

The Office accepted the claim for right shoulder tendinitis. Appellant retired on disability as of March 7, 2008.

On July 7 and August 4, 2007 appellant filed Form CA-7 claims for compensation for wage loss from June 14 through 20, 2007 and July 10 through 14, 2007. He worked a 40-hour work schedule with off days of Monday and Tuesday. A copy of a July 7, 2007 work analysis sheet noted that appellant worked 8 hours on Wednesday, June 13, 2007 and worked 3.18 hours on Thursday, June 14, 2007. Appellant used 4.82 hours leave without pay (LWOP). On Friday, June 15 through Sunday, June 17, 2007, appellant used 24 hours LWOP. He was off his regularly scheduled days of Monday and Tuesday, June 18 and 19, 2007. On Wednesday, June 20, 2007, appellant used eight hours LWOP. On Thursday June 21 and Friday, June 22, 2007 he used 16 hours annual leave. An August 4, 2007 leave analysis sheet indicated that appellant used 40 hours LWOP from Wednesday, July 11 through Sunday, July 15, 2007.

Appellant submitted attending physician reports from Dr. Francisco J. Marasigan, a family practitioner, dated June 14 and July 27, 2007. Dr. Marasigan diagnosed right shoulder impingement secondary to degenerative arthritis of the acromioclavicular (AC) joint. He treated appellant on June 6 and 14, 2007 and stated that he was temporarily totally disabled June 13 through 21, 2007. On July 27, 2007 Dr. Marasigan noted treating appellant on October 2 and 5, 2006 and July 16, 2007. He stated that appellant was temporarily totally disabled July 10 through 14, 2007. An undated report from Dr. Marasigan noted treating appellant since June 6, 2007 for chronic right shoulder tendinitis that was aggravated by his work.

In an August 28, 2007 letter, the Office advised appellant that the medical evidence was insufficient to support his claim for temporary total disability. It contacted Dr. Marasigan's office, which advised that the July 27, 2007 report was prepared in error as appellant was last seen on June 22, 2007. Appellant was allowed 30 days to submit additional medical evidence explaining how his accepted condition caused or contributed to disability for the periods claimed.

In a September 4, 2007 medical certificate, Dr. Marasigan advised that appellant was seen on June 14 and 21, 2007 for right shoulder pain and stiffness. He stated that appellant was disabled from June 13, 2007 and released to work on June 22, 2007.

By decision dated December 17, 2007, the Office denied wage-loss compensation from June 14 through 20, 2007 and July 10 through 14, 2007.

On January 20, 2008 appellant requested reconsideration. He submitted a January 16, 2008 magnetic resonance imaging (MRI) scan report of the right shoulder.

In a February 27, 2008 report, Dr. Steven J. Barad, a Board-certified orthopedic surgeon, provided an impression of impingement phenomenon with probable rotator cuff strain/tear and acromioclavicular joint disease. He recommended a diagnostic arthroscopy of the right shoulder, subacromial decompression and acromioclavicular joint resection with possible repair of the rotator cuff. Dr. Barad released appellant to return to work on February 27, 2008 with restrictions. In a March 5, 2008 report, he stated that appellant's examination remained unchanged. Dr. Barad took appellant off work from February 26 through 29, 2008 and March 4 through 5, 2008. He noted that appellant was scheduled for surgery on April 8, 2008.

In a March 10, 2008 report, Dr. Marasigan noted the results of the January 16, 2008 MRI scan and appellant's current condition. He advised that appellant was totally disabled from June 11 through 13, 2007; June 23 through 24, 2007 and August 24 through 25, 2007. Dr. Marasigan stated that appellant could return to light duty on June 22, 2007. He treated appellant on January 15, July 16 and October 2, 2006 and April 27 and May 28, 2007.

On March 12, 2008 appellant claimed intermittent disability for the period June 11, 2007 through March 5, 2008. A leave analysis sheet indicated that appellant used 16 hours of LWOP on June 11 and 12, 2007, 5 hours of LWOP on June 13, 2007, 8 hours of annual leave on June 23, 2007, 8 hours of LWOP on June 24, 2007, 16 hours of LWOP on August 24 and 25, 2007, 32 hours of LWOP from February 26 through 29, 2008 and 16 hours of LWOP on March 4 and 5, 2008.

By decision dated April 23, 2008, the Office denied modification of the December 17, 2007 decision.

In an April 21, 2008 attending physician's report, Dr. Marasigan listed periods of total disability as June 11 through 13, 2007, June 14 through 16, 2007, June 20 through 21, 2007, June 24, 2007, July 11 through 14, 2007, and August 24 through 25, 2007. He advised that appellant worked for three hours on June 13, 2007 but went home due to severe pain. Dr. Marasigan noted that appellant was advised to sit on a regular chair when casing mail and not to lift more than 10 pounds. Appellant was also treated on October 2, 2006 and April 27 and May 28, 2007.

In an April 30, 2008 decision, the Office denied appellant's claim for intermittent disability compensation from June 11, 2007 through March 5, 2008.

On June 9, 2008 appellant requested reconsideration and submitted a May 27, 2008 surgical report from Methodist Hospital of Sacramento and physical therapy notes.

On June 9, 2008 Dr. Barad noted that appellant called in sick due to intolerable right shoulder pain from June 12 to 16, 2007, June 20 to 21, 2007, June 24, 2007, July 10 to 14, 2007, August 24 to 25, 2007, February 26 to 28, 2008 and March 4 to 5, 2008. He noted that appellant believed that he would not be able to perform necessary tasks on those days. Dr. Barad stated that his March 5, 2007 report was in error and should have read temporary total disability from February 26 to 29 through March 24 to 25, 2008.

By decision dated September 5, 2008, the Office denied modification of its April 30, 2008 decision.

LEGAL PRECEDENT

For each period of disability claimed, the employee has the burden of proving that he or she was disabled for work as a result of the accepted employment injury.¹ As used in the Federal Employees' Compensation Act, the term "disability" means incapacity, because of an

¹ *William A. Archer*, 55 ECAB 674 (2004).

employment injury, to earn the wages that the employee was receiving at the time of injury.² Disability is thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.³ Whether a particular injury causes an employee to be disabled for employment, and the duration of that disability, are medical issues, which must be proved by a preponderance of the reliable, probative and substantial medical evidence.⁴ The Board will not require the Office to pay compensation in the absence of medical evidence directly addressing the particular period of disability for which compensation is sought. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.⁵

The Board has held that, under section 8103, payment of expenses incidental to the securing of medical services encompasses payment for loss of wages incurred while obtaining medical services.⁶ An employee is entitled to disability compensation for loss of wages incidental to treatment for an employment injury.⁷

ANALYSIS

Appellant has an accepted injury for right shoulder tendinitis. He claimed compensation for intermittent disability from June 11, 2007 to March 5, 2008. Appellant bears the burden to establish through probative medical evidence that he was disabled during this period causally related to his accepted injury.

The Board finds that the evidence establishes that appellant attended doctor's appointments for treatment of his work-related injury on June 6, 14 and 21, 2007.⁸ Appellant used 4.82 hours LWOP on June 14, 2007 and 8 hours annual leave on June 21, 2007 but there is no record for time lost from work on June 6 or June 21.⁹ As the medical evidence supports that appellant received treatment for his accepted condition on these dates, he should be granted appropriate compensation for any wage-loss incidental to such treatment on these dates.¹⁰

² *Patricia A. Keller*, 45 ECAB 278 (1993); 20 C.F.R. § 10.5(f).

³ *See Fred Foster*, 1 ECAB 21 (1947).

⁴ *Fereidoon Kharabi*, 52 ECAB 291 (2001); *see also Edward H. Horton*, 41 ECAB 301 (1989).

⁵ *Sandra D. Pruitt*, 57 ECAB 126 (2005); *William A. Archer*, 55 ECAB 674 (2004).

⁶ 5 U.S.C. § 8103.

⁷ *Daniel Hollars*, 51 ECAB 355 (2000); *Antonio Mestres*, 48 ECAB 139 (1996); *Henry Hunt Searles, III*, 46 ECAB 192 (1994); *Myrtle B. Carlson*, 17 ECAB 644 (1966); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computing Compensation*, Chapter 2.901.16(a) (December 1995).

⁸ While the record indicates that appellant also attended doctor's appointments for treatment of his work-related injury on May 28 and July 16, 2007, the Board notes that those dates are appellant's scheduled off days.

⁹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Administrative Matters*, Chapter 3.900.8 (November 1998) (provides that, in general, no more than four hours of compensation or continuation of pay should be allowed for routine medical appointments).

¹⁰ *See Daniel Hollars*, 51 ECAB 355 (2000) (an employee is entitled to disability compensation for loss of wages incidental to treatment for an employment injury).

The remainder of the reports from Dr. Marasigan do not support disability from June 11 through August 25, 2007. In June 14 and September 3, 2007 reports, he listed the period of total disability as June 13 through 21, 2007, in his July 27, 2007 report, he listed the period of total disability as July 10 through 14, 2007. Dr. Marasigan's March 10, 2008 report lists the period of total disability as June 11 through 13, 2007, June 23 through 24, 2007, and August 24 through 25, 2007. On April 21, 2008 he listed the period of total disability as June 11 through 13, 2007, June 14 through 16, 2007, June 20 through 21, 2007, June 24, 2007, July 11 through 14, 2007, and August 24 through 25, 2007. However, Dr. Marasigan did not provide any medical rationale explaining the basis for finding disability to the accepted employment injury. As noted, the Board will not require the Office to pay compensation for disability in the absence of probative medical evidence directly addressing the specific dates of disability for which compensation is claimed. The treatment records of Dr. Marasigan noted only right shoulder pain and stiffness. Dr. Marasigan did not present finding on examination or provide medical rationale to explain how the accepted right shoulder tendinitis prevented appellant from performing modified duty during the period claimed. On April 21, 2008 he noted that appellant went home due to severe pain on June 13, 2007 after working for three hours; however, he relied on appellant's statement that he was unable to work the remainder of the day June 13, 2007 as no examination had been performed.¹¹ Moreover, on June 21, 2007 Dr. Marasigan released appellant to modified duties effective June 22, 2007. He did not adequately address his subsequent finding of intermittent disability in view of his reports lack objective medical findings in addition to not providing medical rationale on causal relationship to support the disability claimed. Accordingly, Dr. Marasigan's reports are insufficient to meet appellant's burden of proof.

Appellant also submitted reports from Dr. Barad which found appellant temporarily totally disabled for the requested periods. Dr. Barad's February 27, 2008 report returns appellant to work on February 27, 2008, but fails to specifically indicate when temporary total disability due to the accepted work condition began.¹² Instead he noted treating appellant for conditions, such as shoulder impingement and a probable rotator cuff tear, that were not accepted as being employment related.¹³ In his March 5, 2008 report, Dr. Barad states that appellant was totally disabled from February 26 through 29, 2008 and March 4 through 5, 2008; however, he fails to provide any medical rationale regarding causal relationship between the two periods of temporary disability and the accepted right shoulder tendinitis, and he did not provide any objective medical evidence. In Dr. Barad's June 9, 2008 report, he indicated that appellant

¹¹ See *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008) (when a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that she hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation).

¹² See *Jaja K. Asaramo*, 55 ECAB 200 (2004) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

¹³ *Id.* (where an employee claims that a condition not accepted or approved by the Office was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury).

called in sick due to intolerable right shoulder pain on June 12 through 15, 2007, June 20 through 21, 2007, June 24, 2007, July 10 through 14, 2007, August 24 through 25, 2007, February 26 through 28, 2008, and March 4 through 5, 2008. However, his reliance on appellant's statement regarding his ability to work, without any objective evidence of disability, is insufficient to establish appellant's claim.¹⁴ Thus these reports do not establish compensable disability during the claimed period.

Other medical evidence of record does not specifically address whether appellant had employment-related disability during the claimed period. Without reasoned medical evidence supporting that appellant had employment-related disability during the period in question, appellant has not met his burden of proof to establish his claim for intermittent wage-loss compensation during the period June 11, 2007 through March 5, 2008.

CONCLUSION

The Board finds that appellant is entitled to appropriate compensation for wage loss incident to medical treatment, as indicated, but has not otherwise met his burden of proof for the other claimed dates during the period June 11, 2007 to March 5, 2008.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 5, April 30 and 23, 2008 and December 17, 2007 are affirmed, as modified.

Issued: August 6, 2009
Washington, DC

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

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

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

¹⁴ See *G.T.*, *supra* note 8.