



## ISSUE

The issue is whether appellant has met his burden of proof to establish disability from work during the period December 11 through 20, 2019 causally related to his accepted April 4, 2019 employment injury.

## FACTUAL HISTORY

On April 4, 2019 appellant, then a 59-year-old area maintenance technician, alleged that he felt a “pop” in his right shoulder while reaching to change a lightbulb while in the performance of duty. OWCP initially accepted the claim for sprain of right shoulder joint. It subsequently expanded its acceptance of the claim to include superior glenoid labrum lesion of right shoulder and complete tear or rupture of the right rotator cuff. On October 4, 2019 appellant underwent an OWCP-authorized right shoulder arthroscopic debridement of the rotator cuff, distal clavical resection, and tendonesis of the biceps tendon, performed by Dr. Craig T. Arntz, a Board-certified orthopedic surgeon.<sup>3</sup> Appellant received appropriate wage-loss compensation on OWCP’s supplemental rolls for the period October 4 through December 10, 2019. He retired on December 10, 2019.

On December 9, 2019 Dr. Arntz indicated that appellant’s right shoulder surgical incision was healing beautifully, and that his shoulder motion and comfort was improving. In a December 9, 2019 activity prescription form, he released appellant to modified duty with restrictions of no pushing, pulling, reaching, or lifting with the right arm.

In a December 10, 2019 letter, the employing establishment offered appellant a temporary limited-duty job beginning that day.<sup>4</sup> It advised that the job duties entailed helping customers with packaging and forms and directing customers to the self-service kiosks. Appellant rejected the temporary assignment, contending that its required duties were outside of his medical restrictions.

A December 10, 2019 document effectuating the offer bore the heading “Offer of Modified Assignment (Limited-Duty).” It reflected that a modified assignment of “customer service” was available to appellant for eight hours a day. The position had an annual salary of \$65,447.00 for level 09 step P. The duties of the modified assignment involved helping customers with packaging and forms with the left hand/arm for four hours a day and directing customers to the self-service kiosk for four hours a day with use of left hand/arm. The physical requirements of the modified position indicated that no pushing, pulling, reaching or lifting would be performed with the right arm.

On December 17, 2019 appellant refused the modified assignment, contending that it was not a regular job position.

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<sup>3</sup> The surgical report discusses appellant’s right shoulder conditions, but references his left shoulder regarding the surgical procedure.

<sup>4</sup> It noted that the date of injury was September 24, 2019.

On December 24, 2019 appellant filed a claim for wage-loss compensation (Form CA-7) for disability during the period December 7 through 20, 2019. In an accompanying time analysis form (Form CA-7a) appellant indicated that no suitable work was available during each of the days claimed. The employing establishment controverted the claim for wage-loss compensation beyond December 10, 2019 as appellant was no longer an employee of the employing establishment.

In a January 3, 2020 letter, OWCP acknowledged receipt of appellant's Form CA-7 and advised appellant that it had processed a wage-loss compensation payment for the period December 7 through 10, 2019. It noted that on December 10, 2019 he had elected to receive disability retirement. OWCP also noted that the employing establishment had offered appellant a modified temporary light-duty assignment in customer service on December 10, 2019, which he declined. It informed him that the duties and physical requirements of the employing establishment's temporary light-duty assignment in customer service were within Dr. Arntz' December 9, 2019 work restrictions as the job offered only required use of his left arm. OWCP also informed appellant of the provisions of 20 C.F.R. § 10.500(a) and further advised that his entitlement to wage-loss compensation may be denied under this provision if he did not accept the offered assignment or provide a written explanation with justification for his refusal within 30 days. It specifically requested appellant to submit evidence to support that the assignment was no longer available or no longer accommodated his medical restrictions.

In a January 13, 2020 report, Dr. Arntz provided an impression of excellent progress post right rotator cuff tear repair and steadily improving shoulder motion, strength, and comfort. He recommended restrictions of no lifting over 10 pounds and limited use of right arm overhead pending reevaluation in approximately six weeks.

By decision dated February 14, 2020, OWCP denied appellant's claim for disability for the period December 11 through 20, 2019 pursuant to 20 C.F.R. § 10.500(a) based on his refusal to accept the employing establishment's December 10, 2019 offer for a temporary light-duty assignment. It explained that the evidence established that he had medical restrictions in place, a light-duty work assignment within those restrictions was available to him, and he was previously notified in writing that such light-duty work was available.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>5</sup> In general the term, "disability" under FECA means incapacity because

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<sup>5</sup> *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

of injury in employment to earn the wages, which the employee was receiving at the time of such injury.<sup>6</sup>

To establish causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such causal relationship.<sup>7</sup> The opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship.<sup>8</sup>

Section 10.500(a) of OWCP's regulations provides that benefits are available only while the effects of a work-related condition continue. Compensation for wage loss due to disability is available only for periods during which an employee's work-related medical condition prevents him or her from earning the wages earned before the work-related injury. For example, an employee is not entitled to compensation for wage-loss claimed on a Form CA-7 to the extent that evidence contemporaneous with the period claimed on a Form CA-7 establishes that an employee had medical work restrictions in place, that light duty within those work restrictions was available, and that the employee was previously notified in writing that such duty was available.

OWCP's procedures provide that, when a claimant is not on the periodic rolls, a claim for wage-loss compensation may be received on a Form CA-7 when a temporary light-duty assignment has been provided by the employing establishment. These procedures further provide that, when a formal loss of wage-earning capacity has not been issued, OWCP's claims examiner should follow certain specified procedures. If the evidence establishes that injury-related residuals continue and result in work restrictions, that light duty within those work restrictions was available, and that the employee was notified in writing that such light duty was available, then wage-loss benefits (effective the date of the written notification of light-duty availability) are not payable for the period covered by the available light-duty assignment. Such benefits are payable only for periods during which an employee's work-related medical condition prevent him or her from earning the wages earned before the work-related injury.<sup>9</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish disability from work during the period December 11 through 20, 2019 causally related to his accepted April 4, 2019 employment injury.

OWCP's denial of wage-loss compensation for the period December 11 through 20, 2019 is supported by the provisions of 20 C.F.R. § 10.500 (a). On December 10, 2019 the employing

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<sup>6</sup> See 20 C.F.R. § 10.5(f); see also *S.W., id.; A.M.*, Docket No. 09-1895 (issued April 23, 2010); *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

<sup>7</sup> *J.M.*, Docket No. 19-0478 (issued August 9, 2019).

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

<sup>9</sup> 20 C.F.R. § 10.500(a); see also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Job Offers and Return to Work*, Chapter 2.814.9a (June 2013).

establishment provided appellant a full-time modified light-duty assignment in customer service. The December 10, 2019 cover letter specifically advised that the offered assignment was temporary.<sup>10</sup> The document effectuating the offer indicated that modified position was available to appellant commencing December 10, 2019. The duties of the position required appellant to help customers with packaging and forms for four hours a day and direct customers to the self-serve kiosk for four hours a day, all with the use of left hand/arm. The physical requirements of the modified position indicated that no pushing, pulling, reaching, or lifting with the right arm was involved. This is consistent with Dr. Arntz' December 9, 2019 work restrictions as the modified job offered only required use of his left arm. Thus, the evidence establishes that appellant had medical work restrictions in place, that light duty within those work restrictions was available, and that he was previously notified in writing that such light duty was available.<sup>11</sup>

The record is devoid of any evidence, which shows that the temporary modified light-duty assignment was not within appellant's work restrictions or was no longer available. Dr. Arntz' subsequent January 13, 2020 work restrictions of no lifting over 10 pounds and limited use of right arm overhead continues to support that the offered position was within his physical restrictions.

Therefore, the evidence shows that, for the period December 11 through 20, 2019, appellant could perform the temporary modified light-duty position available to him and OWCP properly denied entitlement to wage-loss compensation for that period.<sup>12</sup>

On appeal appellant submitted pleadings asserting issues concerning his denial of compensation and medical treatment, denial of third-party compensation, denial of accommodation, and denial of return to work. He also alleged that he involuntarily retired and raised issues pertaining to the Office of Personnel Management, the Family and Medical Leave Act, and other statutes. The Board's jurisdiction is limited to the issue of appellant's entitlement to disability for the claimed period of December 11 through 20, 2019. For the reasons set forth above, appellant has not met his burden of proof to establish disability from work for the period December 11 through 20, 2019 due to his accepted conditions. Additionally, appellant submitted a petition for reconsideration requesting that the Board "reopen" the present appeal. However, this petition is premature as the Board had not issued a final decision in this appeal. Appellant has 30 days from the issuance of this decision to file a petition for reconsideration.<sup>13</sup> Appellant has also filed a motion for a preliminary injunction. However, the Board's *Rules of Procedure* does not provide for injunctive relief.<sup>14</sup> Finally, appellant also filed a motion to consolidate the present appeal with his appeal in Docket No. 21-0375. However, the Board, in its discretion, denies the request as it involves a subsequent decision of OWCP. Therefore, the appeal in Docket No. 21-0375 will be adjudicated separately.

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<sup>10</sup> See *B.T.*, Docket No. 19-1331 (issued April 30, 2020).

<sup>11</sup> See *S.W.*, *supra* note 5.

<sup>12</sup> See *A.M.*, Docket No. 19-0138 (issued October 2, 2019).

<sup>13</sup> 20 C.F.R. § 501.7(a).

<sup>14</sup> See *id.* at § 501 *et seq.*

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 his burden of proof to establish disability from work during the period December 11 through 20, 2019 causally related to his accepted April 4, 2019 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 14, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 14, 2021  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

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