

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

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**M.M., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Brooklyn, NY, Employer**

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**Docket No. 12-1884  
Issued: February 22, 2013**

*Appearances:*  
*Thomas R. Harkins, Esq., for the appellant*  
*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 August 24, 2012 appellant, through her attorney, filed a timely appeal from June 6 and 27, 2012 merit decisions of the Office of Workers' Compensation Programs (OWCP) which denied disability compensation for the period August 6 through December 3, 2010. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 was disabled from August 6 through December 3, 2010 causally related to her accepted August 6, 2010 employment injury.

**FACTUAL HISTORY**

On October 14, 2010 appellant, then a 59-year-old mail clerk, filed a traumatic injury claim alleging that on August 6, 2010 she experienced shoulder pain when she distributed first

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

class mail at work. She stopped work.<sup>2</sup> OWCP accepted appellant's claim for right shoulder impingement.

On April 18, 2012 appellant submitted a claim for disability compensation for the period September 21 to December 3, 2010. On May 9, 2012 she submitted a request for disability compensation for the period August 6 to September 20, 2010.

By letters dated May 2 and 22, 2012, OWCP advised appellant that the evidence submitted was insufficient to establish her compensation claims. It requested additional evidence to establish that she was disabled from work during the claimed periods as a result of her August 6, 2010 employment injury.

In handwritten August 11, September 22 and October, 2010 notes, Dr. Eric L. Freeman diagnosed right shoulder impingement pain. He indicated that appellant was totally disabled from work. In the August 11, 2010 note, Dr. Freeman advised that she may not return to work for three weeks.

OWCP also received August 11, September 1 and 22 and October 20, 2010 reports from Dr. Freeman, who conducted orthopedic follow-up evaluations and noted a date of injury of April 4, 2009. In the August 11, 2010 report, Dr. Freeman stated that appellant was not working after a flare-up from work. Upon examination, he observed focal discomfort over the right shoulder and greater tuberosity discomfort. Dr. Freeman also noted positive impingement signs. The reports listed "no clinical change" in appellant's physical examination. Neer and Hawkins testing were positive. Range of motion revealed abduction and forward flexion to 160 degrees, internal rotation to L2 and external rotation to 35 degrees. On September 1, 2010 Dr. Freeman stated that he would keep appellant out of work until he determined whether surgery was needed. Appellant remained off work.

In a December 1, 2010 report, Dr. Freeman again noted a date of injury of April 4, 2009. Upon examination, he reported no change in appellant's range of motion and observed that she was neurologically intact. Dr. Freeman stated that she was capable of working with no lifting more than 10 pounds.

In a November 17, 2011 report, Dr. Freeman noted a follow-up orthopedic evaluation and stated the date of injury as April 4, 2009. The examination revealed right shoulder abduction and forward flexion to 165 degrees, internal rotation to L2 and external rotation to 35 degrees. Dr. Freeman related that appellant's cervical spine was bothering her and noted positive Spurling maneuver. He explained that her cervical condition was a consequential injury related to the shoulder. Appellant was eligible for strict light duty only.

In a March 8, 2012 report, Dr. Freeman noted a date of injury of April 4, 2009. He stated that appellant's right shoulder and cervical region were unchanged, but he observed some mild

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<sup>2</sup> The Board notes that appellant originally filed a recurrence claim, but OWCP treated the claim as a traumatic injury claim since appellant was describing a new injury that occurred during one day or work shift. The Board further notes that OWCP previously accepted a claim for an April 4, 2009 employment incident.

bicipital tendinitis. Neer and Hawkins testing's and Spurling maneuver were positive. Dr. Freeman stated that light duty was not available and that appellant was still not working.

Dr. Freeman completed an April 2, 2012 work limitation, restricting appellant to no lifting over 10 pounds and no repetitive work. He authorized her to return to a desk job only with breaks every 30 minutes.

On April 19, 2012 Dr. Freeman obtained a history that on August 6, 2010 appellant delivered mail and was unable to move her right shoulder the next day. He listed appellant's complaints of cervical pain and numbness and tingling in her hands. Upon examination, Dr. Freeman observed positive impingement signs and Neer and Hawkins testing's in her right shoulder. Abduction and forward flexion was to 170 degrees and external rotation to 35 degrees. Dr. Freeman reported that radiographs of the shoulder did not demonstrate any acute bony abnormality. Examination of the cervical spine revealed positive Spurling maneuver. Dr. Freeman recommended surgery for appellant's right shoulder and physical therapy. Regarding her cervical condition, he opined that it was a consequential injury that was compensatory to the right shoulder condition and recommended it be accepted as part of this case. Dr. Freeman restricted appellant to no repetitive lifting or lifting more than 5 pounds and no carrying, pushing or pulling until further notice.

On May 24, 2012 Dr. Freeman diagnosed right shoulder impingement and stated that appellant was treated that day. He authorized her to return to light duty. Dr. Freeman restricted appellant to no lifting over 10 pounds with breaks every 30 minutes.

By decision dated June 6, 2012, OWCP denied appellant's claim for wage-loss compensation from September 21 to December 3, 2010. It noted that the medical evidence did not establish that she was disabled from work as her physician indicated that she was capable of performing light duty.

In a letter dated June 25, 2012, appellant's counsel requested that a decision be issued by OWCP concerning the period August 5, 2010 to September 20, 2012.<sup>3</sup> Appellant resubmitted various medical reports from Dr. Freeman.

By decision dated June 26, 2012, OWCP denied appellant's claim for disability compensation for the period August 5 to September 20, 2010.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA bears the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.<sup>4</sup> The term disability as used in FECA means the incapacity because of an employment injury to earn the wages that the

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<sup>3</sup> The Board notes that appellant's counsel indicated that she requested disability compensation for the period August 5, 2010 to September 20, 2012. The records show compensation claims for August 6 to September 20, 2010 and September 21 to December 3, 2010.

<sup>4</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

employee was receiving at the time of injury.<sup>5</sup> Monetary compensation benefits are payable to an employee who has sustained wage loss due to disability for employment resulting from the employment injury.<sup>6</sup> 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 reliable, probative and substantial medical opinion evidence. For each period of disability claimed, the employee must establish that he or she was disabled for work as a result of the accepted employment injury.<sup>7</sup> The medical evidence must include findings on examination and the physician's opinion, supported by medical rationale, showing how the injury caused the employee disability for his or her particular work.<sup>8</sup> 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 or her disability and entitlement to compensation.<sup>9</sup>

### ANALYSIS

OWCP accepted that on August 6, 2010 appellant sustained a right shoulder impingement in the performance of duty. The record also reveals that she had a previously accepted claim for an April 4, 2009 injury. Appellant stopped work on August 6, 2010. She submitted claims for disability compensation for the period August 6 to December 3, 2010. Appellant bears the burden of proof to establish that her disability from work during that period was causally related to her accepted employment injury.<sup>10</sup> The Board finds that she has failed to meet her burden of proof to establish that she was disabled from work from August 6 to December 3, 2010 as a result of her August 6, 2010 employment injury.

Appellant submitted numerous reports from Dr. Freeman. In August 11, September 1 and 22 and October 20, 2010 reports, Dr. Freeman noted a date of injury of April 4, 2009 and stated that he was conducting follow-up orthopedic evaluations. The examination revealed positive impingement signs and Neer and Hawkins testing. Range of motion revealed abduction and forward flexion to 160 degrees, internal rotation to L2 and external rotation to 35 degrees. In a September 1, 2010 report, Dr. Freeman stated that appellant remain out of work until he determined whether surgery was needed. In subsequent reports, he noted that she remained disabled. Although Dr. Freeman concluded that appellant was disabled from work, the Board finds that he did not adequately explain how her disability for work was causally related to the August 6, 2010 employment injury. The Board notes that he listed the date of injury as April 4, 2009 and not August 6, 2010. The Board has held that medical reports must be based on a complete and accurate factual and medical background and medical opinions based on an

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<sup>5</sup> *Paul E. Thams*, 56 ECAB 503 (2005).

<sup>6</sup> *Laurie S. Swanson*, 53 ECAB 517, 520 (2002); *see also Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

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

<sup>8</sup> *Dean E. Pierce*, 40 ECAB 1249 (1989).

<sup>9</sup> *Amelia S. Jefferson*, *supra* note 7.

<sup>10</sup> *Supra* note 7.

incomplete or inaccurate history are of limited probative value.<sup>11</sup> Dr. Freeman did not mention the August 6, 2010 employment incident or describe any details regarding her injury. The only mention of an August 6, 2010 injury was two years later in his April 19, 2012 report. Dr. Freeman failed to explain how appellant's disability from work was causally related to her August 6, 2010 employment injury. 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 his or her employment injury and supports that conclusion with sound medical reasoning.<sup>12</sup> As these reports fail to meet that standard, they are insufficient to establish appellant's claim.

In August 11, September 22 and October 22, 2010 disability notes, Dr. Freeman diagnosed right shoulder impingement pain and indicated that appellant was totally disabled from work. Although he found that appellant was disabled from work, he did not attribute her disability to the August 6, 2010 employment injury. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.<sup>13</sup> In the August 11, 2010 report, Dr. Freeman noted that appellant could not return to work for three weeks. He still, however, did not relate her inability to work to the accepted injury. Thus, these reports are insufficient to establish that appellant was disabled from work as a result of her August 6, 2010 injury.

In a December 1, 2010 report, Dr. Freeman noted a date of injury of April 4, 2009 and reported no change in appellant's range of motion. He observed that she was neurologically intact and stated that she was capable of working with no lifting more than 10 pounds. The Board finds that this report does not support that appellant was disabled from work through December 3, 2010. Dr. Freeman opined that she was capable of working with restrictions prior to December 3, 2010. Similarly, the Board finds that the subsequent reports of his dated November 17, 2011, March 8, April 19 and May 24, 2012 are insufficient to establish appellant's claimed disability as he authorized light-duty work. None of the reports provide any rationalized medical explanation as to why she was disabled and incapable of performing her employment duties from August 6 to December 3, 2010 as a result of the August 6, 2010 employment injury.

On appeal, appellant's counsel contends that the medical evidence is sufficient to establish appellant's entitlement to compensation for wage-loss disability. He stated that Dr. Freeman's reports demonstrate that she was unable to perform the duties of the limited-duty position she was working at the time of the August 6, 2010 employment incident. Dr. Freeman's reports fail to establish that appellant was disabled from her employment from August 6 to December 3, 2010 as a result of the August 6, 2010 employment injury. Appellant has not submitted any rationalized medical evidence establishing that her disability from August 6 to December 3, 2010 was causally related to the August 6, 2010 employment injury.

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<sup>11</sup> *J.R.*, Docket No. 12-1099 (issued November 7, 2012); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

<sup>12</sup> *V.L.*, Docket No. 12-1444 (issued November 27, 2012); *see also R.D.*, Docket No. 11-1551 (issued August 8, 2012).

<sup>13</sup> *R.E.*, Docket No. 10-679 (issued November 16, 2010); *K.W.*, 59 ECAB 271 (2007).

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 meet her burden of proof to establish that she was disabled from August 6 through December 3, 2010 as a result of her August 6, 2010 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 27 and 6, 2012 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 22, 2013  
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