

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

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D.E., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,  
Palmdale, CA, Employer**

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**Docket No. 17-1005  
Issued: October 19, 2017**

*Appearances:*

*Appellant, pro se*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge

COLLEEN DUFFY KIKO, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On April 7, 2017 appellant filed a timely appeal from a January 31, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> 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 disability for work commencing February 24, 2016, causally related to accepted left upper extremity conditions.

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<sup>1</sup> Appellant did not appeal a February 2, 2017 decision denying, in part, a claim for wage-loss compensation from August 22 to November 11, 2016.

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

## **FACTUAL HISTORY**

OWCP accepted that on or before November 2, 2015 appellant, then a 54-year-old rural carrier assigned to case and deliver her duty station's rural route 6, sustained a left shoulder strain and an unspecified tear or rupture of the left rotator cuff due to repetitive upper extremity motion while casing and delivering mail. Appellant's date-of-injury position required lifting up to 70 pounds. She stopped work on November 2, 2015. Appellant filed claims for wage-loss compensation (Form CA-7) and OWCP issued wage-loss compensation from November 5, 2015 to February 23, 2016.

On March 8, 2016 appellant filed a claim for compensation (Form CA-7) commencing February 24, 2016. She remained off work.

Additional medical evidence had been received into the record. Dr. Katayoom Shahrokh, an attending Board-certified physiatrist, provided periodic reports commencing November 2015 diagnosing left rotator cuff syndrome and left lateral epicondylitis.

In reports dated February 23, 24, and 26, 2016, Dr. Shahrokh diagnosed left rotator cuff syndrome with pain and restricted motion. She released appellant to modified duty with no lifting above shoulder level with the left arm; lifting, pushing, pulling, and carrying no more than 10 pounds; and repetitive left hand motions for no more than 15 minutes an hour.

On February 26, 2016 the employing establishment had offered appellant a modified version of her date-of-injury job, casing and carrying rural route six for nine hours a day. The position would not require her to reach above shoulder level with the left arm; lift, carry, or push more than 10 pounds with either arm; or perform repetitive left hand motions more than 15 minutes each hour. Appellant declined the position on March 1, 2016, pending her physician's review.

In a March 8, 2016 report, Dr. Shahrokh diagnosed left rotator cuff syndrome and left lateral epicondylitis. She restricted lifting, carrying and pushing with the left arm to five pounds, and driving for no more than two hours a day. Dr. Shahrokh also directed that appellant be allowed to rest her hands and arms for 15 minutes each hour.<sup>3</sup>

In a March 29, 2016 report, Dr. Shahrokh diagnosed left rotator cuff syndrome and left lateral epicondylitis, with limited motion and pain on palpation. She reiterated the restrictions given on February 23, 2016, with lifting limited to 10 pounds.

By April 13, 2016 letter, OWCP notified appellant of the additional evidence needed to establish her claim for wage-loss compensation, including a report from her attending physician explaining how the accepted left shoulder condition would disable her for work on and after February 24, 2016. It afforded appellant 30 days to submit such evidence.

In response, appellant provided April 19 and May 10, 2016 reports from Dr. Shahrokh, reiterating prior restrictions, but with lifting then limited to five pounds.

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<sup>3</sup> Appellant participated in physical therapy in February and March 2016.

On May 11, 2016 appellant accepted a new modified assignment to case and carry rural route 6, with lifting, carrying, and pushing limited to 10 pounds, no reaching above shoulder level with the left upper extremity, repetitive left hand motions restricted to 25 percent of the work shift, and driving no more than two hours a day. She could rest her arms for 15 minutes each hour. Appellant noted that the restrictions listed were not reflective of the latest limitations given by her physician.

Appellant did not report for duty beginning May 12, 2016 and used accrued leave. In a May 12, 2016 letter, she contended that the employing establishment pressured her into accepting a modified assignment on May 11, 2016 even though it was not within her medical restrictions.

By decision dated June 1, 2016, OWCP denied appellant's claim for compensation for the period commencing February 26, 2016, finding that light-duty work was available within her restrictions and that the medical evidence of record was insufficient to establish that she was unable to perform the offered position. It paid wage-loss compensation for two days, February 24 and 25, 2016.

In June 1 and 15, 2016 reports, Dr. Shahrokh diagnosed left lateral epicondylitis and left rotator cuff syndrome. She limited appellant to lifting, carrying, pulling, and pushing no more than five pounds; no reaching above shoulder level with the left upper extremity; and driving for more than two hours a day. From July 6 through August 17, 2016, Dr. Shahrokh increased lifting, pulling, and pushing to 20 pounds.

On August 19, 2016 the employing establishment again offered appellant a position as a modified rural carrier, with custodial duties up to 40 hours a week, and training up to 8 hours a day. The job limited lifting, carrying, and pushing to 20 pounds intermittently and with driving up to two hours a day. Appellant accepted the position on August 19, 2016. She worked part time, intermittently commencing August 23, 2016. OWCP paid intermittent wage-loss compensation.

On October 12, 2016 appellant requested reconsideration of the June 1, 2016 decision. She contended that she should not have been compelled to accept a position that exceeded her medical restrictions. Appellant alleged that supervisors advised her that she would not receive accommodations or assistance in complying with her medical restrictions. She contended that there was no medical report of record dated February 24, 2016, and that there were documents in the case record that were not hers. Appellant submitted additional evidence.

Dr. Shahrokh provided September 8 and 28, and November 23, 2016 reports reiterating prior diagnoses and restrictions, with a 20-pound lifting limitation. She noted renewing modified-duty restrictions on May 10, 2016. Dr. Shahrokh indicated that the custodial duties appellant performed beginning on August 23, 2016 aggravated her left arm.

The employing establishment responded by November 8, 2016 letter, contending that they were unaware of any documents submitted incorrectly to the file. It asserted that the February 26 and May 11, 2016 limited-duty job offers were both within appellant's work restrictions and that assistance or extra time would be provided as needed.

Appellant replied by November 30, 2016 letter, contending that the February 26 and May 11, 2016 job offers were not within her medical limitations. She reiterated that rural route 6 required 9.2 hours to case and deliver and that the employing establishment had not explained how it would assist her in completing the route in eight hours. Also, the October 11, 2016 duty status report indicated that rural route 6 required six hours of driving to complete.

On December 19, 2016 OWCP obtained a second opinion from Dr. Kevin F. Hanley, a Board-certified orthopedic surgeon, to determine appellant's work capacity. He reviewed the medical evidence of record and a statement of accepted facts. Dr. Hanley noted that appellant's date-of-injury position required lifting up to 70 pounds, sorting mail, loading her delivery vehicle, and delivering mail and parcels. He commented that, although OWCP accepted an unspecified tear or rupture of the left rotator cuff, there were no definitive imaging studies of record. On examination, Dr. Hanley found abduction of the left shoulder limited to 120 degrees, painful external rotation, and a positive impingement sign. He diagnosed left rotator cuff tendinitis, rule out rotator cuff tear, and myofascial pain of the left forequarter. Dr. Hanley explained that appellant continued to have objective findings of the accepted left shoulder condition, including limited motion and objective tenderness to palpation. He opined that she had not reached maximum medical improvement. Dr. Hanley restricted appellant to light demand level work, with no reaching above the shoulder with the left arm; other reaching limited to four hours a day; no climbing, pushing, pulling and lifting up to four hours a day; and lifting, pulling, and pushing up to 25 pounds.

In a December 19, 2016 report, Dr. Shahrokh found that appellant had attained maximum medical improvement. She restricted lifting to 20 pounds and driving and deliveries to two hours a day as of October 19, 2016.

On December 30, 2016 the employing establishment offered appellant a modified position as a rural carrier on route 6, for 9.2 hours a day, 46 hours a week. The job offer complied with appellant's restrictions against lifting, carrying, or pushing with the left arm more than 20 pounds and for no more than three hours a shift. Appellant accepted the position on December 30, 2016.

By decision dated January 31, 2017, OWCP denied modification, finding that the additional evidence and argument submitted were insufficient to establish that the position offered on February 23, 2016 was not within her restrictions. It found that appellant's belief that the position exceeded her medical limitations was tantamount to "self-certifying" her disability, as she did not attempt to return to work.

#### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.<sup>4</sup> Under FECA, the term "disability" is defined as an inability, due to an employment injury, to earn the wages the employee was receiving at the time of the injury, *i.e.*, an impairment resulting in loss of wage-

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<sup>4</sup> *Joe D. Cameron*, 41 ECAB 153 (1989).

earning capacity.<sup>5</sup> For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.<sup>6</sup> Whether a particular injury causes an employee to 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> The fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.<sup>8</sup> 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 her disability and entitlement to compensation.<sup>9</sup>

## ANALYSIS

OWCP accepted that on or before November 2, 2015 appellant sustained a left shoulder strain and an unspecified tear or rupture of the left rotator cuff. It paid wage-loss compensation from November 5, 2015 through February 25, 2016.

Appellant filed a claim for recurrence of disability beginning February 24, 2016. The Board finds that she has failed to meet her burden of proof to establish disability due to the accepted employment injury.

Dr. Shahrokh provided reports dated from February 23 to 26, 2016 restricting appellant from pushing, pulling, carrying and lifting up to 10 pounds; no lifting above shoulder level with the left arm; and repetitive left hand motions to no more than 15 minutes an hour. On February 26, 2016 the employing establishment offered appellant a modified rural carrier position, listing the restrictions given by Dr. Shahrokh.

Appellant declined the February 26, 2016 modified job offer contending that it exceeded her medical restrictions. She has the burden of proof to establish by the weight of the substantial, reliable, and probative evidence that she was totally disabled for work for the claimed period due to the accepted left shoulder condition.<sup>10</sup>

The February 26, 2016 modified-duty job offer lists the same restrictions assigned by Dr. Shahrokh from February 23 to 26, 2016. There is no indication that the position exceeded appellant's medical limitations as of the date of the offer. Dr. Shahrokh did not explain any disagreement with the position as offered or opine that the accepted left shoulder conditions disabled appellant from performing the job. While she noted a 5-pound lifting restriction in her

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<sup>5</sup> See *Prince E. Wallace*, 52 ECAB 357 (2001).

<sup>6</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>7</sup> *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>8</sup> *Manuel Garcia*, 37 ECAB 767 (1986).

<sup>9</sup> *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>10</sup> *Alfredo Rodriguez*, 47 ECAB 437 (1996).

March 8, 2016 report, Dr. Shahrokh reiterated the 10-pound lifting restriction on and after March 29, 2016, but did not provide any explanation for the temporary decrease. Her opinion is therefore insufficient to meet appellant's burden of proof to establish disability for the claimed period.<sup>11</sup>

OWCP also obtained a second opinion on December 19, 2016 from Dr. Hanley, who found appellant able to perform light-duty work with no reaching above the shoulder with the left arm; reaching limited to four hours a day; and lifting, pulling, and pushing up to 25 pounds for up to four hours a day. The Board finds that the February 26, 2016 job offer was within these restrictions.

As appellant did not submit sufficient medical evidence demonstrating that the accepted left upper extremity conditions disabled her for work beginning on February 24, 2016, OWCP's January 31, 2017 decision denying the claimed period of disability is proper under the circumstances of this case.<sup>12</sup>

On appeal appellant asserts that when she reported for duty on May 12, 2016, a supervisor informed her that the two hours of driving allowed would not include delivery time, which necessitated an additional four hours of driving. The Board concludes that there is insufficient evidence of record to establish this allegation as factual.

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 her burden of proof to establish total disability commencing February 24, 2016, causally related to her accepted left upper extremity conditions.

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<sup>11</sup> *Supra* note 6.

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 31, 2017 is affirmed.

Issued: October 19, 2017  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board