophy in appellant's shoulders, point tender over the anterolateral and posterolateral acromion aggravated with impingement maneuvers and a grossly intact rotator cuff function. He noted that appellant's Neer, Hawkins and O'Brien's testing were positive. Dr. Cable reviewed appellant's MRI scan results and did not find any significant rotator cuff pathology, but did observe some signal change consistent with mild tendinitis. He opined that appellant's work-related activities contributed to his left shoulder large tear and recommended a shoulder arthroscopy. On November 24, 2009 the Office authorized appellant's left shoulder arthroscopy.

In a December 15, 2009 letter, the Office informed appellant that it received his claim for compensation beginning on November 22, 2009. It requested he provide a medical report by his treating physician indicating that appellant should be off work beginning on November 22, 2009 and confirming that appellant had surgery on December 8, 2009.

Appellant responded on December 18, 2009 by submitting additional medical reports by Dr. Cable. In a December 4, 2009 letter, Dr. Cable confirmed that appellant was under his medical care and stated that he should remain off work from December 2 to 19, 2009. In a December 7, 2009 medical report, he stated that appellant was a 45-year-old right-handed firefighter who was diagnosed with left shoulder outlet impingement and rotator cuff tendinitis. Dr. Cable also noted that appellant was scheduled for left shoulder surgery on December 8, 2009. In a December 8, 2009 surgical report, he noted that he performed a left shoulder arthroscopy on appellant for his shoulder impingement. In a December 15, 2009 treatment note, Dr. Cable checked a box indicating that appellant should remain off work until further notice.

In a letter dated December 23, 2009, the Office advised appellant that the medical evidence was insufficient to demonstrate that appellant was disabled beginning on November 22, 2009.

In a letter dated December 28, 2009, the Office reported that appellant received a payment for the period December 8 to 31, 2009 for the amount of \$2,578.56 and included a payroll sheet. It also requested medical evidence supporting appellant's disability for the period December 2 to 8, 2009 and specifically explained that pain was not considered an objective medical finding. On December 30, 2009 the Office issued another letter reporting that appellant received a payment for the period January 1 to 3, 2010 in the amount of \$368.36 and included a supplemental payroll sheet.

Appellant provided additional reports by Dr. Cable and by Lem Martin, a physical therapist. In a January 5, 2010 medical note, Dr. Cable confirmed that appellant was under his medical care and had been off work from December 2 to 8, 2009 as a result of severe left shoulder pain, little to no range of motion and heavy pain medication. In a December 18, 2009 work status report, he checked a box that appellant should remain off work until further notice, but noted that appellant could return to modified work status with restrictions beginning on January 4, 2010. In a February 3, 2010 medical report, Dr. Cable saw appellant for a postoperative examination. He noted appellant's date of injury as September 9, 2009 and date of surgery as December 8, 2009. Dr. Cable further reported that appellant had returned to work doing administrative duties and did not complain of any pain. He observed that appellant had full range of motion of the shoulder with negative impingement signs, no pain on cross body abduction and an intact rotator cuff function. Dr. Cable noted some weakness on isolation of supraspinatus to heavy resistance, but x-rays revealed adequate decompression in both the acromion and distal clavicle. In a December 8, 2009 operative report, he reported that the surgery revealed a large anterior acromial spur, a hypertrophied coracoacromial ligament, an inflamed and irritated underlying bursal surface of the rotator cuff, and a significant arthritic AC joint impinging on the underlying rotator cuff with evidence of tendinitis.

In a December 29, 2009 physical therapy evaluation, Lem Martin, a physical therapist, stated that appellant was a 45-year-old fireman with several episodes of left shoulder pain while putting on a fire hose, which progressed to the point that he was unable to exercise. He reported that appellant underwent a left shoulder subacromial decompression on December 10, 2009 performed by Dr. Cable and is currently undergoing physical therapy for early range of motion and strength. Mr. Martin noted that appellant's right shoulder range of motion was within normal limits and his left shoulder range of motion was 0 to 145 degrees flexion, 0 to 125 degrees abduction, 0 to 90 degrees external rotation and 0 to 50 degrees internal rotation. Appellant was advised to continue physical therapy treatments at least two times per week for six weeks.

According to a January 11, 2010 payroll sheet, appellant received compensation for the period December 2 to 7, 2009 in the amount of \$736.73. The report noted that he had been temporarily totally disabled since December 2, 2009.

In a decision dated March 12, 2010, the Office denied appellant's claim for disability compensation for the period November 22 to December 7, 2009 because he failed to submit medical evidence demonstrating that he was totally disabled for that period.

## LEGAL PRECEDENT

The term disability as used in the Act<sup>2</sup> means the incapacity because of an employment injury to earn the wages that the employee was receiving at the time of injury.<sup>3</sup> 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.<sup>4</sup> Whether a particular injury causes an employee to be disabled for employment is a medical issue which must be proved by a preponderance of the reliable, probative and substantial medical evidence.<sup>5</sup> Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work.<sup>6</sup>

The Board will not require the Office to pay compensation for disability in the absence of any medical evidence 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.<sup>7</sup>

## ANALYSIS

The Office accepted appellant's claim for left shoulder sprain and bursae and tendons disorder. On December 3, 2009 appellant filed a claim for compensation for the period November 22 to December 19, 2009. The record reflects that the Office paid him compensation for the periods December 2 to 7, 2009, December 8 to 31, 2009 and January 1 to 3, 2010. The issue, therefore, is whether appellant is entitled to compensation for the period November 22 to December 2, 2009. The Board finds that the medical evidence submitted is insufficient to support that the claimed period of disability was causally related to the accepted employment conditions.

In support of his claim for disability compensation, appellant provided medical reports and treatment notes from Dr. Cable. In a December 4, 2009 report, Dr. Cable stated that appellant should remain off work from December 2 to 19, 2009. In December 15 and 18, 2009 treatment notes, he indicated that appellant should not work until further notice. In a January 5, 2010 report, Dr. Cable stated that appellant was off work from December 2 to 8, 2009 because of severe shoulder pain. In addition, in a December 29, 2009 physical therapy report, Dr. Lem described appellant's improvement and advised him to continue physical therapy treatments. None of these medical reports, however, state that appellant was disabled beginning on November 22, 2009. As noted above, the employee has the burden of establishing that he was

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<sup>2</sup> *Id.* at §§ 8101-8193.

<sup>3</sup> 20 C.F.R. § 10.5(f); *Paul E. Thams*, 56 ECAB 503 (2005).

<sup>4</sup> *Sandra D. Pruitt*, 57 ECAB 126 (2005); *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>5</sup> *G.T.*, 59 ECAB 447 (2008); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>6</sup> *See S.F.*, 59 ECAB 525 (2008); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>7</sup> *Amelia S. Jefferson*, 57 ECAB 183 (2005); *see William A. Archer*, 55 ECAB 674 (2004).

disabled for each period of disability claimed as a result of the accepted employment injury.<sup>8</sup> The earliest date that appellant was excused from work is December 2, 2009, for which he received compensation. He, therefore, did not provide any medical evidence establishing that he was disabled beginning on November 22, 2009 as a result of his accepted employment condition.

On appeal, appellant alleged that his pain kept him from doing his work as he was waiting for his surgery and that his physician sent medical documents to support this claim. The issue of whether a claimant's disability is related to an accepted condition is a medical question that must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to employment factors and supports that conclusion with sound medical reasoning.<sup>9</sup> Despite appellant's allegations, the Board finds that no such medical evidence was provided demonstrating that he was disabled from November 22 to December 2, 2009 due to his accepted shoulder condition. Thus, he has failed to meet his burden of proof in this case.

### **CONCLUSION**

The Board finds that appellant has not established that he was disabled from November 22 to December 2, 2009 as a result of his accepted shoulder condition.<sup>10</sup>

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<sup>8</sup> See *Sandra D. Pruitt*, *supra* note 4; *Amelia S. Jefferson*, 57 ECAB 183 (2005).

<sup>9</sup> *T.F.*, 58 ECAB 128 (2006); *K.L.*, Docket No. 09-2053 (issued August 9, 2010).

<sup>10</sup> The Board notes that appellant submitted additional evidence following the March 12, 2010 decision. Since the Board's jurisdiction is limited to evidence that was before the Office at the time it issued its final decision, the Board may not consider this evidence for the first time on appeal. See 20 C.F.R. § 501.2(c); *Sandra D. Pruitt*, *supra* note 4.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 12, 2010 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: June 3, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board