

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

DONNA L. REEVER, Appellant

and

**U.S. POSTAL SERVICE, WEST YORK POST
OFFICE, York, PA, Employer**

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**Docket No. 05-392
Issued: July 20, 2005**

Appearances:

*Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On December 2, 2004 appellant, through her attorney, filed a timely appeal of an April 15, 2004 merit decision of the Office of Workers' Compensation Programs, finding that she was not totally disabled on intermittent dates during the period June 28 through August 30, 2002 and denied her claim for leave buy back. Pursuant to 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 established that she was totally disabled on intermittent dates during the period June 28 through August 30, 2002, for which the Office did not authorize leave buy back.

FACTUAL HISTORY

On July 12, 2002 appellant, then a 51-year-old letter carrier, filed a claim (Form CA-2a) alleging that on June 28, 2002 she sustained a recurrence of disability of a left shoulder injury she sustained on November 1, 2001 and April 29, 2002. Appellant indicated that following these

injuries she did not perform her usual duties. In describing her recurrence of disability, appellant stated that she had just started her route and she reached for a parcel with both hands to put it in a box when she felt a sharp pain in her shoulder. She could not move, get out of her employing establishment vehicle or release her seat belt.

In support of her claim, appellant submitted an unsigned hospital emergency room report dated June 27, 2002, which revealed a diagnosis of left shoulder pain and exacerbation of a previous shoulder injury. A June 28, 2002 disability certificate of a registered nurse whose signature is illegible indicated that appellant sustained an exacerbation of a previous shoulder injury and that she had limited use of her left shoulder. In a June 28, 2002 duty status report, Dr. Brian L. Bixler, appellant's treating Board-certified orthopedic surgeon, indicated that appellant had tendinitis and advised her that she could only perform limited-duty work with her right hand on July 1, 2002. In a July 9, 2002 report, Dr. Bixler reported appellant's shoulder pain and his findings on physical examination, which included significantly decreased range of motion with evidence of impingement, rotator cuff tendinitis and subacromial bursitis. He stated that there was no evidence of neurologic dysfunction. An x-ray examination demonstrated narrowing of the space of the acromial cuff and no significant degenerative arthritis or acute problems. Dr. Bixler attributed appellant's pain to her activities as a mail carrier.

On August 2, 2002 the Office determined that appellant's recurrence claim should be treated as a new injury claim as she hurt her left shoulder over the course of a single work shift. The Office stated that the date of injury was June 28, 2002 and that it appeared appellant had lost time for work but had since returned to work.

On August 5, 2002 appellant advised the Office that the correct date of injury was June 27, 2002. In an August 15, 2002 work status report, Dr. Bixler stated that appellant suffered from left shoulder pain and that physical therapy had been ordered for six weeks.

By letters dated August 16, 2002, the Office accepted appellant's claim for tendinitis of the left shoulder. The Office advised appellant that it had received a traumatic injury claim (Form CA-1) for the June 27, 2002 injury and determined that the medical evidence covered time off from work for disability between June 28 and July 1, 2002. The Office requested that she submit medical evidence to support her disability for the claimed period. The Office informed appellant that a report of termination of disability and/or payment (Form CA-3) must be submitted when she returned to work and a claim for compensation (Form CA-7) should be submitted if she entered leave-without-pay status following 45 days of continued pay.

Dr. Bixler's June 28, July 9 and August 8, 2002 reports reiterated his diagnosis of shoulder pain, a rotator cuff tear, tendinitis and impingement syndrome of the left shoulder, recommendation that appellant undergo physical therapy and perform light-duty work with her right hand. Treatment notes dated June 25, 2002, which contained the typed name of Lisa Kemp, appellant's physical therapist, reported appellant's continued left shoulder symptoms and exercise routine and findings on physical examination. A July 30, 2002 report which contained the typed name of Dr. Michael P. Recht, a Board-certified radiologist, revealed the results of a magnetic resonance imaging (MRI) scan, which found signal changes involving the distal aspect of the supraspinatus tendon consistent with tendinosis and a probable small partial thickness undersurface tear. There was no evidence of a full thickness tendon tear.

A September 30, 2002 report which contained Ms. Kemp's typed name provided findings on physical examination and an assessment of decreased joint mobility, general shoulder flexibility/range of motion and strength and end range pain. Treatment notes dated September 5 and 24, 2002, which contained the typed name of Emily S. Hennon, appellant's physical therapist, provided addressed appellant's symptoms and exercise routine. Appellant's September 27 and October 7, 2002 treatment notes also addressed appellant's symptoms and exercise routine.

In an undated work status report, Dr. Bixler diagnosed appellant as having impingement syndrome of the left shoulder and stated that she may return to work with certain restrictions on September 19, 2002. Ms. Kemp's September 17 and 30, 2002 treatment notes and Ms. Hennon's October 3, 2002 treatment note revealed appellant's symptoms, progress and findings on physical examination.

An October 23, 2002 report of Dr. Michael J. Sicuranza, a Board-certified orthopedic surgeon, indicated that appellant had adhesive capsulitis and rotator cuff tendinitis and that she needed to undergo an arthroscopic evaluation, manipulation under anesthesia, arthroscopic capsular release and repair of the rotator cuff.¹

An unsigned report dated September 19, 2002, which contained Dr. Bixler's typed name indicated that appellant's adhesive capsulitis of the shoulder was more significant and that she had been referred to Dr. Sicuranza to consider surgical intervention. Appellant was permitted to return to work with her previous restrictions. The November 21, 2002 report of Christopher J. Borsa, appellant's physical therapist, provided his findings on physical examination of appellant's left shoulder. He found pain in the left shoulder with functional use and stated that appellant was unable to work at that time secondary to the shoulder injury. Mr. Borsa's November 26 and December 2, 2002 treatment notes revealed appellant's shoulder symptoms and exercise routine.

The December 4, 2002 treatment note of Whitney Michael, appellant's physical therapist, discussed appellant's shoulder symptoms and exercise routine. Dr. Bixler's October 23, 2002 work status report indicated that appellant had adhesive capsulitis and a rotator cuff tear and that she could return to work with certain limitations. Ms. Kemp's treatment notes dated October 17 and 21, 2002 addressed appellant's exercise routine. Dr. Sicuranza's October 14, 2002 report reiterated his diagnosis of adhesive capsulitis and he also diagnosed a partial rotator cuff tear. Dr. Sicuranza recommended that appellant continue with light-duty activities for four to six weeks.

Treatment notes and reports from Ms. Hennon, Ms. Michael, Mr. Borsa and April L. Dietz, appellant's physical therapist, covered intermittent dates from December 4, 2002 through March 11, 2003 and addressed appellant's shoulder symptoms, exercise routine and progress. Dr. Bixler's November 25, 2002 work status report revealed that appellant was status post rotator cuff repair and that she could return to work with no restrictions on December 9, 2002. In an undated work status report, Dr. Bixler diagnosed adhesive capsulitis and reiterated that appellant

¹ By letter dated November 7, 2002, the Office authorized the medical treatment requested by Dr. Sicuranza, who performed arthroscopic surgery on appellant's left shoulder on November 19, 2002.

could return to work with certain restrictions. He reiterated his diagnosis and stated that appellant had her rotator cuff repaired in a February 7, 2003 work status report. He stated that she could return to work with specific restrictions. In a November 25, 2002 report, Dr. Sicuranza noted that appellant was status post rotator cuff repair and that she was doing well and that she would be released to return to work in a few days. His December 23, 2002 report reiterated that appellant was status post rotator cuff repair and arthroscopic release for adhesive capsulitis. Dr. Sicuranza's February 10, 2003 report reiterated his previous diagnoses and noted appellant's physical therapy treatment.

In a May 28, 2003 report, Dr. Sicuranza stated that appellant had adhesive capsulitis and left shoulder pain. His July 9, 2003 medical report revealed that appellant was status post rotator cuff repair with secondary bicipital tendinitis and carpal tunnel syndrome. Dr. Michael B. Furman, a Board-certified physiatrist, provided the results of nerve conduction velocity and electromyogram studies of appellant's left shoulder in a July 25, 2003 medical report. Dr. Sicuranza's August 11, 2003 report indicated that appellant could return to work on that date. An August 18, 2003 report of Dr. Paul N. Groof, a Board-certified radiologist, revealed that appellant was status post rotator cuff repair and that, based on a magnetic resonance arthrogram of her left shoulder, she had full thickness tear of the supraspinatuous tendon. A June 27, 2002 report of Lorraine W. Bock, a certified nurse practitioner, provided that appellant had left shoulder pain that was an exacerbation of a previous shoulder injury.

On August 15, 2003 appellant filed claims for compensation (Form CA-7) for the period June 28 to August 30, 2002 and November 19 to December 6, 2002 and requested leave buy back for these periods. She submitted a time analysis form, which indicated that she used 8 hours of sick leave on June 28, 2002 for a medical evaluation and 48 hours of sick leave on July 17, 22 and 23 and August 16, 29 and 30, 2002 due to shoulder pain for a total of 56 hours. Another time analysis form indicated that appellant used 112 hours of sick leave when she was off work on November 19, 2002 due to shoulder surgery through December 6, 2002, while she recovered from the surgery. Appellant also submitted Dr. Bixler's March 21, 2003 attending physician's report in which he noted the date of injury as June 28, 2002 and diagnosed rotator cuff tendinitis and shoulder pain. Dr. Bixler indicated with an affirmative mark that appellant's conditions were caused by the June 28, 2002 employment injury and that she would be partially disabled beginning June 28, 2003.

Appellant submitted additional medical reports and treatment notes from her treating physicians and physical therapists, which addressed her continuing shoulder problems, medical treatment and ability to work with no restrictions during the period March 21, 2003 through February 11, 2004.

By letter dated March 15, 2004, the Office advised appellant that her request to repurchase leave for the period June 28 through August 30, 2002 had been reviewed and that it could not be processed at that time as the case record did not contain adequate medical documentation to support her disability for work on July 17, 22 and 23 and August 16, 29 and 30, 2002. The Office was able to verify that appellant saw her physician on June 28, 2002 and that she was entitled to repurchase four hours, the maximum number of compensable hours for attending physical therapy and medical appointments, for that date. The Office requested that

appellant submit the necessary medical documentation to substantiate disability on the above-noted dates within 30 days.

Appellant submitted progress notes dated September 18 and 19, 2003 from a registered nurse and a physical therapist whose names are partially illegible regarding her left shoulder conditions. Hospital discharge instructions dated September 19, 2003 from the same nurse noted that appellant should maintain her regular diet, take specific medication according to the recommended dosage, wear a sling and perform a pendulum range of motion exercise and follow up with Dr. Sicuranza as scheduled. The instructions also provided an assessment of appellant's level of consciousness, psychological and respiratory/lung conditions, circulation, motor ability and nutrition/elimination. Dr. Bixler's discharge instructions dated October 9, 2003 indicated that appellant was discharged from the hospital on September 18, 2003 following the repair of her left rotator cuff tear on that date. Dr. Bixler recommended that appellant perform a range of motion exercise, take certain medication, wear a sling and follow up with Dr. Sicuranza.

By decision dated April 15, 2004, the Office denied appellant's claim to buy back leave for the claimed dates during the period June 28 through August 30, 2002.² The Office found the medical evidence of record insufficient to establish she was disabled for work on the claimed dates.³

LEGAL PRECEDENT

The Office's federal regulation at section 10.425⁴ provides:

“The employee may claim compensation for periods of annual and sick leave which are restorable in accordance with the rules of the employing establishment. Forms CA-7 and CA-7b are used for this purpose.”

In situations where compensation is claimed for periods when leave was used, the Office has the authority and responsibility to determine whether the employee was disabled during the period, for which compensation is claimed.⁵

² The Board notes that by letter dated October 26, 2004, the Office approved appellant's request to buy back leave for the period November 19 through December 6, 2002.

³ Following the issuance of the Office's April 15, 2004 decision, the Office received additional medical evidence. The Board may not consider evidence for the first time on appeal, which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). Appellant can submit this evidence to the Office and request reconsideration. 5 U.S.C. § 8128; 20 C.F.R. § 10.606.

⁴ 20 C.F.R. § 10.425.

⁵ *Laurie S. Swanson*, 53 ECAB 517 (2002); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computing Compensation*, Chapter 2.901.19 (July 2000), which indicates that the Office is responsible for reviewing the medical evidence to determine if it establishes entitlement to compensation for periods during which leave buy back is claimed.

In general, the term “disability” under the Federal Employees’ Compensation Act⁶ means incapacity because of injury in employment to earn the wages, which the employee was receiving at the time of such injury.⁷ Disability is not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has had a physical impairment causally related to his or her federal employment, but who nonetheless has the capacity to earn wages he or she was receiving at the time of injury, has no disability as that term is used in the Act and is not entitled to compensation for loss of wage-earning capacity. When, however, the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing his or her employment, he or she is entitled to compensation for any loss of wage-earning capacity.⁸

Causal relationship is a medical issue⁹ 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.¹⁰

ANALYSIS

The Office accepted that appellant sustained tendinitis of the left shoulder on June 27, 2002. Appellant requested leave buy back for June 28, July 17, 22 and 23 and August 16, 29 and 30, 2002, for a total of 56 hours. The Office advised her that to be eligible for leave buy back, she would have to submit medical evidence establishing disability for work on the days claimed. The Office found the evidence of record sufficient to establish appellant’s entitlement to repurchase four hours of sick leave she used for a medical appointment on June 28, 2002 that was related to her June 27, 2002 employment injury. However, the Board finds that the medical evidence of record does not support that appellant was disabled for work or received medical treatment on July 17, 22 and 23 and August 16, 29 and 30, 2002, due to her accepted employment injury.

The sole medical evidence of record relevant to the claimed dates of disability is an unsigned MRI scan report dated July 30, 2002, which contained the typed name of Dr. Recht. The MRI scan revealed signal changes involving the distal aspect of the supraspinatus tendon consistent with tendinosis and a probable small partial thickness undersurface tear. There was no evidence of a full thickness tendon tear. This unsigned report is insufficient to establish

⁶ 5 U.S.C. §§ 8101-8193.

⁷ *Janice J. Green*, 49 ECAB 307 (1998).

⁸ *Lyle E. Dayberry*, 49 ECAB 369 (1998).

⁹ *Mary J. Briggs*, 37 ECAB 578 (1986).

¹⁰ *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

appellant's burden of proof because it is not clear that it is from a physician.¹¹ Therefore, the Board finds that as this report lacks proper identification, it does not constitute probative medical evidence sufficient to establish appellant's burden of proof.

All of the other medical evidence of record dates from either before July 17, 2002 or after August 30, 2002 with the exception of Dr. Bixler's August 15, 2002 report, which did not find that appellant was disabled or address whether she received medical treatment on the claimed dates. Further, none of the physicians of record indicated the need for any periods of disability between July 17 and August 30, 2002. Therefore, the Board finds that appellant has not submitted the necessary evidence to meet her burden of proof and the Office properly denied leave buy back for the dates in question.

CONCLUSION

The Board finds that appellant has failed to establish that she was totally disabled on intermittent dates during the period June 28 through August 30, 2002, for which the Office did not authorize leave buy back.

ORDER

IT IS HEREBY ORDERED THAT the April 15, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 20, 2005
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

¹¹ *Vickey C. Randall*, 51 ECAB 357 (2000); *Merton J. Sills*, 39 ECAB 572 (1988) (reports not signed by a physician lack probative value).