

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

R.W., Appellant)

and)

**U.S. POSTAL SERVICE, LONGVIEW POST
OFFICE, Longview, WA, Employer**)

**Docket No. 12-282
Issued: June 12, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 23, 2011 appellant filed a timely appeal from a July 14, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying modification of its loss of wage-earning capacity determination. 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 established that the August 12, 2009 wage-earning capacity determination should be modified.

FACTUAL HISTORY

On January 10, 2008 appellant, then a 49-year-old part-time associate rural carrier, filed a traumatic injury claim alleging that on December 29, 2007 he separated his right shoulder and

¹ 5 U.S.C. § 8101 *et seq.*

sustained a right leg contusion when he rolled his motor vehicle into a ditch after hitting ice. He stopped work on December 29, 2007. OWCP accepted the claim for lacerations of the right leg, a closed right shoulder acromioclavicular (AC) joint dislocation and multiple right hand lacerations. It paid appellant compensation for total disability beginning February 18, 2008.

On December 4, 2008 appellant accepted a position as a modified rural carrier.² In a decision dated August 12, 2009, OWCP reduced his compensation based on its finding that his actual earnings as a modified rural carrier effective December 6, 2008 fairly and reasonably represented his wage-earning capacity.³ By decision dated April 14, 2010, it denied modification of the August 12, 2009 decision. OWCP found, however, that further development was needed on the issue of appellant's pay rate.

In a report dated August 31, 2010, Dr. Bryan H. Laycoe, a Board-certified orthopedic surgeon, related, "[Appellant] has been gradually increasing at work, even though we had him on restrictions. Basically, he was gradually squeezed back to doing his regular deliver job and he has had more and more pain in the AC joint, tip of the shoulder on the right." Dr. Laycoe diagnosed status post right shoulder AC joint separation with residual symptoms and stated, "It is reasonable for [appellant] to be off work." Dr. Laycoe recommended a magnetic resonance imaging (MRI) scan study and surgical evaluation. In a work status note, he stated that appellant was not released for work.

An MRI scan study of the right shoulder obtained September 22, 2010 revealed old traumatic separation of the AC joint, an area of marrow edema, mild ventral supraspinatus tendinitis and "old traumatic changes involving ventral inferior bony glenoid and adjacent inferomedial humeral head."

On September 10, 2010 Dr. Gregory D. Gramstad, a Board-certified orthopedic surgeon, discussed appellant's December 2007 motor vehicle accident and noted that he "most recently has been taken off work by Dr. Laycoe on August 31, [2010]." Appellant's symptoms included increased pain with repetitive reaching or weight bearing. Dr. Gramstad reviewed and concurred with the September 22, 2010 MRI scan study and diagnosed "[r]ight shoulder chronic [g]rade [3] AC [joint] separation approaching [g]rade [5] with recurrent painful symptoms and limitation with increasing levels of activity." He recommended a coracoclavicular ligament reconstruction and excision of the distal clavicle.⁴

In a November 22, 2010 progress report, Dr. Laycoe noted that Dr. Gramstad recommended a distal clavicle resection and reconstruction. He found that appellant would most likely be off for a minimum of four months and that there was "very significant doubt" regarding whether he could return to work after he recovered from surgery. In a disability certificate,

² By decision dated April 7, 2009, OWCP granted appellant a schedule award for a 10 percent permanent impairment of the right arm. The period of the award ran from December 21, 2006 to July 27, 2009.

³ OWCP reduced appellant's compensation on July 28, 2009 the date his schedule award compensation ended.

⁴ On October 13, 2010 an OWCP medical adviser determined that the requested surgery was appropriate and should be authorized.

Dr. Laycoe indicated that appellant was not released for employment and could be off work for four months.⁵

By letter dated February 24, 2011, appellant informed OWCP that he was unable to work beginning August 31, 2010 and requested compensation for total disability. On March 21, 2011 he filed a claim for compensation for total disability from August 31, 2010 to February 28, 2011.

On April 1, 2011 OWCP advised appellant of the criteria for modifying a wage-earning capacity decision. It explained that the medical evidence was currently insufficient to establish that his shoulder condition materially changed and requested that he submit rationalized evidence supporting that he was unable to work beginning August 31, 2010.

In a report dated May 3, 2011, Dr. Gramstad related that Dr. Laycoe would provide the rationale for appellant being taken off work in August 2010. On May 3, 2011 Dr. Laycoe stated, “[Appellant] was taken off work for a diagnosis of post[-]traumatic arthritis in the [AC] joint of the right shoulder confirmed with x-rays and MRI [scan study] in 2010. This was not compatible with his work due to excessive reaching with his arm.” Dr. Laycoe related that he referred appellant to Dr. Gramstad for surgery and stated:

“[Appellant’s] time off work until he had surgery was some months, but was to be expected, as it was a process between him finally reaching a point of not being able to work in August [2010] through the time period that I was assessing this and doing MRI [scans] and ultimately to his referral to Dr. Gramstad. As I understand it, there was no light[-]work option available from the [employing establishment] and the demands were too much on his shoulder due to the post[-]traumatic arthritis.”⁶

By decision dated July 14, 2011, OWCP denied appellant’s claim for compensation from August 31, 2010 to January 27, 2011 as he had not established that modification of the wage-earning capacity determination was warranted. It noted that his condition materially changed beginning January 28, 2011 when he had surgery and that he was entitled to compensation for total disability beginning that date.

On appeal, appellant contends that his shoulder pain increased as his work duties became more demanding. He discussed the medical evidence submitted and questioned why it was insufficient to show that he was totally disabled. Appellant also noted that the employing establishment did not offer him light duty.

LEGAL PRECEDENT

A wage-earning capacity decision is a determination that a specific amount of earnings, either actual earnings or earnings from a selected position, represents a claimant’s ability to earn

⁵ The record contains progress reports from Dr. Gramstad addressing appellant’s pre and postoperative condition.

⁶ In another report dated May 3, 2011, Dr. Gramstad related that Dr. Laycoe would provide the rationale for appellant being taken off work in August 2010.

wages.⁷ Compensation payments are based on the wage-earning capacity determination and it remains undisturbed until properly modified.⁸

Once the wage-earning capacity of an injured employee is determined, a modification of such determination is not warranted unless there is a material change in the nature and extent of the injury-related condition, the employee has been retrained or otherwise vocationally rehabilitated or the original determination was, in fact, erroneous.⁹ The burden of proof is on the party attempting to show a modification of the wage-earning capacity determination.¹⁰

ANALYSIS

OWCP accepted that appellant sustained a right leg laceration, multiple hand lacerations and a dislocation of the AC joint of the right shoulder in a December 29, 2007 motor vehicle accident. On August 12, 2009 it reduced his compensation as his actual earnings as a modified rural carrier beginning December 6, 2008 fairly and reasonably represented his wage-earning capacity.

On March 21, 2011 appellant filed a claim for compensation for total disability beginning August 31, 2010. He did not allege that the original wage-earning capacity was erroneous but instead that he sustained a material change in the nature and extent of his employment-related condition.

OWCP determined that appellant established that modification of the August 12, 2009 wage-earning capacity determination was warranted beginning January 28, 2011, the date he underwent right shoulder surgery. The Board finds, however, that he did not submit sufficient medical evidence to establish a material change in his injury-related condition, which prevented him from performing the duties of the modified rural carrier position prior to January 28, 2011.¹¹

In a report dated August 31, 2010, Dr. Laycoe related that appellant's work duties had increased and that he was experiencing more pain in the AC joint of the right shoulder. He diagnosed status post AC joint separation of the right shoulder and stated that it was reasonable for appellant to be off work. In a disability certificate of the same date, Dr. Laycoe noted that appellant was not released for work. He did not, however, provide any rationale addressing how appellant's right shoulder condition had materially changed such that he was disabled from his

⁷ See 5 U.S.C. § 8115 (determination of wage-earning capacity).

⁸ *Sharon C. Clement*, 55 ECAB 552 (2004).

⁹ *Harley Sims, Jr.*, 56 ECAB 320 (2005); *Tamra McCauley*, 51 ECAB 375, 377 (2000).

¹⁰ *Id.*

¹¹ See *Norman F. Bligh*, 41 ECAB 230 (1989) (discussing the need for rationalized medical evidence to show a material change in an injury-related condition in the context of a request for modification of an OWCP wage-earning capacity determination).

modified position as a rural carrier. As Dr. Laycoe's report is devoid of medical rationale regarding appellant's disability it is of diminished probative value.¹²

In a progress report dated November 22, 2010, Dr. Laycoe noted that Dr. Gramstad had recommended surgery and stated that appellant would be off work a minimum of four months. In a disability certificate he again opined that appellant was not released for work. Dr. Laycoe, however, did not explain why appellant became disabled from his modified work duties prior to surgery or relate the disability to the accepted work injury. Additionally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work.¹³

On May 3, 2011 Dr. Laycoe related that appellant was disabled from work based on his post-traumatic AC joint arthritis confirmed by MRI scan study. He stated that the arthritis was not compatible with appellant's work due to excessive reaching with his arm. Dr. Laycoe asserted that it took time to schedule appellant's surgery and that he understood that there was "no light[-]work option available from the [employing establishment]...." It is unclear from this report whether he was aware of appellant's modified work duties. The issue of whether a claimant's disability is related to an accepted condition is a medical question, which 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.¹⁴ As Dr. Laycoe's disability finding was not based on an accurate history of appellant's work duties as a modified rural carrier, his report is of little probative value.¹⁵

On September 10, 2010 Dr. Gramstad reviewed appellant's history of a work injury on December 2007 and noted that Dr. Laycoe found that appellant should not work beginning August 31, 2010. He diagnosed AC joint separation with recurrent pain and limitations and recommended surgery. On May 3, 2011 Dr. Gramstad indicated that Dr. Laycoe would address appellant's disability from work starting August 2010. He discussed Dr. Laycoe's disability finding but did not independently address the issue of whether appellant was disabled from work as of August 31, 2010. Consequently, Dr. Gramstad's opinion is insufficient to meet appellant's burden of proof.

On appeal, appellant argues that his work duties increased but submitted no evidence supporting this allegation. He further maintains that the medical evidence is sufficient to show that he was disabled during the period in question and that the employing establishment did not offer him limited duty. Appellant has the burden, however, to show that he is disabled from his modified employment.¹⁶ As explained above, however, he has not submitted rationalized

¹² *K.W.*, 59 ECAB 284 (2007).

¹³ *Laurie S. Swanson*, 53 ECAB 517 (2002).

¹⁴ *Sandra D. Pruitt*, 57 ECAB 126 (2005).

¹⁵ See *Roger Dingess*, 47 ECAB 123 (1995) (a physician's report must be based on a complete and accurate factual history).

¹⁶ See *Thaddeus J. Spevack*, 53 ECAB 474 (2002) (the burden of proof is on the party attempting to show a modification of the wage-earning capacity award).

medical evidence addressing how his accepted conditions caused him to be totally disabled from his position as a modified rural carrier. Appellant may again request modification of the wage-earning capacity determination for the period in question, supported by new evidence of argument, at any time before OWCP.

CONCLUSION

The Board finds that appellant has not established that the August 12, 2009 wage-earning capacity determination should be modified prior to January 28, 2011.

ORDER

IT IS HEREBY ORDERED THAT the July 14, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 12, 2012
Washington, DC

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

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

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