

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

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**R.W., Appellant** )  
 )  
**and** ) **Docket No. 06-2104**  
 ) **Issued: February 23, 2007**  
**DEPARTMENT OF AGRICULTURE,** )  
**AGRICULTURAL MARKETING SERVICE,** )  
**Afton, TN, Employer** )  

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On August 29, 2006 appellant filed a timely appeal from an October 19, 2005 Office of Workers' Compensation Programs' merit decision, denying his claim for wage-loss compensation from February 23 to September 12, 2005. 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's total disability from February 23 to September 12, 2005 was causally related to his November 22, 2004 employment injury.

**FACTUAL HISTORY**

On November 30, 2004 appellant, then a 64-year-old market news recorder (clerk), filed a traumatic injury claim alleging that on November 22, 2004 he injured his left shoulder and right knee when he fell backward while examining a bale of tobacco. On December 16, 2004 a treating physician indicated that appellant could return to work without restrictions. On

February 23, 2005 the Office accepted his claim for a left rotator cuff strain and sprain. On June 1, 2005 the Office accepted left superior glenoid labrum lesions as related to the November 22, 2004 employment injury.<sup>1</sup> Appellant filed a claim for total disability beginning February 23, 2005.<sup>2</sup>

On April 7, 2005 Dr. Charles E. Barnes, an attending Board-certified orthopedic surgeon, provided findings on physical examination. He stated that appellant had left shoulder pain with overhead activity and internal rotation. Appellant also had left arm pain posteriorly and laterally. Dr. Barnes diagnosed left shoulder adhesive capsulitis and possible internal derangement of the left shoulder.<sup>3</sup> On May 19, 2005 he stated that a magnetic resonance imaging (MRI) scan and arthrogram suggested a tear of the posterior and superior glenoid labrum. On June 28 and September 1, 2005 Dr. Barnes stated that appellant's condition was unchanged. He provided findings on examination and diagnosed a posterior superior labral tear of the left shoulder and subacromial impingement syndrome with rotator cuff tendinitis. Dr. Barnes indicated that he discussed possible arthroscopic surgery with appellant.

By decision dated October 19, 2005, the Office denied appellant's claim for wage-loss compensation on the grounds that the medical evidence did not establish that he was disabled from February 23 to September 12, 2005 due to his November 22, 2004 employment injury. The Office noted that appellant returned to full duty and performed his job until March 18, 2005 when he stopped work due to a RIF. It stated that appellant was still entitled to medical benefits for his accepted medical conditions.<sup>4</sup>

### **LEGAL PRECEDENT**

Appellant has the burden of proving by the preponderance of the reliable, probative and substantial evidence that he was disabled for work as the result of an employment injury.<sup>5</sup> Monetary compensation benefits are payable to an employee who has sustained wage loss due to disability for employment resulting from the employment injury.<sup>6</sup> Whether a particular employment injury causes disability for employment and the duration of that disability are

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<sup>1</sup> A condition referred to with the abbreviation "SLAP" which stands for "superior labral anterior posterior."

<sup>2</sup> Telephone memoranda dated October 18 and 19, 2005 indicated that appellant lost his position on March 18, 2005 because of an employing establishment reduction-in-force (RIF), not due to his employment injury.

<sup>3</sup> On October 11, 2005 Dr. Barnes stated that appellant's work restriction of no use of his left arm was in effect as of April 7, 2005. Appellant indicated in an undated statement that his regular job did not require use of his left arm.

<sup>4</sup> Appellant submitted additional evidence subsequent to the Office decision of October 19, 2005. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

<sup>5</sup> *David H. Goss*, 32 ECAB 24 (1980).

<sup>6</sup> *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

medical issues which must be proved by a preponderance of reliable, probative and substantial medical evidence.<sup>7</sup>

Section 10.5 (x) of the Office regulation<sup>8</sup> states:

*“Recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee’s physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a RIF), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.”*

### ANALYSIS

The Office accepted that appellant sustained a left rotator cuff strain and sprain and left superior glenoid labrum lesions as a result of the November 22, 2004 employment injury.

The medical evidence is not sufficient to establish that appellant’s total disability from February 23 to September 12, 2005 was causally related to his November 22, 2004 employment injury. Dr. Barnes found that appellant could return to regular work with the restriction of no use of his left arm. As noted, appellant indicated in a written statement that his regular job did not require use of his left arm. Dr. Barnes stated that appellant had left shoulder pain with overhead activity and internal rotation and also experienced left arm pain posteriorly and laterally. He did not find that appellant was totally disabled from February 23 to September 12, 2005 due to the November 22, 2004 injury, accepted left rotator cuff strain and sprain and left superior glenoid labrum lesions. Additionally, two conditions diagnosed by Dr. Barnes, left shoulder adhesive capsulitis and subacromial impingement syndrome, are not conditions accepted by the Office as related to the November 22, 2004 employment injury. For these reasons, the medical evidence is not sufficient to establish that appellant was totally disabled from February 23 to September 12, 2005 as a result of his November 22, 2004 employment injury.

Section 10.515 of the Office regulation<sup>9</sup> provides:

*“If an employee can resume regular [f]ederal employment, he or she must do so. No further compensation for wage loss is payable once the employee has recovered from the work-related injury to the extent that he or she can perform*

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<sup>7</sup> *Edward H. Horten*, 41 ECAB 301 (1989).

<sup>8</sup> 20 C.F.R. § 10.5(x).

<sup>9</sup> 20 C.F.R. § 10.515.

*the duties of the position held at the time of injury, or earn equivalent wages.”*  
(Emphasis added.)

The record shows that appellant resumed his regular employment. Although he had a work restriction against using his left arm, appellant recovered from his November 22, 2004 employment injury to the extent that he could perform the duties of the position held at the time of injury; a position which, as appellant indicated, did not require use of his left arm. Appellant performed his regular work until March 18, 2005 when he lost his position due to a RIF. Pursuant to section 10.515, appellant is not entitled to compensation for total disability from February 23 to September 12, 2005.

In its October 19, 2005 decision, the Office found that appellant returned to work in a light-duty position. It determined that he was not entitled to compensation based on section 10.509 of the implementing regulation which provides:

“(a) In general, an employee will not be considered to have experienced a compensable recurrence of disability as defined in section 10.5(x) merely because his or her employer has eliminated the employee’s light-duty position in a reduction-in-force or some other form of downsizing. When this occurs, [the Office] will determine the employee’s wage-earning capacity based on his or her actual earnings in such light-duty position if this determination is appropriate on the basis that such earnings fairly and reasonably represent the employee’s wage-earning capacity and such a determination has not already been made.

“(b) For the purposes of this section only, a *light-duty position* means a classified position to which the injured employee has been formally reassigned that conforms to the established physical limitations of the injured employee and for which the employer has already prepared a written position description such that the position constitutes ‘regular’ [f]ederal employment.”<sup>10</sup>

The evidence shows that appellant returned to his regular position following his November 22, 2004 employment injury, not a light-duty position for which the employing establishment had prepared a written light-duty job description. Therefore, section 10.509 does not apply in appellant’s case.

On appeal, appellant stated that Dr. Barnes had recommended further treatment for his left shoulder conditions and indicated that the full extent of his injuries was not determined until after the RIF. However, as noted, the Office has not terminated appellant’s medical benefits for his accepted conditions. The Office’s October 19, 2005 decision does not preclude appellant from requesting authorization from the Office for medical treatment for his accepted left shoulder conditions.

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<sup>10</sup> 20 C.F.R. § 10.509.

**CONCLUSION**

The Board finds that appellant failed to meet his burden of proof to establish that he was totally disabled from February 23 to September 12, 2005 due to his November 22, 2004 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 19, 2005 is affirmed as modified.

Issued: February 23, 2007  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board