

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

---

**L.N., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Dallas, TX, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 16-0137  
Issued: October 14, 2016**

*Appearances:*

*Michael E. Woods, for the appellant<sup>1</sup>  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On November 2, 2015 appellant, through her representative, filed a timely appeal of a September 4, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</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 has met her burden of proof to establish total disability for the period December 3, 2011 through December 31, 2013.

---

<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On October 17, 2011 appellant, then a 46-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on October 16, 2011 she injured her left shoulder when loading a trunk. She did not stop work at that time.

Appellant was treated by Dr. Ronnie Shade, a Board-certified orthopedic surgeon. An October 26, 2011 disability certificate found her totally incapacitated for work from October 26 to November 23, 2011. In an October 27, 2011 report, Dr. Shade noted that appellant sustained a work injury to the left shoulder as a result of an October 16, 2011 work accident where she was pulling on footlocker trunks and felt something pull in her left shoulder. He found that flexion and abduction was 135 degrees, and tenderness in the subacromial bursa and biceps. Dr. Shade diagnosed acute cervical sprain with left upper extremity radiculopathy, bursitis of the left shoulder, and rotator cuff tear of the left shoulder. In November 23, 2011 reports, he repeated his diagnoses and placed appellant off work from November 23 to December 21, 2011. In reports dated November 27, 2011 and April 15, 2012, Dr. Shade opined that the mechanism of injury was directly related to the work injury. He explained that the injury that appellant sustained caused the listed diagnoses. Dr. Shade opined that her neck and left shoulder condition was directly causally related to her work injury on October 16, 2011. In December 15 and 29, 2011 treatment notes, he provided an injection of the subacromial bursa and bicep tendon. On January 23, 2012 Dr. Shade advised that appellant was totally disabled from January 23 to February 23, 2012. In a February 22, 2012 report, he noted that she had bilateral hand and wrist complaints. Dr. Shade noted a normal inspection of the right and left wrists, with no asymmetry, crepitus, swelling, or effusion. He continued to treat appellant and placed her off work due to her cervical and left shoulder pain and spasms.

On April 25, 2012 OWCP accepted the claim for neck sprain, disorder of bursae, and tendons in left shoulder, and other specified disorder of bursae and tendons in the left shoulder.

In reports dated May 14, June 11, and July 11, 2012, Dr. Shade advised that appellant was released to limited duty on May 16, 2012. In the July 11, 2012 report, he noted that she complained of severe pain, tightness, weakness, spasms and pain associated with lying, lifting, and with overhead use. Dr. Shade explained that appellant was unable to perform activities of daily living such as driving or house chores and rated the pain on a level 7 out of 10. He diagnosed: left shoulder bursitis, bilateral carpal tunnel syndrome, and acromioclavicular (AC) joint degenerative disease of the left shoulder, cervical discogenic disease from C4-5 through C6-7, and chronic pain.

In an October 7, 2013 report, Dr. Shade noted treating appellant for the October 16, 2011 work injury. He examined her and diagnosed: bursitis, left shoulder, bilateral carpal tunnel syndrome, AC joint degenerative disease, left shoulder, cervical discogenic disease from C4-5 through C6-7, and chronic pain. Dr. Shade advised that appellant still had symptoms after stopping work at the employing establishment. Appellant continued with pain from her conditions which “would incapacitate her from performing any work duties that consist of continuous pushing and pulling of heavy lifting and repetitive movement and motion of the upper extremities.” Dr. Shade explained that her cervical and left shoulder conditions required permanent limitations and her prognosis was fair to poor. He opined that within a degree of

medical certainty appellant was limited in the capacity of work that she did and the objective medical evidence “casts no doubt as to her disability.” Dr. Shade recommended that she continue with orthopedic treatment.

In an October 8, 2013 report, Dr. Shade requested acceptance for bilateral carpal tunnel syndrome. He indicated that appellant could return to limited duty on October 9, 2013. In a November 8, 2013 duty status report, Dr. Shade continued her limited-duty work restrictions from October 8, 2013.

On June 13, 2014 appellant submitted a Form CA-7 claim for compensation requesting wage-loss compensation for the period December 3, 2011 through December 31, 2013. The employing establishment advised that she received continuation of pay from October 26 to December 9, 2011. It noted that appellant was issued a notice of removal, for unacceptable conduct and attendance, and was off work for two years. The employing establishment stated that it never advised her that no work was available.

In a September 11, 2013 arbitration award it was found that there was no just cause to issue a December 12, 2011 notice of removal and the notice was rescinded. It was also noted that on October 22, 2011 appellant called in and requested leave without pay, which was considered to be a request for continuation of pay. She was reinstated to her former position without any loss of seniority or other nonmonetary benefits, to include compensation for the 45 days of continuation of pay. The decision noted that making appellant whole and any reinstatement was conditioned upon her providing acceptable medical documentation to explain her absence, along with a fitness-for-duty examination. Following this, she was reinstated effective December 28, 2013 for four hours a day, increasing to full time.

In a letter dated June 23, 2014, appellant’s representative requested compensation from December 3, 2011 through December 31, 2013 as the employing establishment refused to allow appellant to come to work after she was terminated. He indicated that she was returned to work by the arbitrator’s decision. The representative contended that the fact that the employing establishment did not provide her a form that there was “No work available” did not relieve it from its responsibility in providing her work. He argued that she still had residuals from her October 16, 2011 injury and that Dr. Shade provided a consistent opinion that appellant was unable to work for the period October 27, 2011 through January 15, 2014.

By letter dated July 30, 2014, OWCP informed appellant of the type of evidence needed to support her claim for the period December 3, 2011 through December 31, 2013. It noted that the arbitration award ordered the employing establishment to make her whole. OWCP explained that appellant was not provided a “No work available” note going back to 2011. It noted that she was issued a notice of removal for unacceptable conduct and attendance-”AWOL.” OWCP advised that appellant was not off work due to no work available and, therefore, she was not entitled to compensation for the period claimed.

In an August 11, 2014 response, appellant’s representative argued that appellant was removed two months after her injury because of the injury. He indicated that she was not made whole and had not received any compensation. The representative argued that, on November 27, 2011, Dr. Shade declared appellant unable to work and two weeks later on December 11, 2011,

she was terminated because of her on-the-job injury. He argued that she was disabled since November 27, 2011 until she was released to return to work on May 16, 2012. Furthermore, the employing establishment refused to allow appellant to return to work. Appellant's representative indicated that no light duty was made available to her consistent with her restrictions.

In a letter dated November 20, 2014, OWCP advised appellant and her representative that the employing establishment indicated that it had never issued a "no work" memorandum. Rather, appellant stopped coming to work and failed to submit documentation of total disability. OWCP noted that she also stopped communicating with everyone. It explained that the arbitration decision awarded 45 calendar days of continuation of pay. Additionally, the notice of removal was rescinded and appellant was reinstated without loss of seniority or benefits. OWCP noted that the decision indicated that it would not be appropriate to award full back pay for the entire time off. It requested that appellant submit additional medical evidence to support her claim and afforded her 30 days to submit the requested evidence.

By decision dated January 14, 2015, OWCP denied appellant's claim for compensation for the period December 3, 2011 through December 31, 2013. It advised her that the medical evidence did not establish disability for the above period.<sup>3</sup>

On January 23, 2015 appellant's representative requested a telephonic hearing, which was held on June 24, 2015. In a letter dated July 27, 2015, he argued that appellant was entitled to benefits regardless of whether the termination of employment was for cause as the medical evidence established that she was unable to perform her assigned duties due to her accepted condition. The representative argued that light-duty consistent with her medical restrictions was not provided. In a July 27, 2015 separate letter, he argued that Dr. Shade provided sufficient support for causation to establish the claim.

Appellant provided a December 4, 2014 report from Dr. Shade who advised that he treated her since October 27, 2011 and at that time diagnosed her with cervical sprain, bursitis, left shoulder, and left rotator cuff tear. Dr. Shade indicated that the left shoulder was positive for impingement syndrome, subacromial bursa, and bicep tendon tenderness. He noted that x-rays showed hypertrophy of the distal clavicle and increased subacromial joint space. Dr. Shade related that appellant was taken off work the same day as she was having cervical and left shoulder spasms with radicular symptoms. He related that she remained off work with these symptoms pending approval of her claim as well as the need for surgery. Dr. Shade noted that appellant was released to limited duty on May 16, 2012, but she was unable to perform her usual mail handler duties, which included lifting up to 70 pounds. He noted that she had left shoulder rotator cuff surgery on July 28, 2014 and remained unable to perform her mail handler duties.

In a July 24, 2015 response to the hearing, Lester Williams, the supervisor of distribution operations, stated that appellant was given a notice of removal on December 12, 2011. He explained that she filed a grievance and the termination process stopped and she was never terminated. Mr. Williams advised that appellant received disciplinary action for reasons having nothing to do with her injury, but rather unacceptable attendance (AWOL) for the periods:

---

<sup>3</sup> On July 28, 2014 appellant underwent authorized left rotator cuff surgery. She stopped work on that date. OWCP paid appellant disability compensation beginning July 28, 2014.

October 22 to November 4, 2010, 80 hours unscheduled leave without pay/absence without official leave; November 5 to 18, 2011, 80 hours unscheduled leave without pay/absence without official leave; and 80 hours unscheduled leave without pay/absence without official leave (ULWOP/AWOL). He explained that on September 18, 2013 the employing establishment sent her a letter requesting that she return to duty. Mr. Williams related that appellant was advised that the arbitration decision provided that she only receive continuation of pay and no back pay for the 2011 to 2013 period. He noted that she never received any accommodations because she never asked for accommodation and did not provide medical evidence of any kind. Mr. Williams indicated that appellant was issued a job offer after the arbitration once she provided medical documentation. Additionally, he related that she simply stopped coming to work and stopped communicating with the employing establishment, with a few exceptions. Mr. Williams reiterated that appellant stopped submitting medical documentation and never requested limited duty or contacted her employing establishment concerning limited duty. Accompanying this was a copy of the December 12, 2011 notice of removal that was to be effective January 31, 2012.

In a September 4, 2015 hearing representative decision, OWCP's hearing representative affirmed the January 14, 2015 decision.<sup>4</sup> She found that Dr. Shade did not provide sufficient support for the claimed disability. The hearing representative further found that there was no evidence that work restrictions were identified by him and provided to the employing establishment. She explained that appellant had a duty to maintain communication with her employing establishment concerning her work injury and release to return to work.

### **LEGAL PRECEDENT**

The term disability as used in FECA<sup>5</sup> means the incapacity because of an employment injury to earn the wages that the employee was receiving at the time of injury.<sup>6</sup> Whether a particular injury caused an employee disability for employment is a medical issue which must be resolved by competent medical evidence.<sup>7</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>8</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.

---

<sup>4</sup> OWCP also issued an August 12, 2015 decision which suspended appellant's wage-loss compensation due to her failure to submit a completed CA-1032 form. Appellant has not appealed this decision.

<sup>5</sup> 20 C.F.R. § 10.5(f).

<sup>6</sup> *Paul E. Thams*, 56 ECAB 503 (2005).

<sup>7</sup> *W.D.*, Docket No. 09-658 (issued October 22, 2009); *Id.*

<sup>8</sup> *Id.*

To do so would essentially allow employees to self-certify their disability and entitlement to compensation.<sup>9</sup>

### ANALYSIS

In support of her claim for disability compensation for the period December 3, 2011 through December 31, 2013, appellant provided several reports from her treating physician, Dr. Shade. However, these reports do not provide sufficient support for total disability for the period December 3, 2011 through December 31, 2013 due to her accepted employment injuries. OWCP accepted the claim for sprain of the neck, disorder of bursae, and tendons in shoulder region, left, other specified disorder of bursae, and tendons in shoulder region, left. The employing establishment indicated that it never told appellant that no work was available, prior to her notice of removal for unacceptable attendance and that it would have provided work if it had been apprised of her restrictions.<sup>10</sup> The Board notes that when a claimant stops work for reasons unrelated to the accepted employment injury, there is no disability within the meaning of FECA.<sup>11</sup>

In November 23, 2011 reports, Dr. Shade diagnosed cervical sprain, acute with left upper extremity radiculopathy, bursitis of the left shoulder and rotator cuff tear, left shoulder and placed appellant off work for the period November 23 to December 21, 2011. The Board notes that not all of these conditions were accepted by OWCP. Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, appellant bears the burden of proof to establish that the condition is causally related to the work injury.<sup>12</sup> Dr. Shade did not explain the reasons why she was totally disabled and unable to work due to her accepted conditions. A physician's opinion on causal relationship between a claimant's disability and an employment injury is not conclusive simply because it is rendered by a physician. To be of probative value, the physician must provide rationale for the opinion reached. Where no such rationale is present, the medical opinion is of diminished probative value.<sup>13</sup>

Dr. Shade subsequently provided a January 23, 2012 disability certificate, indicating that appellant was totally incapacitated from January 23 to February 23, 2012. On February 22, 2012 he noted that she had complaints of the bilateral hands and wrists and placed her off work due to her cervical and left shoulder pain and spasms. However, these reports are of insufficient probative value, as Dr. Shade did not provide any rationale to explain why appellant was

---

<sup>9</sup> *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>10</sup> See 20 C.F.R. § 10.515(b) (if an employee cannot return to the job held at the time of injury due to partial disability from the effects of the work-related injury, but has recovered enough to perform some type of work, she must seek work).

<sup>11</sup> See *John I. Echols*, 53 ECAB 481 (2002); *John W. Normand*, 39 ECAB 1378 (1988). Cf. 20 C.F.R. § 10.5(x) (a recurrence of disability does not apply when a light-duty assignment is withdrawn for reasons of misconduct, nonperformance of duties or other downsizing).

<sup>12</sup> *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>13</sup> *T.M.*, Docket No. 08-975 (issued February 6, 2009).

disabled due to her accepted conditions. On June 11 and July 11, 2012 he advised that she was released to limited duty on May 16, 2012. Dr. Shade diagnosed bursitis, left shoulder; bilateral carpal tunnel syndrome, and AC joint degenerative disease of the left shoulder, cervical discogenic disease from C4-5 through C6-7 and chronic pain. The Board notes that these were not all accepted conditions. He did not offer any opinion regarding her inability to work before May 16, 2012. In May 14 and October 7, 2013 reports, Dr. Shade opined that her conditions continued to prevent appellant from performing all the duties of her date-of-injury job. He advised that she was limited in the capacity of work that she did and the objective medical evidence “casts no doubt as to her disability.” As explained, not all of the diagnosed conditions were accepted by OWCP and Dr. Shade did not otherwise explain how the accepted conditions would cause total disability during the period December 3, 2011 to December 31, 2013.

On December 4, 2014 Dr. Shade noted treating appellant since October 27, 2011. He related that she was taken off work the same day as she was having cervical and left shoulder spasms with radicular symptoms. Dr. Shade noted that appellant was released to limited duty on May 16, 2012, but was unable to perform her usual duties as a mail handler. He does not provide medical rationale to explain the reasons why she was totally disabled during the period December 3, 2011 to December 31, 2013 due to her accepted conditions. For much of the period, Dr. Shade acknowledges that appellant was able to work limited duty. Without rationale to explain why appellant was totally disabled during the above noted time frame, this report is of limited probative value.<sup>14</sup> Other medical reports submitted by her either predated the claimed period or did not address whether her accepted conditions caused disability from December 3, 2011 through December 31, 2013.<sup>15</sup>

Although appellant alleged that she was disabled for the period December 3, 2011 through December 31, 2013, due to her accepted employment injury, the medical evidence of record does not establish that her claimed disability during the timeframe was related to her accepted employment injuries. The Board finds that she has failed to submit rationalized medical evidence establishing that her disability from December 3, 2011 through December 31, 2013, was causally related to her accepted employment injury, and thus, she has not met her burden of proof.

On appeal, appellant’s representative asserts that the medical evidence supports appellant’s claim. As explained, the medical evidence is insufficient to establish the claimed period of disability. The representative also asserts that appropriate light duty was not made available to appellant. The Board notes that she was issued a notice of removal and was off work for two years as discipline for unacceptable attendance. As noted, when a claimant stops work for reasons unrelated to the accepted employment injury, there is no disability within the meaning of FECA.<sup>16</sup> An arbitration decision later reinstated appellant to her former position and the employing establishment was directed to make her whole, but this was conditioned upon her providing acceptable medical documentation to explain her absence, along with a fitness-for-

---

<sup>14</sup> *See id.*

<sup>15</sup> *See supra* note 8.

<sup>16</sup> *See supra* note 10.

duty examination. The Board notes that it has no jurisdiction over internal employing establishment personnel matters.<sup>17</sup> There is no basis under FECA for requiring the employing establishment to make work available during the pendency of an administrative action involving the removal of an employee. While the employing establishment's administrative removal was later overturned, this is a personnel matter of the employing establishment. There is no evidence establishing that appellant was removed due to her work-related condition. The employing establishment confirmed that, before the removal, appellant never contacted it for limited duty or requested limited duty. Accordingly, there is no basis for wage-loss compensation for the period requested.

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 failed to establish that she was disabled for the period December 3, 2011 through December 31, 2013.

---

<sup>17</sup> *A.B.*, Docket No. 15-0785 (issued August 11, 2015); *V.B.*, Docket No. 12-0114 (issued June 13, 2012).



**ORDER**

**IT IS HEREBY ORDERED THAT** the September 4, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 14, 2016  
Washington, DC

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

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

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