

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

S.H., Appellant)	
)	
and)	Docket No. 18-1342
)	Issued: February 26, 2019
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Atlanta, GA, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 28, 2018 appellant filed a timely appeal from a March 29, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 from work on October 26, 2017 due to her employment-related right shoulder condition.

FACTUAL HISTORY

On July 28, 2017 appellant, then a 52-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that, on July 27, 2017, she injured her right shoulder when

¹ 5 U.S.C. § 8101 *et seq.*

lifting trays while working on a delivery bar code sorter machine. She did not stop work. OWCP accepted her claim for right upper arm/shoulder strain on September 26, 2017.

On November 21, 2017 appellant filed a claim for compensation (Form CA-7) for intermittent wage loss for the period October 5 through November 8, 2017. On the reverse side of the claim form, the employing establishment noted that appellant stopped work on October 5, 2017 and returned to limited-duty work on October 8, 2017. On the attached time analysis form (Form CA-7a), appellant claimed 1.77 hours of lost wages on October 5, 2017; 1.77 hours on October 10, 2017; 8 hours on October 26, 2017; 1.43 hours on November 2, 2017; and 1.36 hours on November 8, 2017, for a total of 14.33 hours. She indicated that the reason for her absence was because she “[w]ent to [d]octor.” The eight-hour request for October 26, 2017 noted a magnetic resonance imaging (MRI) scan.

On December 5, 2017 OWCP paid compensation for a total of 4.56 hours of lost wages on October 5, and November 2 and 8, 2017. It subsequently paid compensation for 1.77 hours of wage loss on October 10, 2017.

By development letter dated December 5, 2017, OWCP advised appellant that the evidence of record was insufficient to support her claim for eight hours of lost wages on October 26, 2017 to obtain medical care.² It explained that, as a rule, no more than four hours of compensation should be allowed for routine medical appointments. In this instance, appellant had not submitted any documentation to support her absence on October 26, 2017. OWCP afforded appellant 30 days to submit the requested medical documentation.

OWCP subsequently received physical therapy treatment notes for October 10, 17, 19, and 24 and November 2, 2017.

In a December 6, 2017 report, Dr. Neil J. Negrin, a Board-certified orthopedic surgeon, related appellant’s complaints of shoulder rotator cuff pain. Examination revealed tenderness in the supraspinatus fossa and full range of motion. Dr. Negrin reported that appellant had returned to work. He administered a corticosteroid injection and advised her to follow-up in two months. Dr. Negrin also completed a duty status form report (Form CA-17) which described appellant’s work restrictions.³

By decision dated January 3, 2018, OWCP denied appellant’s claim for eight hours of lost wages on October 26, 2017. It found that the medical evidence of record was insufficient to establish that she sought treatment on that date or that she was otherwise disabled from work on October 26, 2017. OWCP noted that neither the physical therapy treatment records, nor Dr. Negrin’s December 6, 2017 report mentioned any treatment on October 26, 2017.

On February 12, 2018 appellant requested reconsideration.

² OWCP also requested documentation to support her claimed wage loss on October 10, 2017. It subsequently paid appellant for 1.77 hours of wage loss on October 10, 2017.

³ Appellant subsequently claimed eight hours of lost wages on December 6, 2017, which OWCP approved.

OWCP received an October 25, 2017 initial evaluation report by Dr. Negrin, who provided examination findings and noted a diagnosis of rotator cuff tendinitis and subacromial bursitis. Dr. Negrin related: “Patient will remain off for the rest of the day and tomorrow the 26th and return to work on the 27th.” He administered a corticosteroid injection, which provided “complete relief of [appellant’s] pain.” Dr. Negrin advised that she continue with physical therapy and return for follow-up in two weeks.

In reports dated February 7 and 28, 2018, Dr. Negrin reevaluated appellant for right shoulder pain. He provided examination findings and reported diagnoses of resolved rotator cuff tendinitis, resolving subacromial bursitis, and acromioclavicular (AC) joint synovitis. In a February 28, 2018 report, Dr. Negrin indicated that appellant was able to return to work without restrictions.

By decision dated March 29, 2018, OWCP denied modification of the January 3, 2018 decision. It found that, although Dr. Negrin had taken appellant off work, he did not sufficiently explain how appellant was disabled from performing her light-duty assignment on October 26, 2017.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence.⁵ 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.⁶ Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.⁷

Under FECA, the term disability means an incapacity because of an employment injury, to earn the wages the employee was receiving at the time of the injury.⁸ Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.⁹ When, however, the medical evidence establishes that the residuals or sequelae of an

⁴ *Id.*

⁵ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁶ *Dominic M. Descaled*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

⁷ *See Amelia S. Jefferson*, 57 ECAB 183 (2005); *see also Nathaniel A. Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

⁸ 20 C.F.R. § 10.5(f); *see e.g., Cheryl L. Decavitch*, 50 ECAB 397 (1999).

⁹ *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

employment injury are such that, from a medical standpoint, prevent the employee from continuing in his or her employment, he or she is entitled to compensation for any loss of wages.¹⁰

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish total disability from work on October 26, 2017 due to her employment-related right shoulder condition.

Appellant alleged on the Form CA-7a that she was disabled from work on October 26, 2017 due to a doctor's appointment, which included an MRI scan. There is, however, no medical evidence submitted to establish that appellant had a medical appointment on the claimed date.¹¹

Furthermore, the medical evidence of record does not establish that appellant was disabled from work on October 26, 2017 as a result of her accepted July 27, 2017 employment injury.¹² The only medical evidence which addressed the claimed date of disability was a report dated October 25, 2017 by Dr. Negrin who conducted an examination and noted a diagnosis of rotator cuff tendinitis and subacromial bursitis. Dr. Negrin also administered a corticosteroid injection, which provided "complete relief of [appellant's] pain." He recommended that appellant be off work for the rest of that date and the following date, October 26, 2017. Although Dr. Negrin excused her from work on October 26, 2017, he did not explain why she was unable to work as a result of her accepted right arm injury.¹³ He did not rely on any objective findings or provide any medical rationale for how appellant's accepted right arm injury had worsened to the extent that she was disabled from work on the claimed date. This report, therefore, is of diminished probative value and is insufficient to establish her disability claim.¹⁴

As noted above, appellant has the burden of proof to establish by the weight of the substantial, reliable, and probative evidence a causal relationship between her claimed disability on October 26, 2017 and the accepted July 27, 2017 employment injury.¹⁵ The reports of her physician do not provide a rationalized medical opinion substantiating that appellant was disabled from work on October 26, 2017 due to her accepted right arm injury. Accordingly, the Board finds that the medical evidence submitted is insufficient to meet appellant's burden of proof.¹⁶

¹⁰ *Merle J. Marceau*, 53 ECAB 197 (2001).

¹¹ In order to establish entitlement to compensation for any time missed from work due to medical treatment for an employment-related condition, a claimant must submit supporting medical evidence. *Dorothy J. Bell*, 47 ECAB 624 (1996); *Zane H. Cassell*, 32 ECAB 1537 (1981).

¹² *G.T.*, 59 ECAB 447 (2008); see *Huie Lee Goal*, 1 ECAB 180, 182 (1948).

¹³ See *M.M.*, Docket No. 16-0541 (issued April 27, 2010).

¹⁴ *S.B.*, Docket No. 13-1162 (issued December 12, 2013).

¹⁵ See *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001); see also *Amelia S. Jefferson*, 57 ECAB 183 (2005).

¹⁶ *Alfredo Rodriguez*, 47 ECAB 437 (1996).

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 from work on October 26, 2017 due to her employment-related right shoulder condition.

ORDER

IT IS HEREBY ORDERED THAT the March 29, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 26, 2019
Washington, DC

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

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

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