

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

E.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Little Rock, AR, Employer**

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**Docket No. 11-1494
Issued: February 10, 2012**

Appearances:
James W. Stanley, Jr., 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 9, 2011 appellant, through her attorney, filed a timely appeal from the Office of Workers' Compensation Programs' (OWCP) merit decision dated May 25, 2011. 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 her burden of proof to establish that she is entitled to compensation for wage loss from September 4 to 10, 2010.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

Appellant, a 39-year-old modified mail processor, filed a claim for benefits on June 29, 2001, alleging that she strained her neck and shoulder while sorting mail on June 20, 2001. OWCP accepted the claim for neck sprain/strain and bilateral shoulder impingement syndrome.²

On August 20, 2010 appellant filed a Form CA-2a claim for benefits, alleging that she sustained a recurrence of disability as of August 20, 2010 which was causally related to her accepted neck and shoulder conditions. She indicated on the form that she was seeking compensation for 80 hours of leave without pay (LWOP) because the employing establishment had no light duty available to her within her restrictions.

On September 10, 2010 appellant submitted a Form CA-7 requesting compensation for wage loss for the period August 28 to September 10, 2010. She indicated on the form that she was seeking compensation for 80 hours of LWOP because the employing establishment had no light duty available to her within her restrictions.

In a report dated August 4, 2010, received by OWCP on September 16, 2010, Dr. William F. Hefley, Board-certified in orthopedic surgery and appellant's treating physician, stated that he had been treating her for complaints of left shoulder pain and discomfort. He advised that she had some palpable crepitation with impingement testing and a little bit of discomfort; however, he opined that her condition was substantially improved. Dr. Hefley administered a magnetic resonance imaging (MRI) scan of the left shoulder which showed no rotator cuff tear, no labral tear, a subchondral cyst of the humeral head, evidence of prior surgery, but was within normal limits. He stated that he planned to return appellant to an eight-hour, full-duty workday with restrictions on lifting after four weeks of four-hour workdays. In an August 25, 2010 addendum note, Dr. Hefley clarified that he would follow up in four weeks from the August 4, 2010 examination to determine maximum medical improvement and release to full duty at that point.

In two form reports dated August 4, 2010, Dr. Hefley reiterated that he anticipated appellant would reach maximum medical improvement in four weeks time, or as of September 4, 2010.

By letter dated September 28, 2010, OWCP advised appellant that it had received her Form CA-7, claim for wage-loss compensation, from August 28 to September 10, 2010. It informed her that it was authorizing payment for the period August 28 to September 3, 2010; however, it found that she was not entitled to compensation from September 4 to 10, 2010 because the medical evidence indicated that she had been released to work full duty as of September 4, 2010. OWCP informed appellant that she had 30 days to submit the requested medical evidence.

² In a separate claim, case number xxxxxx325, the Board, by decision dated September 13, 2011, Docket No. 11-148, denied appellant's claim for a recurrence of disability as of November 18, 1999, based on an injury she sustained on September 23, 1999.

By decision dated September 29, 2010, OWCP accepted appellant's claim for a recurrence of disability for the period the employing establishment was unable to accommodate her work restrictions, until she was released to return to work with no restrictions on September 4, 2010. It stated that it had received a Form CA-2a, notice of recurrence of injury, indicating that she had been placed off work on August 20, 2010 because there had been no work available to accommodate her work restrictions. OWCP advised appellant to complete a Form CA-7 in the event she lost time from work.³

In a report dated September 14, 2010, received by OWCP on October 8, 2010, Dr. Hefley noted that appellant had been sent home because the employing establishment had no work available to her within her medical restrictions. He stated, however, that her shoulders were in a stable state and that she had reached maximum medical improvement with regard to both shoulders as of September 14, 2010. Dr. Hefley opined that she could resume work for eight hours with her previous work restrictions and limitations in place.

By decision dated November 8, 2010, OWCP denied compensation for wage loss for disability from September 4 to 10, 2010. It stated that it had requested medical evidence sufficient to establish total disability during this period, but that appellant had failed to submit such evidence. This decision did not note receipt of Dr. Hefley's September 14, 2010 report.

On November 18, 2010 appellant requested an oral hearing, which was held on March 17, 2011. She did not submit any new medical evidence.

By decision dated May 25, 2011, an OWCP hearing representative affirmed the November 8, 2010 decision. The hearing representative found that the medical reports of record from Dr. Hefley established that appellant could return to full-duty work as of September 4, 2010.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of establishing that the essential elements of his or her claim by the weight of the evidence.⁵ Under FECA, the term disability is defined as an inability, due to an employment injury, to earn the wages the employee was receiving at the time of injury, *i.e.*, an impairment resulting in loss of wage-earning capacity.⁶ 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.⁷ Whether a particular injury causes an employee to become disabled for work and the duration of that

³ OWCP noted that appellant had filed a Form CA-2a claim for a recurrence of disability under case number xxxxxx325 for the same period of time. It stated that the recurrence claim for that case had been closed and she was considered able to perform full duty in regard to that claim xxxxxx325.

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *See Prince E. Wallace*, 52 ECAB 357 (2001).

⁷ *Dennis J. Balogh*, 52 ECAB 232 (2001).

disability are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.⁸ The fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁹ The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his disability and entitlement to compensation.¹⁰

Chapter 2.807.17(c) of the Federal (FECA) Procedural Manual, Part 2 -- Continuation of Pay and Initial Payments, *Timely Payment of Compensation*, Medical Evidence, (March 2004) states:

“c. Medical Evidence. Absent information that the claimant has returned to duty, the CE may authorize the payment of compensation for wage loss based on medical evidence of injury-related disability for the period claimed or the period for which compensation is being authorized.

(1) Medical evidence may take the form of:

- (a) Form CA-16, Form CA-20 or Form CA-17 with a period of disability indicated.
- (b) Medical notes from the attending physician indicating that the claimant is not to work until the next scheduled office visit, at which time he/she will be reevaluated.
- (c) Hospital records indicating disability for the period in question.
- (d) A current narrative medical report indicating disability for the period in question or projecting disability through the period claimed.”¹¹

ANALYSIS

In the instant case, OWCP accepted appellant’s claim for neck sprain/strain and bilateral shoulder impingement syndrome. Appellant subsequently submitted a Form CA-7 covering the period August 28 to September 10, 2010. In support of her claim, she submitted reports dated August 4 and 25 and September 14, 2010 from the attending physician, Dr. Hefley. These reports indicated that periods of disability, restricted appellant from work until her next scheduled office visit and projected disability through the period claimed. In his August 4, 2010

⁸ Gary L. Watling, 52 ECAB 278 (2001).

⁹ Manual Garcia, 37 ECAB 767 (1986).

¹⁰ Amelia S. Jefferson, 57 ECAB 183 (2005); Fereidoon Kharabi, 52 ECAB 291 (2001).

¹¹ Chapter 2.807.17(c) of the Federal (FECA) Procedural Manual, Part 2 -- Continuation of Pay and Initial Payments, *Timely Payment of Compensation*, Medical Evidence (March 2004)

reports, Dr. Hefley indicated that appellant should continue on disability until his next visit, which was scheduled for four weeks later, on September 4, 2010, at which time he would determine whether she had reached maximum medical improvement and was ready to return to full duty. However, he did not actually examine appellant until September 14, 2010, at which time he determined that her bilateral shoulder condition had stabilized, that she had reached maximum medical improvement and could return to full duty.

The Board finds that the medical evidence appellant submitted above was sufficient to support total disability for the period claimed. The reports from Dr. Hefley clearly met the standard for establishing entitlement to total disability compensation for an accepted condition set out in Chapter 2.807.17(c) of the Federal (FECA) Procedural Manual. OWCP relied on Dr. Hefley's August 4, 2010 reports, which stated that she would attain maximum medical improvement at the time of her next scheduled visit, which was projected to occur four weeks later. He stated, however, that he could not make this determination until he actually reexamined her and was able to review her condition. This examination did not take place until September 14, 2010, at which time Dr. Hefley reported that appellant had in fact reached maximum medical improvement with regard to her shoulders and was able to perform full duty for eight hours per day. Neither OWCP's November 8, 2010 decision, nor the May 25, 2011 hearing representative's decision noted Dr. Hefley's September 14, 2010 report and his findings and conclusions therein. OWCP, however, continued to find, erroneously, that her period of disability ended on September 4, 2010. Dr. Hefley submitted medical reports which were sufficient to establish that appellant was entitled to compensation for total disability based on her accepted bilateral shoulder condition for the period requested, pursuant to the applicable protocols of the Federal (FECA) Procedural Manual, as stated above. The Board therefore reverses the May 25, 2011 decision of OWCP's hearing representative.

CONCLUSION

The Board finds that appellant has met her burden of proof to establish that she was entitled to compensation for wage loss from September 4 to 10, 2010.

ORDER

IT IS HEREBY ORDERED THAT the May 25, 2011 decision of the Office of Workers' Compensation Programs be reversed and the case is remanded to OWCP to determine the amount of compensation to which appellant is entitled.

Issued: February 10, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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