



On appeal counsel argues that the medical evidence of record establishes appellant's entitlement to wage-loss compensation for the period claimed.

### **FACTUAL HISTORY**

On April 30, 2014 appellant, then a 32-year-old aircraft electrician, filed a traumatic injury claim (Form CA-1) alleging that on March 25, 2014 he injured his left shoulder while moving parts from the floor to a table. OWCP accepted the claim for left shoulder and upper arm sprain and left brachial plexus lesions. Subsequently, on January 16, 2015 it expanded acceptance of the claim to include left shoulder traumatic arthropathy.

In an April 8, 2014 report, Dr. John W. Ellis, a treating Board-certified family medical practitioner, noted that appellant sustained a left shoulder employment injury on March 25, 2014 as the result of lifting and carrying a crate. Diagnoses included left shoulder strain with internal derangement and left brachial plexus impingement. A physical examination of the left shoulder revealed tenderness, weakness on movement, decreased range of motion, mild tingling of the left arm on gentle pressure of the left trapezius, and inability to bring his left hand above shoulder height. Dr. Ellis opined that the employment injury caused the diagnosed conditions due to the lifting of the crate while twisting and extension of the left arm which caused a tearing of the left shoulder internal structures. He reported that appellant was capable of working light duty with left arm restrictions of no overhead work and no lifting more than five pounds.

A June 11, 2014 work status form completed by Dr. Ellis noted that appellant was unable to work for the period May 1 to 15, 2014 and was released to return to work on May 16, 2014.

On October 17, 2014 OWCP received an August 27, 2014 letter from the employing establishment controverting appellant's claim for wage-loss compensation for the period claimed. It noted that appellant had requested sick leave under the Family Medical Leave Act (FMLA) for anxiety during the period May 5 to July 9, 2014.

In a September 29, 2014 report, Dr. Ellis reviewed a magnetic resonance imaging (MRI) scan which revealed left shoulder acromioclavicular capsular tear and bone contusion/arthritis.

Appellant filed claims for wage-loss compensation (Form CA-7) for the period July 29 to August 18, 2014. He checked a box marked "no" as to whether the leave requested for the period in question was intermittent.

On October 15, 2014 the employing establishment again controverted appellant's claim for wage-loss compensation for the periods March 25 to July 28, July 29 to August 7, and August 8 to 18, 2014 as he had previously requested and been approved for sick leave under the FMLA for his anxiety condition.

In an October 17, 2014 letter, the employing establishment again controverted appellant's wage-loss claim for the period July 29 to August 7, 2014 and clarified it was because he had been suspended from work during this period. Attachments to the letter included a copy of a

master time history noting that appellant had been suspended for the period July 29 to August 7, 2014 and a July 29, 2014 notification of personnel action noting that he had been suspended for leaving the job without permission and failing to request leave pursuant to established procedures.

Dr. Ellis, in a September 29, 2014 report, provided a history of the employment injury, confirmation of medical records reviewed, and his opinion as to causation. Diagnoses included left shoulder sprain and acromioclavicular capsular tear and bone contusion/arthritis. Dr. Ellis explained that as a result of appellant's employment injury he had intermittent periods of disability, as detailed in an attached list. The dates of disability listed on an August 28, 2014 note included March 27, 28, April 1, 7 to 9, 14, 15, 21, 23, May 1 to July 9, July 11, 17, 21 to 31, August 1, 4 to 8, 13 to 15, and 18, 2014. Dr. Ellis wrote "All these off workdays were ALL due to his work[-]related injury." (Emphasis in the original.)

By letter dated October 27, 2014, OWCP informed appellant that the evidence of record was insufficient to support his claim for wage-loss compensation. Appellant was advised as to the medical and factual evidence required and was afforded 30 days to provide this information.

On October 29, 2014 OWCP received a March 12, 2014 Certification of Health Care Provider for Employee's Serious Medical Condition under the FMLA from Dr. Amitkumar Patel, Board-certified in family medicine, requesting leave for appellant to receive treatment for his panic disorder. He indicated that the treatment required appellant to work part time or on a reduced schedule over a three-month period with follow-up visits. Dr. Patel indicated that the episodic flare-ups would prevent appellant from performing his employment duties and that it was necessary for him to be excused from work during the flare-ups of his panic disorder.

On October 31, 2014 OWCP received an August 7, 2014 report by Dr. Tom W. Ewing, an examining osteopathic Board-certified orthopedic surgeon. Dr. Ewing diagnosed mild impingement syndrome and acromioclavicular arthrosis with capsular tear based on review of an MRI scan and physical examination. He reported that the injury occurred as the result of lifting a box and moving "in a particular way." A physical examination revealed difficulty with left arm range of motion and abduction. A review of an x-ray interpretation showed acromioclavicular arthrosis with some spurring. Dr. Ewing noted that appellant was currently working with a five-pound weight restriction and no overhead lifting with his left arm. He recommended physical therapy three times a week for the next four weeks.

By letter dated October 27, 2014, OWCP informed appellant that the evidence of record was insufficient to support his claim for wage-loss compensation for the periods July 29 to August 18, 2014. Appellant was advised as to the medical evidence required and was afforded 30 days to provide this information.

In response to OWCP's letter, appellant submitted a September 29, 2014 report and two letters from Dr. Ellis detailing disability dates after August 20, 2014. On November 20 and 24,

2014 appellant filed CA-7 forms claiming wage-loss compensation for the periods May 6 to July 28 and August 25 to October 13, 2014.<sup>3</sup>

In a November 28, 2014 letter, OWCP again advised appellant that the evidence of record was insufficient to support his claim for wage-loss compensation and advised as to the medical and factual evidence required to support his claim. He was again given 30 days to provide the requested information.

On January 2, 2015 OWCP received a September 30, 2014 work status form from Dr. Ellis releasing appellant to return to work with restrictions of no overhead work. Dr. Ellis further noted that appellant was to notify his employer that he was unable to work on aircraft maintenance when taking diazepam.

By decision dated January 2, 2015, OWCP denied appellant's claim for wage-loss compensation for the period May 6 to August 18, 2014. In a separate decision dated January 2, 2015, it denied appellant's claim for wage-loss compensation for the period August 25 to October 13, 2014. OWCP found the medical evidence of record was insufficient to support appellant's claim for wage-loss compensation for the periods claimed.

On February 17, 2015 OWCP granted wage-loss compensation for the period August 25 to October 13, 2014 and issued a supplemental rolls payment for the entire 105.5 hours of wage loss requested.

On January 23, 2015 appellant requested a review of the written record by an OWCP hearing representative.

By decision dated June 8, 2015, an OWCP hearing representative affirmed the January 2, 2015 decision denying wage-loss compensation for the period May 6 to August 18, 2014.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.<sup>5</sup> 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.<sup>6</sup> Whether a particular injury causes an employee to

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<sup>3</sup> In the November 20, 2014 CA-7a forms, appellant requested 47.25 hours of wage loss for the period August 25 to September 16, 2014, and 58.25 hours of wage loss for the period September 17 to October 8, 2014. On November 24, 2014 appellant also filed a claim for intermittent wage-loss compensation for the period May 1 to 5, 2014. As OWCP has not issued a final decision regarding the May 1 to 5, 2014 period, the Board does not have jurisdiction to review the issue of appellant's claim for intermittent wage loss for that period. See 20 C.F.R. § 501.2(c).

<sup>4</sup> 5 U.S.C. §§ 8101-8193

<sup>5</sup> See *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

<sup>6</sup> See *Amelia S. Jefferson, id.*; see also *David H. Goss*, 32 ECAB 24 (1980).

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.<sup>7</sup>

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.<sup>8</sup> Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.<sup>9</sup> An employee who has a physical impairment causally related to his federal employment, but who nonetheless has the capacity to earn the wages he was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.<sup>10</sup> 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 employment, he is entitled to compensation for any loss of wages.

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 their disability and entitlement to compensation.<sup>11</sup>

### ANALYSIS

OWCP initially accepted appellant’s claim for left shoulder and upper arm sprain and left brachial plexus lesions. By decision dated January 16, 2015, it expanded the accepted conditions to include left shoulder traumatic arthropathy. Appellant filed claims for wage-loss compensation for the periods May 6 to August 18 and August 25 to October 13, 2014. By decision dated January 2, 2015, OWCP denied appellant’s wage-loss compensation claim for the period May 6 to August 18, 2014 as it found the medical evidence of record insufficient to establish that the claimed disability was due to the accepted conditions. By separate decision dated January 2, 2015, it denied appellant’s wage-loss compensation claim for the period August 25 to October 13, 2014. OWCP subsequently authorized compensation benefits for all of the intermittent dates claimed from August 25 to October 13, 2014. On June 8, 2015 an OWCP hearing representative affirmed the January 2, 2015 decision denying wage-loss compensation for the period May 6 to August 18, 2014. The issue on appeal is whether appellant was disabled due to his accepted employment conditions only for the period May 6 to August 18, 2014. The Board finds that appellant failed to meet his burden of proof.

In support of his claim, appellant submitted various reports and disability notes from Dr. Ellis diagnosing left shoulder sprain and acromioclavicular capsular tear and bone

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<sup>7</sup> See *Edward H. Horton*, 41 ECAB 301 (1989).

<sup>8</sup> *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).

<sup>9</sup> *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

<sup>10</sup> *Merle J. Marceau*, 53 ECAB 197 (2001).

<sup>11</sup> See *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

contusion/arthritis. In the June 11, 2014 work status form, Dr. Ellis reported that appellant was totally disabled for the period May 1 to 15, 2014. In letters dated August 28 and October 14, 2014, Dr. Ellis provided dates of total disability for appellant, with the relevant dates of disability as follows: May 1 to July 9, 11, 17, 21 to 31, August 1, 4 to 8, and 13 to 15, 2014. While Dr. Ellis provided a firm diagnosis and detailed dates of disability, he failed to provide a rationalized medical explanation as to how appellant's accepted left shoulder, upper arm sprain, left brachial plexus lesions, and left shoulder traumatic arthropathy rendered him totally disabled from working on the dates noted. None of the reports from Dr. Ellis contained any supporting rationale explaining why appellant was disabled from work, particularly as Dr. Ellis had previously indicated on April 8, 2014 that appellant was capable of working with restrictions and on June 11, 2014 Dr. Ellis reported that appellant was released to return to work on May 16, 2014. The Board has long held that medical conclusions unsupported by rationale are of diminished probative value and insufficient to establish causal relationship.<sup>12</sup> As there is no rationalized medical opinion evidence contemporaneous with the periods of claimed disability, appellant failed to meet his burden of proof to establish entitlement to total disability compensation for the period May 6 to August 18, 2014.

The record also contains evidence from the employing establishment and Dr. Patel regarding appellant's claimed disability. The employing establishment noted that appellant had been on approved medical leave under the FMLA for a three-month period intermittently from March 12, 2014. Dr. Patel, in his March 12, 2014 certification form, noted that appellant would have episodic flare-ups over the next three months which would render him disabled from working. His report is not relevant to the question of disability for the accepted condition.

The employing establishment also noted that for the period July 29 to August 8, 2014 appellant had been suspended from work. Thus, appellant's inability to work during this period was not found to be due to his employment-related condition.

The Board finds that appellant has failed to meet his burden of proof to establish disability for the period May 6 to August 18, 2014 due to his accepted shoulder conditions.

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 failed to establish wage-loss compensation for the period May 6 to August 18, 2014 causally related to his accepted March 25, 2014 employment injury.

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<sup>12</sup> *F.T.*, Docket No. 09-919 (issued December 7, 2009); *Richard A. Neidert*, 57 ECAB 474 (2006).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 8, 2015 is affirmed.

Issued: April 25, 2016  
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board