



loaded a tub of mail.<sup>2</sup> Following the injury, appellant returned to modified-duty work. He underwent arthroscopic decompression of the left shoulder on September 13, 2012, authorized by OWCP. Appellant returned to modified duty on March 7, 2013, working four hours a day.

As appellant's condition did not improve, Dr. Mark Hopkins, Board-certified in orthopedic sports medicine, performed a Mumford open distal clavicle resection on June 6, 2013, with removal of 1.2 centimeters of the distal clavicle. OWCP authorized the procedure. Appellant did not return to work. He received total disability compensation on the daily and periodic rolls through July 2014, and relocated from California to Denver, Colorado. OWCP approved appellant's request to change physicians to Dr. Robert Kawasaki, a Board-certified physiatrist in the Denver area.

On July 30, 2014 OWCP obtained a second opinion from Dr. John D. Douthit, a Board-certified orthopedic surgeon. On examination, Dr. Douthit found tendinosis of the left shoulder with mild atrophy and chronic pain. He opined that appellant could perform full-time modified duty, with permanent restrictions against overhead reaching, reaching outward, and lifting more than 50 pounds.

On August 21, 2014 the employing establishment offered appellant a full-time modified letter carrier position, with no reaching above the left shoulder, and no lifting over 20 pounds. The position was available beginning on August 23, 2014.

Appellant filed claims for total disability compensation for the period August 30 to September 26, 2014. The employing establishment advised appellant and OWCP that the modified letter carrier position remained open and available.

In an October 8, 2014 letter, OWCP advised appellant that the medical evidence did not support a finding of total disability from August 30 to September 26, 2014. Appellant did not provide medical evidence that he could not perform the modified-duty position. OWCP noted that the job complied with the medical limitations provided by Dr. Douthit.

In response, appellant submitted November 4, 2014 reports from Dr. Kawasaki, restricting lifting with the left arm to 10 pounds, with no repetitive reaching or reaching above shoulder level with the left arm. Dr. Kawasaki noted that he could not provide a comprehensive assessment of appellant's condition as he did not have access to any of appellant's surgical reports or medical records. He recommended imaging studies.<sup>3</sup>

On November 25, 2014 appellant refused the modified letter carrier position. He submitted reports from Dr. Kawasaki renewing prior work restrictions through December 9, 2014. In a December 12, 2014 report, Dr. Kawasaki reiterated that appellant could

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<sup>2</sup> OWCP's June 28, 2012 letter accepting appellant's claim mentions the right shoulder and not the left. The Board finds that this is a Scrivener's error, as subsequent documents in the record clearly accept the claimed left shoulder injury.

<sup>3</sup> A November 18, 2014 left shoulder arthrogram demonstrated postsurgical changes, and supraspinatus and infraspinatus tendinosis.

work eight hours a day, with lifting, pulling, and pushing with the left arm limited to 10 pounds, and no reaching above the shoulder.

In a January 2, 2015 report, Dr. Michael S. Hewitt, a Board-certified orthopedic surgeon to whom appellant was referred by Dr. Kawasaki, diagnosed impingement syndrome of the left shoulder. He did not address appellant's work capacity.

Dr. Kawasaki provided a January 6, 2015 report renewing his prior work restrictions.

By decision dated January 30, 2015, OWCP denied appellant's claim for total disability compensation for the period August 30 to September 26, 2014. It found that the medical evidence did not establish that appellant was totally disabled for work for the claimed period, or that he was unable to perform the offered modified-duty position.

### **LEGAL PRECEDENT**

Under FECA, the term disability is defined as incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>4</sup> Disability is thus not synonymous with physical impairment which may or may not result in incapacity to earn the wages. An employee who has a physical impairment causally related to a federal employment injury but who nonetheless has the capacity to earn wages he or she was receiving at the time of injury has no disability as that term is used in FECA.<sup>5</sup> The test of disability under FECA is whether an employment-related impairment prevents the employee from engaging in the kind of work he or she was doing when injured.<sup>6</sup> Whether a particular injury causes an employee to be disabled for work and the duration of that disability, are medical issues that must be proved by a preponderance of the reliable, probative, and substantial medical evidence.<sup>7</sup>

### **ANALYSIS**

The Board finds that appellant failed to meet his burden of proof to establish total disability for the period August 30 to September 26, 2014 due to the accepted left shoulder injury. The employing establishment offered a modified letter carrier position within his restrictions formulated by Dr. Douthit, a Board-certified orthopedic surgeon and second opinion physician. However, appellant asserted that he remained disabled for work under medical limitations imposed by Dr. Kawasaki, an attending Board-certified physiatrist.

Dr. Kawasaki provided work restrictions from November 4, 2014 to January 2, 2015, limiting lifting with the left arm to 10 pounds, with no overhead reaching or reaching outward. He explained, however, that he could not provide a comprehensive opinion on appellant's

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<sup>4</sup> *A.L.*, Docket No. 15-0238 (issued July 13, 2015). See *Prince E. Wallace*, 52 ECAB 357 (2001).

<sup>5</sup> *Cheryl L. Decavitch*, 50 ECAB 397 (1999); *Maxine J. Sanders*, 46 ECAB 835 (1995).

<sup>6</sup> *Corlisa Sims*, 46 ECAB 963 (1995).

<sup>7</sup> *Tammy L. Medley*, 55 ECAB 182 (2003).

condition as he did not have access to appellant's medical records or surgical reports. Dr. Kawasaki's work restrictions were not predicated on a complete factual and medical history and his opinion is insufficient to establish that appellant was unable to discharge the offered light-duty position for the period between August 30 to September 26, 2014.<sup>8</sup> In contrast, Dr. Douthit, a Board-certified orthopedic surgeon and second opinion physician, found that appellant could lift up to 50 pounds, based on the complete medical record and the statement of accepted facts. His opinion on appellant's work capacity remains controlling.

Appellant also provided a January 2, 2015 report from Dr. Hewitt, an attending Board-certified orthopedic surgeon, who diagnosed impingement syndrome of the left shoulder. Dr. Hewitt did not offer work limitations or otherwise address appellant's disability status. His opinion is therefore insufficient to outweigh that of Dr. Douthit.

The Board finds that the evidence fails to show that appellant was disabled for the claimed period because of his accepted left shoulder injury. Appellant submitted insufficient medical evidence establishing that he was totally disabled for work from August 30 to September 26, 2014.

On appeal, appellant asserted that Dr. Kawasaki's opinion should be accorded the weight of the medical evidence as it was "accurate and reliable." He contends that Dr. Douthit did not perform a thorough examination or obtain imaging studies of his left arm. As stated above, Dr. Kawasaki did not have sufficient information about appellant's medical and surgical history to provide a complete opinion as to whether he was totally disabled for work for the claimed period.

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 has not met his burden of proof to establish disability from August 30 to September 26, 2014 due to an accepted left shoulder injury.

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<sup>8</sup> *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 30, 2015 is affirmed.

Issued: September 3, 2015  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

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

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