

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

J.D., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Springhill, FL, Employer**

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**Docket No. 12-1687
Issued: February 20, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 6, 2012 appellant filed a timely appeal from a March 30, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. § 501.3(e), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant is entitled to wage-loss compensation for eight hours on August 15, 2011 and 2.64 hours on September 14, 2011.

¹ The record also contains an April 6, 2012 OWCP decision regarding appellant's schedule award claim. As he did not expressed disagreement with this decision, the Board will not review it on appeal.

² 5 U.S.C. §8101 *et seq.*

FACTUAL HISTORY

On September 16, 2009 appellant, then a 54-year-old postal worker, filed an occupational disease claim alleging that his right shoulder condition was due to factors of his employment. OWCP accepted the claim for right shoulder impingement syndrome and rotator cuff tear. It paid appropriate compensation benefits, including an August 11, 2009 right shoulder arthroscopy.

On October 3, 2011 appellant filed a CA-7 claim for wage-loss compensation for the period August 15 through September 20, 2011 for physician and physical therapy appointments. This included 8 hours on August 15, 2011, 5.40 hours on August 30, 2011, 3.05 hours on September 13, 2011, 2.65 hours on September 14, 2011 and 5.48 hours on September 20, 2011.

In an October 17, 2011 letter, OWCP authorized payment for 4 hours on August 30, 2011, 3.05 hours on September 13, 2011 and 4.0 hours on September 20, 2011. It advised that further medical evidence was necessary to support compensation for the dates of August 15 and September 14, 2011. Appellant was afforded 30 days in which to submit the requested information.

In a November 5, 2011 letter, appellant stated that he used sick leave on both August 15 and September 14, 2011 as his doctor told him not to report to work. No medical information relative to any examination or treatment on August 15 and September 14, 2011 was received.

By decision dated November 28, 2011, OWCP denied the claim for wage-loss benefits for the claimed dates of August 15 and September 14, 2011.

On December 13, 2011 OWCP received appellant's request for a review of the written record. Evidence from AmeriMed Diagnostic Services, Inc. reflects that he was seen by Dr. William Nase, an osteopath, on September 14, 2010, September 13 and 20 and October 4, 2011. In an August 16, 2011 note, Dr. Nase advised that appellant was unable to work on August 15, 2011 "due to an existing health condition." He indicated that appellant could return to full-duty activity on August 16, 2011.

In a March 30, 2012 decision, OWCP's hearing representative affirmed the November 28, 2011 decision. She found that the medical evidence failed to establish appellant was disabled or received medical care due to the effects of his work injury on the dates claimed.

LEGAL PRECEDENT

For each period of disability claimed, the employee has the burden of establishing that he was disabled for work as a result of the accepted employment injury.³ Whether a particular injury causes an employee to become disabled for work and the duration of that disability, are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.⁴ The Board will not require OWCP to pay compensation for disability in the absence

³ See *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *David H. Goss*, 32 ECAB 24 (1980).

⁴ See *Edward H. Horton*, 41 ECAB 301 (1989).

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 their disability and entitlement to compensation.⁵

Under FECA the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁶ Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.⁷ An employee who has a physical impairment causally related to his or her federal employment, but who nonetheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity. When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for any loss of wages.⁸

ANALYSIS

OWCP accepted appellant's claim for right shoulder impingement syndrome and rotator cuff tear, for which he had surgery in 2009. Appellant filed a claim for wage-loss compensation for the period August 15 through September 20, 2011 for physician and physical therapy appointments. OWCP paid wage-loss compensation for certain of the claimed dates but denied payment for 8 hours on August 15, 2011 and 2.65 hours on September 14, 2011. It is appellant's burden of proof to establish employment-related disability for those dates. On October 17, 2011 OWCP advised him of the evidence needed to establish his claim. The Board finds that appellant did not submit sufficient medical evidence to establish that he was disabled on August 15, 2011 or September 14, 2011 causally related to his accepted right shoulder conditions. Appellant did not submit medical evidence from a treating physician explaining how his disability was related to his accepted employment-related conditions.

Appellant claimed wage-loss compensation for August 15, 2011. The evidence reflects he received medical care from Dr. Nase on August 16, 2011. In an August 16, 2011 report, Dr. Nase stated generally that appellant was incapacitated and unable to work on August 15, 2011 "due to an existing health condition." He did not identify the condition that gave rise to disability findings or address appellant's inability to work in relation to his accepted right shoulder conditions. Without reasoned medical evidence supporting that appellant had

⁵ See *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁶ *S.M.*, 58 ECAB 166 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Conard Hightower*, 54 ECAB 796 (2003); 20 C.F.R. § 10.5(f).

⁷ *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

⁸ See *Merle J. Marceau*, 53 ECAB 197 (2001).

employment-related disability during the period in question, Dr. Nase has not met his burden of proof to establish his claim for wage-loss compensation for August 15, 2011.⁹

Appellant also claimed wage-loss compensation for September 14, 2011. There is no medical evidence of record which demonstrates appellant received medical care for his accepted condition on September 14, 2011.¹⁰ Appellant failed to establish disability due to his accepted condition on that date. Thus, he is not entitled to wage-loss compensation for September 14, 2011.

Appellant argues on appeal that his doctor's note support disability from work on August 15, 2011 and that "the existing health condition" is the accepted conditions in the claim. As noted, the medical evidence did not sufficiently address the causal relationship of his alleged disability during August 15, 2011 to his accepted work-related injuries. Therefore, appellant failed to meet his burden of proof.

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 10.607.¹¹

CONCLUSION

The Board finds that appellant has not established that he was disabled on August 15, 2011 and September 14, 2011 due to his accepted work-related injuries.

⁹ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

¹⁰ With respect to claimed disability for medical treatment, 5 U.S.C. § 8103 provides for medical expenses, along with transportation and other expenses incidental to securing medical care for injuries. However, OWCP's obligation to pay for medical expenses and other expenses incidental to obtaining medical care, such as loss of wages, extends only to expenses incurred for treatment of the effects of any employment-related condition. A claimant has the burden of proof, which includes the submission of supporting rationalized medical evidence. *Carol A. Lyles*, 57 ECAB 265 (2005).

¹¹ Appellant submitted additional evidence on appeal. However, the Board may not consider new evidence for the first time on appeal. See 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the March 30, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 20, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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