

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

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**D.A., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Springfield, MA, Employer**

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**Docket No. 18-0239  
Issued: June 12, 2018**

*Appearances:*  
*Appellant, pro se*  
*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  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On November 13, 2017 appellant filed a timely appeal from a May 23, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). 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.<sup>2</sup>

**ISSUE**

The issue is whether appellant has met his burden of proof to establish total disability for the period April 29 to May 7, 2016 causally related to his accepted employment injury.

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

<sup>2</sup> The record provided to the Board includes evidence received after OWCP issued its May 23, 2017 decision. The Board's jurisdiction is limited to the evidence that was before OWCP at the time of its final decision. Therefore, the Board is precluded from reviewing this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

## **FACTUAL HISTORY**

On March 17, 2016 appellant, then a 53-year-old mechanic, filed a traumatic injury claim (Form CA-1) alleging that while working in a four-by-four foot space on March 15, 2016, a forklift dropped a transformer on his right great toe. He asserted that when he used his left arm to push the transformer off his toe, he strained his left arm, elbow, shoulder, and low back. Appellant stopped work on March 16, 2016.<sup>3</sup> He received continuation of pay (COP) from March 16 to April 7, 2016. OWCP notified appellant that it had accepted a left shoulder sprain and “strain of muscle, fascia, and tendon of lower back” causally related to the March 15, 2016 employment incident.

In a report dated March 25, 2016, Dr. Alphonse F. Calvanese, an attending Board-certified internist, related appellant’s account of the March 15, 2016 incident and history of chronic lumbar pain, treated with narcotic medication. He diagnosed back pain, joint pain, a left shoulder strain, and left elbow strain. Dr. Calvanese opined that appellant’s back pain was “chronic and worsening due to acute injury.”

In a report dated April 8, 2016, Dr. Jason Donnelly, an attending physiatrist, related appellant’s account of the March 15, 2016 employment injury. He diagnosed lumbar radiculopathy, left biceps tendinitis, and left lateral epicondylitis caused by “cross reaching across his body to lift a 500[-] pound transformer off his foot” three weeks earlier at work. Dr. Donnelly restricted appellant to full-time sedentary duty with no reaching or bending, lifting limited to five pounds, and the ability to sit or stand as needed.

Appellant accepted a full-time modified-duty assignment on April 9, 2016 for 40 hours a week, operating button controls for a hoist, and resetting power equipment control boxes. The position required walking, riding a work tricycle, or standing for two and a half hours a day, pushing buttons for two hours a day, and sitting for one hour a day.<sup>4</sup>

In a report dated May 24, 2016, Dr. Sumner E. Karas, an attending Board-certified orthopedic surgeon, diagnosed left shoulder pain with periscapular trigger points. He prescribed physical therapy and restricted appellant to light, sedentary duty.

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<sup>3</sup> The employing establishment issued an authorization for examination and/or treatment (Form CA-16) on March 17, 2016.

<sup>4</sup> On June 19, 2016 appellant filed a claim for 25.27 hours of wage-loss compensation (Form CA-7) for the period June 7 to 17, 2016 to attend physical therapy appointments for his left shoulder and elbow on June 7, 8, 9, 10, 14, 15, 16, and 17, 2016. He submitted physical therapy treatment notes for each of the dates claimed. The employing establishment provided a time analysis form (Form CA-7a) demonstrating that, for the week of June 4 to 10, 2016, appellant was paid for 33.81 hours of work and 8.0 hours of leave without pay (LWOP) unrelated to his FECA claim. For the week of June 11 to 17, 2016, appellant worked 39.48 hours and may be entitled to .52 hours of LWOP. By decision dated July 5, 2016, OWCP denied appellant’s claim for wage-loss compensation for the period June 7 to 17, 2016, as he had no loss of wages for the claimed period. This decision is not before the Board on the present appeal as it was issued more than 180 days from the date the current appeal was filed. *See* 20 C.F.R. § 501.3(e).

In reports dated May 31, 2016, Dr. Robert Scott Cowan, an attending Board-certified orthopedic surgeon, diagnosed a left rotator cuff tear and lumbar pain. He restricted appellant to sedentary duty.

On June 22, 2016 appellant filed a claim for 56 hours of wage-loss compensation (Form CA-7) for work absences on April 29 and 30, 2016 and from May 3 to 7, 2016. The employing establishment provided a time analysis form (Form CA-7a) which noted that appellant was absent from work for his full eight-hour shift on each of the dates claimed.<sup>5</sup>

By decision dated July 5, 2016, OWCP denied appellant's claim for wage-loss compensation for the period April 29 to May 7, 2016 as the medical evidence of record indicated that he was able to perform full-time sedentary duty. It further found that April 29, 2016 was covered by the 45-day COP period.

In a letter postmarked July 18, 2016 and received by OWCP on July 22, 2016, appellant requested a telephonic hearing before an OWCP hearing representative regarding OWCP's July 5, 2016 decision denying wage-loss compensation from April 29 to May 7, 2016. He claimed "48 hours of pay" for the period April 30 to May 7, 2016.

During the hearing, held on March 17, 2017, appellant alleged that the employing establishment prematurely stopped his COP and forced him to resume work too soon. He contended that, after Dr. Donnelly released him to modified sedentary duty on or about April 8, 2016, the employing establishment assigned him to change 2,000-pound batteries with a hoist in violation of his work restrictions. Appellant stopped work on April 13, 2016 due to back pain caused by changing the batteries. Following the hearing, he provided additional evidence.

In a report dated May 17, 2016, Dr. Louis M. Adler, an attending Board-certified orthopedic surgeon, administered a corticosteroid injection to the left elbow. He noted, in a report dated September 19, 2016, that appellant's left medial and lateral epicondylitis improved after corticosteroid injections administered on June 29 and August 2, 2016.

OWCP continued to receive medical evidence.

On December 5, 2016 OWCP expanded its acceptance of the claim to include left lateral and medial epicondylitis. It authorized a left shoulder arthroscopy, performed on April 5, 2017.

In comments to the hearing transcript dated April 4, 2017, the employing establishment generally refuted appellant's allegation that he was made to work outside his medical restrictions.

By decision dated May 23, 2017, an OWCP hearing representative affirmed OWCP's July 5, 2016 decision which denied appellant's claims for wage-loss compensation from April 29

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<sup>5</sup> On June 24, 2016 appellant claimed wage-loss compensation from June 21 to 24, 2016. By decision dated June 30, 2016, OWCP denied appellant's claim for wage-loss compensation from June 21 to 24, 2016 as his assigned work schedule was 40 hours a week and he had been paid for 49.56 hours during the claimed period.

to May 7, 2016. He found that appellant had not submitted medical evidence sufficient to establish that he was disabled from modified work from April 29 to May 7, 2016.<sup>6</sup>

### **LEGAL PRECEDENT**

A claimant has the burden of proof to establish by a preponderance of the evidence that he or she is disabled from work as a result of an accepted employment injury and submit medical evidence for each period of disability claimed.<sup>7</sup> Whether a particular injury causes an employee to be disabled from employment and the duration of that disability are medical issues.<sup>8</sup> The issue of whether a particular injury causes disability from work must be resolved by competent medical evidence.<sup>9</sup> To meet this burden, a claimant must submit rationalized medical opinion evidence, based on a complete factual and medical background, establishing causal relationship between the alleged disabling condition and the accepted injury.<sup>10</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 his or her disability and entitlement to compensation. For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.<sup>11</sup>

### **ANALYSIS**

The Board finds that the medical evidence of record is insufficient to establish total disability for the period April 29 to May 7, 2016.

Appellant claimed that he sustained left upper extremity and lumbar injuries on March 15, 2016 when he pushed a transformer off his right foot. OWCP accepted that appellant sustained a left shoulder sprain, left medial and lateral epicondylitis, and a lumbar strain. Dr. Donnelly, an attending physiatrist, released appellant to full-time sedentary duty on April 8, 2016, with alternate sitting or standing as needed, lifting limited to five pounds, and no reaching or bending. Appellant returned to work on April 9, 2016 in a full-time modified-duty position, which required him to ride a work tricycle for up to two and a half hours a day, stand for up to two and a half hours a day, push buttons for two hours a day, and sit for one hour a day. On June 22, 2016 he claimed wage-loss compensation for work absences on April 29 and 30, 2016 and from May 3 to 7, 2016. Dr. Calvanese, an attending Board-certified internist, noted on March 25, 2016 that appellant's

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<sup>6</sup> The hearing representative noted that appellant had not appealed OWCP's July 5, 2016 decision, which denied wage-loss compensation from June 7 to 17, 2016.

<sup>7</sup> See *Fereidoon Kharabi*, 52 ECAB 291 (2001).

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

<sup>9</sup> See *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>10</sup> C.S., Docket No. 08-2218 (issued August 7, 2009).

<sup>11</sup> *K.J.*, Docket No. 16-1805 (issued February 23, 2018); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

back pain had worsened, but did not submit any reports which addressed appellant's condition for the claimed period. Dr. Donnelly returned appellant to full-time modified sedentary work on April 8, 2016. He did not find appellant disabled from work at any time from April 29 to May 7, 2016. As noted, part of appellant's burden of proof includes submitting rationalized medical evidence which supports causal relationship between the period of disability and the accepted injury.<sup>12</sup> Therefore, these reports are insufficient to meet appellant's burden of proof.

Following appellant's examination by Dr. Donnelly on April 8, 2016, the next medical opinion of record is a May 24, 2016 report by Dr. Karas, an attending Board-certified orthopedic surgeon. This report does not address the period at issue. It is, therefore, insufficient to meet appellant's burden of proof.<sup>13</sup>

There is no medical evidence of record dated between April 8 and May 24, 2016 which encompasses the claimed period of disability, from April 29 to May 7, 2016. Consequently, appellant has not submitted medical evidence sufficient to establish that he was totally disabled from work during the claimed period causally related to his accepted employment conditions. As previously noted, 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.<sup>14</sup>

On appeal appellant contends that Dr. Donnelly did not perform a thorough examination and returned him to work prematurely, which worsened his elbow and shoulder conditions. As noted above, the medical evidence of record does not establish that appellant was totally disabled from work during the claimed period. Appellant has, therefore, not met his burden of proof.

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 and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish total disability for the period April 29 to May 7, 2016 causally related to his accepted employment injury.

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<sup>12</sup> *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

<sup>13</sup> *K.J.*, *supra* note 11.

<sup>14</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 23, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 12, 2018  
Washington, DC

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

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

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