U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM J. STARK and DEPARTMENT OF THE AIR FORCE, HILL AIR FORCE BASE, UT

Docket No. 02-2310; Submitted on the Record;
Issued December 26, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO, A. PETER KANJORSKI

The issue is whether appellant was entitled to wage-loss compensation for the period December 17 to 31, 2001, due to his accepted employment injury.

On September 12, 2001 appellant, then a 48-year-old EI inspector, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1). He alleged that, on September 9, 2001, he sustained an employment-related injury to his left shoulder in the performance of duty. Appellant returned to light duty on September 11, 2001. On November 30, 2001 the Office of Workers' Compensation Programs accepted the claim; left rotator cuff sprain/strain and rotator cuff repair to the left shoulder was authorized.

On January 7, 2002 appellant filed a Form CA-7 claim for compensation requesting wage-loss compensation for the period December 17 to 31, 2001. Attached to the Form CA-7 was a CA-7 leave buy back worksheet.

By letter dated January 14, 2002, the Office informed appellant of the type of evidence needed to support his claim for wage-loss compensation for the period December 17 to 31, 2001. This was to include a detailed medical narrative with a medical explanation as to why he was temporarily totally disabled for that time period.

In response, appellant submitted additional medical evidence including his operative report from November 30, 2001 and physical therapy notes.

In a January 23, 2001 report, Dr. Michael H. Sumko, a Board-certified orthopedic surgeon and appellant's treating physician, indicated that appellant was off work from November 29, 2001, the day prior to his surgery, all the way through January 2, 2002. He indicated that appellant was off work primarily to allow for his large massive rotator cuff tear to heal, noting that he returned to light duty on January 2, 2002. Dr. Sumko indicated that, during

the time of November 29, 2001, up until January 2, 2002, appellant was unable to work due to his restrictions of attempting to protect the rotator cuff while it healed.

By decision dated February 22, 2002, the Office denied appellant's claim for wage-loss compensation for the period December 17 to 31, 2001 on the grounds that the medical evidence did not support that he was disabled for work for that period.

The Board finds that this case is not in posture for decision.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he or she cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.[1]

Under the Federal Employees' Compensation Act[2] the term "disability" means incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn the wages. An employee who has a physical impairment causally related to a federal employment injury, but who nonetheless has the capacity to earn wages she was receiving at the time of injury, has no disability as that term is used in the Act, and whether a particular injury causes an employee disability for employment is a medical issue which must be resolved by competent medical evidence.[3]

Causal relationship is a medical issue[4] and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[5]

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[1] *Mary A. Howard*, 45 ECAB 646 (1994); *Cynthia M. Judd*, 42 ECAB 246 (1990); *Terry R. Hedman*, 38 ECAB 222 (1986).

[2] 5 USC §§ 8101-8193.

[3] *Maxine J. Sanders*, 46 ECAB 835 (1995).

[4] *Mary J. Briggs*, 37 ECAB 578 (1986).

[5] *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

In the instant case, appellant is claiming compensation for the period December 17 to 31, 2001.[6]

Appellant submitted a report from his treating physician, Dr. Sumko, who advised the Office that appellant was off of work from November 29, 2001, the day prior to surgery, all the way through January 2, 2002 in order to allow time for appellant's massive rotator cuff tear to heal and appellant returned to light duty on January 2, 2002.

While the report of Dr. Sumko is insufficient to establish that appellant was disabled such that he was unable to perform his light-duty position, the fact that his report contains deficiencies preventing appellant from discharging his burden does not mean that this report may be completely disregarded by the Office. It merely means the probative value is diminished. His opinion is thus sufficient to require further development of the record.[7] It is well established that proceedings under the Act are not adversarial in nature[8] and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.[9] On remand the Office should refer appellant to an appropriate Board-certified specialist for a rationalized medical opinion on the issue of whether appellant's employment-related condition prevented him from performing his light-duty work for the period in question. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

[6] The record reflects that appellant used leave to cover the period November 29 to December 16, 2001.

[7] *See Lourdes Davila*, 45 ECAB 139 (1993); *John J. Carlone*, 41 ECAB 354 (1989). The Board notes that the case record does not contain a medical opinion contrary to appellant's claim and further notes that the Office did not seek advice from an Office medical adviser or refer the case for a second-opinion evaluation regarding the recurrence of disability.

[8] *See, e.g., Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985).

[9] *See Dorothy L. Sidwell*, 36 ECAB 699 (1985).

The February 22, 2002 decision of the Office of Workers' Compensation Programs is hereby set aside and the case remanded to the Office for proceedings consistent with this opinion.

Dated, Washington, DC
December 26, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

A. Peter Kanjorski
Alternate Member