

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

G.S., Appellant

and

U.S. POSTAL SERVICE, SHARED SERVICE
CENTER, Pittsburgh, PA, Employer

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**Docket No. 07-16
Issued: February 27, 2007**

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 October 4, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' December 22, 2005, March 30 and September 12, 2006 merit decisions concerning his claims for disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of total disability during the period May 26 to September 16, 2005 or December 13 to 18, 2005 due to his April 30, 2005 employment injury.

FACTUAL HISTORY

On May 1, 2005 appellant, then a 39-year-old automation clerk, filed a traumatic injury claim alleging that he sustained a right shoulder injury when he was sweeping mail at work on April 30, 2005 and felt something pull in his shoulder. The Office accepted that he sustained employment-related right shoulder impingement. Appellant did not stop work but began working in a light-duty position for the employing establishment with no lifting, pushing or

pulling with the right arm. He stopped work on May 26, 2005 and then claimed that he sustained total disability from May 26 to September 16, 2005.

Appellant first sought medical care for his condition on May 3, 2005 with Dr. Robert L. Kalb, a Board-certified orthopedic surgeon, who stated that appellant reported that on April 30, 2005 he reached up and felt a pull in his right shoulder. The pain was present all the time and increased with motion above the shoulder level. Dr. Kalb noted that examination showed tenderness in the acromioclavicular joint, a positive impingement sign and limitation of elevation to 160 degrees and diagnosed impingement of the right shoulder. He provided a similar assessment of appellant's condition on May 19, 2005.

In a form report dated May 27, 2005, Dr. Kalb stated that appellant was totally disabled from May 19 to June 9, 2005 due to the employment-related impingement of the right shoulder which he sustained on April 30, 2005. He also stated, "No use of the right arm/hand above waist level. If no light-duty work available, patient to be put off work." On June 16, 2005 Dr. Kalb noted that appellant reported that his pain had increased. The findings of the June 15, 2005 magnetic resonance imaging scan testing showed a partial tear of the right rotator cuff.

On August 10, 2005 the Office requested that appellant submit additional factual and medical evidence in support of his claim.

In a July 6, 2005 report, Dr. Daniel J. Sullivan, an attending Board-certified orthopedic surgeon, stated that appellant reported a history consistent with a C6 radiculopathy but also a "shoulder proper gain generator" in that he had pain on forward flexion, extension and internal rotation of the right shoulder. He indicated that appellant carried a provisional diagnosis of right shoulder impingement as diagnosed by Dr. Kalb. In a July 5, 2005 note, Dr. Sullivan diagnosed right shoulder impingement and stated that appellant was to be off work due to his April 30, 2005 employment injury from July 6 to October 6, 2005.

On September 17, 2005 appellant returned to light-duty work for the employing establishment with no lifting, pushing or pulling with the right arm. He stopped work on December 13, 2005 and claimed that he sustained a recurrence of total disability during the period December 13 to 18, 2005 due to his April 30, 2005 employment injury.

In a December 22, 2005 decision, the Office denied appellant's claim for total disability for the period May 26 to September 16, 2005 on the grounds that he did not submit sufficient medical evidence showing that he had total disability during this period due to his April 30, 2005 employment injury.

On December 16, 2005 Dr. Sullivan stated that appellant was seen on a routine follow-up basis and noted that his right shoulder condition had not changed. He indicated that appellant continued to respond favorably to an injection that he had performed earlier. In reports dated January 26 and March 9, 2006, Dr. Jeffrey LaPonte, an attending Board-certified orthopedic surgeon, detailed appellant's right shoulder condition but he did not provide any opinion regarding appellant's ability to work during the claimed periods of disability.

By decision dated March 30, 2006, the Office denied appellant's claim for total disability for the period December 13 to 18, 2005 on the grounds that he did not submit sufficient medical

evidence showing that he had total disability during this period due to his April 30, 2005 employment injury.

On May 15, 2006 appellant underwent a subacromial decompression and distal clavicle resection of the right shoulder. The surgery was authorized and he received disability compensation after the surgery. Appellant's entitlement to disability compensation after the surgery is not the subject of the present appeal. He submitted medical reports detailing his medical treatment but these reports relate to his condition after the May 15, 2006 surgery.

Appellant requested a review of the written record by an Office hearing representative. By decision dated September 12, 2006, the Office hearing representative affirmed the Office's earlier decisions.

LEGAL PRECEDENT

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he 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 she cannot perform such light duty. As part of this burden the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.¹

ANALYSIS

The Office accepted that appellant sustained employment-related right shoulder impingement on April 30, 2005. Appellant stopped work for two periods while he was working in limited-duty positions for the employing establishment, May 26 to September 16, 2005 or December 13 to 18, 2005 and claimed total disability for these periods.

The Board finds that appellant did not submit sufficient medical evidence to establish that he sustained a recurrence of total disability during the period May 26 to September 16, 2005 or December 13 to 18, 2005 due to his April 30, 2005 employment injury.

With respect to the period May 26 to September 16, 2005, appellant submitted a May 27, 2005 report in which Dr. Kalb, an attending Board-certified orthopedic surgeon, stated that appellant was totally disabled from May 19 to June 9, 2005 due to the employment-related impingement of the right shoulder which he sustained on April 30, 2005. This report, however, is of limited probative value on the relevant issue of the present case in that it does not contain

¹ *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986). 20 C.F.R. § 10.5(x) provides, "*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 reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations."

any rationale in support of Dr. Kalb's opinion on appellant's disability.² Dr. Kalb did not provide any explanation of why he thought appellant's condition had worsened such that he was no longer able to perform any work. The findings he described in his May 7, 2005 report were not noticeably different from those found in his reports from early May 2005. Dr. Kalb's report is of limited probative value for the further reason in that his opinion on the level of appellant's disability was rendered equivocal because he also stated, "No use of the right arm/hand above waist level. If no light-duty work available, patient to be put off work."³

Appellant also submitted a July 5, 2005 note in which Dr. Sullivan, an attending Board-certified orthopedic surgeon, diagnosed right shoulder impingement and stated that he was to be off work due to his April 30, 2005 employment injury from July 6 to October 6, 2005. However, Dr. Sullivan provided no explanation of why appellant could not perform any work during this period. There are no reports of Dr. Sullivan showing that appellant's condition had deteriorated such that he could no longer perform the limited duties of the light-duty position beginning July 6, 2005 and continuing.⁴ Appellant also did not show a change in his light-duty requirements during the period May 26 to September 16, 2005. For these reasons, he has not shown that he sustained a recurrence of total disability during the period May 26 to September 16, 2005

With respect to the period December 13 to 18, 2005, appellant did not submit any medical evidence showing that he had total disability from all work during this period. In fact, a December 16, 2005 report of Dr. Sullivan suggests that there was no change in appellant's condition around this time. Dr. Sullivan stated that appellant was seen on a routine follow-up basis and noted that his right shoulder condition had not changed. He indicated that appellant continued to respond favorably to an injection he had performed earlier. Appellant also did not show a change in his light-duty requirements during the period December 13 to 18, 2005. For these reasons, appellant has not shown that he sustained a recurrence of total disability during the period December 13 to 18, 2005.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained a recurrence of total disability during the period May 26 to September 16, 2005 or December 13 to 18, 2005 due to his April 30, 2005 employment injury.

² See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (finding that a medical opinion not fortified by medical rationale is of little probative value).

³ See *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962); *James P. Reed*, 9 ECAB 193, 195 (1956) (finding that an opinion which is equivocal or speculative is of limited probative value regarding the issue of causal relationship).

⁴ In a July 6, 2005 report, Dr. Sullivan only indicated that appellant carried a provision diagnosis of right shoulder impingement as diagnosed by Dr. Kalb.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' September 12 and March 30, 2006 and December 22, 2005 decisions are affirmed.

Issued: February 27, 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