

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

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**W.C., Appellant**

**and**

**DEPARTMENT OF VETERANS AFFAIRS,  
CHARLIE NORWOOD VETERANS  
ADMINISTRATION MEDICAL CENTER,  
Augusta, GA, Employer**

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**Docket No. 13-675  
Issued: June 26, 2013**

*Appearances:*

*John M. Brown, Esq., for the appellant*

*No appearance, for the Director*

Oral Argument May 1, 2013

**DECISION AND ORDER**

Before:

PATRICIA HOWARD FITZGERALD, Judge

ALEC J. KOROMILAS, Alternate Judge

MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On January 30, 2013 appellant, through his attorney, filed a timely appeal from a December 5, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his claim for disability compensation. Pursuant to 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 he was totally disabled from June 21 to July 24, 2011 and August 24 through November 14, 2011 due to his March 9, 2011 employment injury.

On appeal, counsel contends that since April 8, 2012 OWCP has denied appellant weekly benefits. He asserts that medical reports dated April 19 to November 2, 2012 from Dr. Lynn Crosby, an attending Board-certified orthopedic surgeon, establishes that appellant is totally disabled due to his accepted employment-related injury.

## **FACTUAL HISTORY**

OWCP accepted that on March 9, 2011 appellant, then a 59-year-old food service supervisor, sustained a complete right rotator cuff rupture as a result of a physical altercation with an employee at work.

On March 30, 2012 appellant filed a compensation claim for leave without pay (LWOP) from June 21 through November 14, 2011 and wage loss from November 15, 2011 to April 8, 2012.

In a February 14, 2012 medical report, Shannon Shellgrove, a registered nurse, stated that appellant had joint pain, bursitis and acromioclavicular (AC) joint arthropathy of the right shoulder. Nurse Shellgrove recommended that he undergo right shoulder arthroscopy with evaluation and possible debridement, rotator cuff repair and capsulolabral reconstruction.

Medical records from the Georgia Health Sciences Medical Center and MCG Health, Inc. dated February 16 to March 7, 2012 noted that appellant underwent right shoulder arthroscopic surgery with rotator cuff repair on March 7, 2012. Appellant's postsurgical medical treatment was also addressed.

By letter dated March 30, 2012, the employing establishment controverted appellant's claim. It contended that he was terminated from his job on May 21, 2011 for just cause; he did not file a claim until approximately two and one-half months after the incident; his absence from work was not due to disability; there were no medical documents establishing that he had become totally disabled since his termination; and the case was initially denied and not accepted until February 9, 2012. The employing establishment further contended that an accompanying settlement agreement dated March 27, 2012 established that its May 21, 2011 removal action would be replaced with a 30-day suspension. Appellant would be reassigned, effective May 21, 2011, to a telephone operator position. He would be placed on LWOP status from June 21 through November 14, 2011 and paid regular salary from November 15, 2011 through April 8, 2012.

By letter dated April 10, 2012, OWCP advised appellant that the evidence submitted was insufficient to establish that he was disabled from June 21 through November 14, 2011 due to his accepted work injury. It requested that he submit a rationalized medical opinion from an attending physician explaining the causal relationship between his disability and accepted injury. OWCP noted that appellant received his regular salary from November 15, 2011 to April 8, 2012 under to the March 27, 2012 settlement agreement. It requested that he submit evidence clarifying whether he incurred any wage loss during this period by providing whether his reassignment to the telephone operator position was due to an administrative action resulting from the March 9, 2011 employment incident or restrictions related to his accepted injury.

In a November 1, 2011 report, Dr. Clarence Joe, a radiologist, advised that a cervical x-ray was of limited diagnostic potential due to obliquity of both the frontal and lateral views. No gross misalignments were identified. Some osteophytes were seen interiorly at C4, 5 and 6. Dr. Joe stated that repeat studies with more conventional positioning may be helpful for further evaluation.

On November 1, 2011 Dr. Crosby stated that appellant had improved status post rotator cuff repair and a second look arthroscopy that was normal except for debrided inflammation. She continued to have pain over the AC joint and anterior shoulder. Dr. Crosby received an injection on the date of examination and his condition improved by 50 percent. On examination of the neck, she found pain in the posterior neck and shoulder area to range of motion. Dr. Crosby diagnosed cervical spine spondylosis. In a March 29, 2012 fitness-for-duty certification form, she advised that appellant could not work from March 7 through June 30, 2012. On May 8, 2012 Dr. Crosby reported that appellant had impingement syndrome and joint pain of the right shoulder.

In a January 11, 2012 report, Dr. Justin V. Bundy, a Board-certified orthopedic surgeon, advised that appellant had cervical radiculopathy, degenerative disc disease and spondylosis without myelopathy.

On February 14, 2012 Dr. Mason N. Florence, an orthopedic surgeon, reported that appellant had joint pain, bursitis and AC joint arthropathy of the right shoulder. He was status post rotator cuff repair.

A March 20, 2012 report noted that it had been authenticated by the physician, Dr. Dale Reed, an orthopedic surgeon. Appellant had impingement syndrome, joint pain and a rotator cuff capsule sprain of the right shoulder. An April 10, 2012 report authenticated by Dr. Reed stated that appellant had a right shoulder rotator cuff tear, degenerative joint disease of spine and cervicalgia.

An unsigned report dated April 10, 2012 contained the typed name of Dr. Yulia Melenevsky, a Board-certified radiologist. The report stated that an x-ray of appellant's cervical spine revealed mild cervical spondylosis that was most pronounced at C4-C5.

An April 19, 2012 duty status report contained a physician's illegible signature. The report provided a diagnosis of rotator cuff tear. Appellant could return to work on September 7, 2012 with restrictions.

In an April 23, 2012 memorandum of conference, the employing establishment advised OWCP that appellant was placed on LWOP status as a result of an administrative issue and not due to the accepted employment injury. Appellant was placed in the telephone operator position based on a disciplinary administrative decision set forth in the March 27, 2012 settlement agreement and not due to restrictions resulting from the accepted injury. On April 8, 2012 he submitted a March 29, 2012 report from a treating physician who excused him from work for three months without providing any further detailed explanation.

By decision dated June 1, 2012, OWCP denied appellant's claim for wage-loss compensation from June 21, 2011 to April 8, 2012. The medical evidence was insufficient to establish that he was totally disabled during the claimed period due to his accepted injury. OWCP found that appellant's transfer to the telephone operator position was part of an administrative action and, thus, he was not entitled to compensation under FECA.

By letter dated September 13, 2012, appellant, through his attorney, requested reconsideration.

In reports dated October 8, 1998 through January 4, 2011, Dr. Crosby addressed appellant's chest, right elbow, shoulder and foot, left forearm, wrist and hand, bilateral knee and lumbar spine conditions and prior surgical procedures, including an August 2, 2010 right shoulder arthroscopic surgery and rotator cuff repair. In reports dated May 8, July 10 and August 21, 2012, she reiterated the right shoulder diagnoses. In the August 21, 2012 report, Dr. Crosby advised that appellant was unable to perform any daily living activity. In a September 14, 2012 fitness-for-duty certification, she advised that appellant was unable to work from March 7 through 31, 2012. In a November 2, 2012 Family and Medical Leave Act (FMLA) form, Dr. Crosby noted that appellant's condition commenced on March 7, 2012 and had a probable duration through March 31, 2013. Appellant was admitted in the hospital on March 7, 2012. She checked "yes" that he would be incapacitated due to his medical condition and estimated that the period of incapacity was through March 31, 2013.

Diagnostic test results and surgical reports dated December 29, 2000 to October 26, 2010 addressed appellant's right elbow, shoulder, foot and knee and left forearm, wrist and hand conditions.

In a January 31, 2012 report, Dr. Joe advised that an x-ray of the right shoulder revealed no fracture or dislocation. The right humeral enchondroma had a stable appearance when compared to a June 14, 2011 x-ray. Appellant was status post right rotator cuff repair. On September 21, 2012 Dr. Joe reported that a magnetic resonance imaging (MRI) scan of the right shoulder without gadolinium was a limited study secondary to significant susceptibility artifact. There was no evidence of retraction of the supraspinatus tendon. There was a mild-to-moderate amount of fluid within the subacromial-subdeltoid bursa. The enchondroma was stable within the proximal right humerus.

In an April 10, 2012 report, Stacy L. Paugh, a licensed practical nurse, addressed appellant's right shoulder pain and listed his medications.

In a decision issued on December 5, 2012, OWCP affirmed the June 1, 2012 decision as modified. The evidence was found sufficient to establish that appellant was totally disabled from July 25 to August 23, 2011 for surgery due to his accepted March 9, 2011 injury. The medical evidence was insufficient to establish that he had any employment-related disability from June 21 to July 24, 2011 or August 24, 2011 to April 8, 2012.

### **LEGAL PRECEDENT**

With respect to a claimed period of disability, an employee has the burden of establishing that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>1</sup> The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.<sup>2</sup>

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<sup>1</sup> *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>2</sup> 20 C.F.R. § 10.5(f); *see, e.g., Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury but no loss of wage-earning capacity).

Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.<sup>3</sup> The medical evidence required to establish a period of employment-related disability is rationalized medical evidence.<sup>4</sup> Rationalized medical evidence is medical evidence based on a complete factual and medical background of the claimant, of reasonable medical certainty, with an opinion supported by medical rationale.<sup>5</sup> The Board, however, 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.<sup>6</sup> To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.<sup>7</sup>

### ANALYSIS

OWCP accepted that appellant sustained a complete right rotator cuff rupture on March 9, 2011 while working as a food service supervisor. He claimed compensation for disability from June 21, 2011 to April 8, 2012. On December 5, 2012 OWCP found that appellant was totally disabled for work from July 25 to August 23, 2011 based on surgery related to his March 9, 2011 employment-related injury. Under the settlement agreement, appellant received in regular salary from November 15, 2011 to April 8, 2012. For the period prior to July 25, 2011 and from August 23 to November 14, 2011, appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his claimed disability and the accepted condition.<sup>8</sup> The Board finds that he did not submit sufficient medical evidence to establish employment-related disability for the period claimed due to his accepted injury.

The reports from appellant's attending physician, Dr. Crosby, are insufficient to establish his disability. She advised that appellant had impingement syndrome and joint pain of the right shoulder and cervical spondylosis. Following appellant's March 7, 2012 right shoulder arthroscopic surgery and rotator cuff repair, Dr. Crosby opined that appellant was unable to perform any daily living activity or work from March 7 through 31, 2013. She did not provide a medical opinion addressing whether her diagnosed conditions, treatment and disability were causally related to the accepted March 9, 2011 employment-related injury. The Board has held that a physician's opinion, which does not address causal relationship, is of diminished probative value.<sup>9</sup> Similarly, the other reports from Dr. Crosby predate the claimed period of disability and

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<sup>3</sup> See *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>4</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>5</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>6</sup> *Sandra D. Pruitt*, 57 ECAB 126 (2005).

<sup>7</sup> See *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharrazi*, *supra* note 3.

<sup>8</sup> *Alfredo Rodriguez*, 47 ECAB 437 (1996).

<sup>9</sup> See *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

failed to provide an opinion stating that appellant was totally disabled from June 21 to July 24, 2011 or August 24 to November 15, 2011 due to the accepted employment injury.<sup>10</sup> For the stated reasons, the Board finds that Dr. Crosby's reports are insufficient to establish appellant's burden of proof.

Dr. Joe's diagnostic test results and Dr. Reed's reports addressed appellant's cervical and right shoulder conditions. Neither physician provided an opinion on the causal relationship between the accepted March 9, 2011 employment injury and the diagnosed conditions.<sup>11</sup> The Board finds, therefore, that the reports from Drs. Joe and Reed are insufficient to establish appellant's claim.

Appellant submitted medical records from Georgia Health Sciences Medical Center and MCG Health, Inc., and reports from Drs. Bundy and Florence which addressed his cervical and right shoulder conditions. These reports are insufficient to establish a claim for disability, as they predate the claimed periods of disability and do not provide an opinion addressing the causal relationship between the accepted employment injury and the diagnosed conditions.<sup>12</sup>

The unsigned report which contained the typed name of Dr. Melenevsky and the report which contained an illegible signature lack probative medical value as the author(s) cannot be identified as a physician.<sup>13</sup>

The reports of Nurses Shellgrove and Paugh have no probative medical value in establishing appellant's claim as a nurse is not defined as a qualified physician under FECA.<sup>14</sup>

Appellant failed to submit rationalized medical evidence establishing that his disability from June 21, 2011 through July 24, 2011 and August 24, 2011 to November 15, 2011 resulted from residuals of his accepted employment-related right shoulder condition. Thus, the Board finds that he has failed to meet his burden of proof.

On appeal, appellant's attorney contended that since April 8, 2012, OWCP has not paid appellant weekly benefits. He asserted that Dr. Crosby's reports April 19 to November 2, 2012 established that appellant was totally disabled due to his accepted March 9, 2011 employment-related injury. The Board notes that OWCP has not adjudicated the issue of appellant's disability after April 8, 2012 and it is not an issue in the present appeal.

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.

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> See *Ricky S. Storms*, 52 ECAB 349 (2001); *Morris Scanlon*, 11 ECAB 384, 385 (1960).

<sup>14</sup> See 5 U.S.C. § 8101(2); *G.G.*, 58 ECAB 389 (2007).

**CONCLUSION**

The Board finds that appellant has failed to establish that he was totally disabled from June 21 to July 24, 2011 and August 24 through November 14, 2011 due to his March 9, 2011 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 5, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 26, 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