

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

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**S.B., Appellant**

**and**

**U.S. POSTAL SERVICE, SAPPINGTON  
BRANCH, St. Louis, MO, Employer**

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**Docket No. 12-1920  
Issued: September 3, 2013**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On September 19, 2012 appellant filed a timely appeal from an August 21, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) finding that he did not establish a recurrence of disability. 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 June 19 through 21, 2012 causally related to his November 23, 2009 employment injury.

**FACTUAL HISTORY**

On November 23, 2009 appellant, then a 45-year-old letter carrier, filed a traumatic injury claim alleging that on that date he sustained right shoulder pain radiating down his arm in

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

the performance of duty. OWCP accepted the claim for right shoulder strain and an aggravation of acromioclavicular degenerative hypertrophy with inflammation of the right shoulder.

Following his injury, appellant performed modified employment until February 2, 2010, when he underwent a reconstruction of the right acromioclavicular joint. On April 20, 2010 he underwent a release of the right coracoacromial ligament and on August 13, 2010 he underwent a distal clavicle resection, acromioplasty and debridement of the rotator cuff and subacromial space. Appellant returned to limited-duty employment on January 18, 2011.

In a report dated August 12, 2011, Dr. Robert Sciortino, a Board-certified orthopedic surgeon and OWCP referral physician, reviewed the history of appellant's work injury and his symptoms of a popping feeling with pain with certain movements and overhead reaching. He diagnosed snapping scapular syndrome. Dr. Sciortino recommended against a scapulothoracic debridement as the change of successful surgery was 50 percent or less. He attributed the snapping scapular syndrome to a possible bony exostosis or "atrophy of the shoulder from his injuries." Dr. Sciortino stated:

"It is possible that [the condition] could have developed at the time of the initial injury and was missed by all treating physicians. The other possibility is that it did not develop until much later and, therefore, it is difficult to determine if this is related. Therefore, I cannot find any direct evidence that the current diagnosis, which is snapping scapular syndrome, is directly related to the November 2009 work injury and subsequent treatment."

By decision dated September 30, 2011, OWCP denied appellant's request for authorization for right shoulder surgery.<sup>2</sup> It found that Dr. Sciortino's opinion represented the weight of the evidence and established that the proposed surgery had only a 50 percent change of reducing the symptoms of popping in the right shoulder. OWCP further determined that the found that appellant had no current symptoms due to the accepted work injury.

In a report dated June 19, 2012, Dr. Richard C. Lehman, a Board-certified orthopedic surgeon, discussed appellant's complaints of pain with cervical spine extension. On examination of the right shoulder, he found posterior aspect soreness and good range of motion. Dr. Lehman stated, "[Appellant] still has popping in the scapulothoracic bursa and now is getting some grinding and numbness in his posterior shoulder and numbness down into his thumb. The numbness down into his arm is somewhat bothersome." Dr. Lehman recommended a magnetic resonance imaging (MRI) scan study of the cervical spine and a second opinion on the shoulder. He performed an injection of the scapulothoracic bursa due to "popping."

In a work certificate dated June 19, 2012, Dr. Lehman found that appellant was off work until June 22, 2012, at which point he could resume work with his usual restrictions.

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<sup>2</sup>In a decision dated August 2, 2011, OWCP denied appellant's claim for compensation on May 6, 2011 as the medical evidence did not show that he was disabled that date or that the employing establishment could not provide limited duty. By decision dated August 11, 2011, it denied his request for compensation for intermittent disability on May 9, 19, 20, 24 and June 3, 2011 as it found that the medical evidence did not establish that he was disabled from work or that he attended a medical appointment. OWCP indicated that it had paid appellant four hours of compensation, the maximum allowed, for medical appointments on May 9 and 24, 2011.

On June 20, 2012 appellant underwent an MRI scan study of the cervical spine.

On June 29, 2012 appellant filed a claim for compensation (Form CA-7) from June 19 through 21, 2012. He requested compensation for five and a half hours on June 19, 2012 for a doctor's visit and eight hours on June 20 and 21, 2012.

By letter dated July 3, 2012, OWCP informed appellant that the evidence of record was currently insufficient to establish that he was disabled from June 19 through 21, 2012. It noted that in his June 19, 2012 report, Dr. Lehman recommended an MRI scan of the cervical spine, a condition not accepted under this claim. OWCP further indicated that treatment of the scapulothoracic joint was not covered as found in its September 30, 2011 decision. It requested that appellant submit a detailed report addressing why he was not able to perform his limited-duty employment beginning June 19, 2012.

On July 18, 2012 Dr. Corey G. Solman, Jr., a Board-certified orthopedic surgeon, reviewed appellant's history of a November 23, 2009 employment injury and subsequent surgeries. On examination, he found "popping" with range of motion. Dr. Solman diagnosed "[s]tatus post three right shoulder surgeries with acromioclavicular joint resection, subacromial decompression and biceps tenodesis -- now with scapulothoracic bursa pain and snapping." He attributed the scapulothoracic bursa changes either to appellant's work injury or to the "poor biomechanics of his scapula after three surgeries where his rotator cuff scapular muscles have been weakened, atrophied and have not been adequately rehabilitated." Dr. Solman noted that appellant received treatment from Dr. Lehman through June 19, 2012 with "multiple injections into the scapulothoracic bursa area." He stated:

"It is probably reasonable to assume, within a degrees of medical certainty, that the superomedial scapulothoracic pain and bursal popping is at least directly or indirectly related to the injury of November 23, 2009 where the right shoulder was injured and subsequently three surgeries were performed and subsequently he has developed some weakness and kinematic issues with the scapulothoracic motion. The culmination [of] all these injuries, surgeries and weakness, has resulted in worsening of his scapulothoracic bursa snapping and grinding syndrome."

Dr. Solman recommended an arthroscopic resection of the scapular bursa.

In a decision dated August 21, 2012, OWCP found that appellant had not established entitlement to wage-loss compensation recurrence of disability from June 19 to 21, 2012.<sup>3</sup>

On appeal, appellant contends that he had popping and shoulder pain since his November 23, 2009 injury.

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<sup>3</sup> OWCP indicated that it found that appellant did not establish a recurrence of disability from June 19 to 21, 2010 rather than 2012; however, it is apparent that this is a typographical error.

## LEGAL PRECEDENT

The term disability as used in FECA<sup>4</sup> means the incapacity because of an employment injury to earn the wages that the employee was receiving at the time of injury.<sup>5</sup> Whether a particular injury caused an employee disability for employment is a medical issue which must be resolved by competent medical evidence.<sup>6</sup> When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in the employment held when injured, the employee is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.<sup>7</sup> The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employee's to self-certify their disability and entitlement to compensation.<sup>8</sup>

## ANALYSIS

OWCP accepted that appellant sustained a right shoulder strain and an aggravation of right shoulder acromioclavicular degenerative hypertrophy with inflammation due to November 23, 2009 employment injury. Following a series of shoulder surgeries, appellant returned to limited-duty employment on January 18, 2011.

On June 29, 2012 appellant filed a claim for wage-loss compensation for five and a half hours on June 19, 2012 and eight hours on June 20 and 21, 2012. On June 19, 2012 Dr. Lehman treated appellant with an injection for scapulothoracic bursa popping and grinding and numbness radiating down his arm. He also recommended an MRI scan study of the cervical spine, which appellant underwent on June 20, 2012. Dr. Lehman found that appellant was disabled from work until June 22, 2012. OWCP denied appellant's claim for compensation based on its finding in its September 30, 2011 decision that he did not sustain popping in the right shoulder or snapping scapular syndrome, due to his accepted work injury. It further noted that the cervical MRI scan study was not for an accepted condition.

The Board finds that the case is not in posture for decision regarding whether the treatment appellant received on June 19, 2012 was necessitated in whole or in part by his work injury. In a report dated August 12, 2011, Dr. Sciortino, an OWCP referral physician, diagnosed appellant's shoulder popping as snapping scapular syndrome. He found that there was no evidence that the diagnosed condition was directly related to the November 2009 employment injury. On July 18, 2012 Dr. Solman, an attending physician, diagnosed scapulothoracic popping either directly to the accepted work injury or indirectly as a result of weakness from the three

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<sup>4</sup>5 U.S.C. § 8101*et seq*; 20 C.F.R. § 10.5(f).

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

<sup>6</sup>*Id.*

<sup>7</sup>*Id.*

<sup>8</sup>*William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

surgeries. The Board finds that a conflict exists between Dr. Sciortino and Dr. Solman regarding whether the scapular popping for which appellant received treatment on June 19, 2012 is causally related to his November 23, 2009 work injury. FECA provides that, when there is a disagreement between an attending physician and the physician making the examination for the United States, OWCP shall refer appellant for a referee examination.<sup>9</sup> On remand, OWCP should refer appellant for an impartial medical examination for resolution of the issue. The impartial medical examiner should further address whether he was disabled on June 20 and 21, 2012 due to his work injury. Following this and any further development deemed necessary, OWCP shall issue *ade novo* decision.

### **CONCLUSION**

The Board finds that the case is not in posture due to a conflict in medical opinion.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the August 21, 2012 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: September 3, 2013  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>9</sup>See 5 U.S.C. § 8123(a); *see also* R.A., Docket No. 09-552 (issued November 13, 2009).