

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

E.A., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
North Sebring, FL, Employer**

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**Docket No. 10-339
Issued: September 14, 2010**

Appearances:

Capp P. Taylor, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 18, 2009 appellant timely appealed the September 15, 2009 merit decision of the Office of Workers' Compensation Programs, which denied his claim for wage-loss compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant is entitled to wage-loss compensation for the period October 19, 2004 through September 21, 2007.

FACTUAL HISTORY

Appellant, a 78-year-old retired mail processing clerk, injured his left upper extremity in the performance of duty on October 19, 2004. The injury occurred when he tried to catch a small parcel that had slipped from his grasp.¹ Following development of the claim, the Office accepted

¹ At the time of his October 19, 2004 injury, appellant was working in a limited-duty capacity based on a January 4, 2003 employment-related right shoulder injury (xxxxxx155).

appellant's left shoulder rotator cuff tear. Appellant retired from the employing establishment and filed a claim for wage-loss compensation (Form CA-7) for the period October 19, 2004 through September 21, 2007.² He indicated that he continued to work after the accepted injury through December 2004 and then utilized annual and/or sick leave until exhausted in mid-April 2005. Afterwards appellant was on leave without pay (LWOP) status until his retirement on March 31, 2006. Leave analysis records provided by the employing establishment confirm that he worked following the October 19, 2004 injury. While appellant took leave intermittently during October, November and December 2004, it was not until January 1, 2005 that he stopped work entirely. The leave analysis records also confirm that he utilized annual and/or sick leave from January 1 through mid-April 2005 and then LWOP until his retirement.

Dr. David D. Turner, a Board-certified family practitioner, initially examined appellant on January 2, 2005 and diagnosed left shoulder derangement. He identified October 28, 2004 as the date of injury. Dr. Turner advised that appellant could return to work on January 3, 2005 with restrictions that included a 10-pound limitation with respect to lifting and pulling/pushing with the left hand. He also precluded left shoulder rotary motion, no above shoulder activity with the left hand, no ladder climbing and no left hand use of vibrating tools. The following day Dr. Turner took appellant off work and noted that appellant could not return to work until January 11, 2005. He subsequently extended appellant's disability status until January 14, 2005.

A January 15, 2005 work status form report from Dr. Turner diagnosed left rotator cuff tear.³ He again listed October 28, 2004 as the date of injury. Dr. Turner advised that appellant could return to work with restrictions similar to those he initially imposed on January 2, 2005, except that the left hand lifting restriction was now five pounds and the pulling/pushing restriction was three to five pounds. He also precluded appellant from driving a company vehicle.

Dr. Turner saw appellant again on January 23, 2005; however, he did not provide any specific information regarding appellant's work status. The record does not include any evidence of treatment received between January 23 and November 30, 2005. Appellant had a follow-up appointment on November 30, 2005, however, the treatment records are in part illegible and the identity of the medical service provider is unclear. The November 30, 2005 form report does not provide any information regarding his ability to work.

Dr. Michael S. Ziebelman, a Board-certified orthopedic surgeon, examined appellant on February 22, 2006 for complaints of left shoulder pain. He did not include a specific history of injury or date of injury, but noted the "onset was approximately [four] months ago. ? industrial accident." Dr. Ziebelman's impression was shoulder region joint pain (ICD-9 719.41). He injected appellant's left shoulder subacromial space with a combination of Xylocaine, Marcaine, Depomedrol and Kenalog. Dr. Ziebelman did not address whether appellant was capable of working. He administered another injection on April 27, 2006 and noted that appellant had a complete tear of the left rotator cuff. Dr. Ziebelman advised appellant to return on an as-needed basis.

² Appellant's retirement was effective March 31, 2006.

³ The diagnosis was confirmed by a January 6, 2005 left shoulder magnetic resonance imaging (MRI) scan.

In a May 3, 2006 report, Dr. Ziebelman noted that he had reviewed a written statement from appellant describing how he injured his left shoulder on October 19, 2004.⁴ He indicated that the diagnosis of left shoulder rotator cuff tear was verified by MRI scan dated January 6, 2005. Dr. Ziebelman attributed the left shoulder diagnosis to appellant's October 19, 2004 injury. He also provided work restrictions of no lifting more than five pounds, no pushing or pulling more than three to five pounds, no rotary motion of the shoulder, no above shoulder activity, no climbing, no repetitive motion of the left shoulder and no driving a company vehicle.

On September 28, 2007 appellant was seen by Nathaniel Allen, a physician's assistant, who diagnosed bilateral rotator cuff strain with a date of injury of January 2003 and October 10, 2004. Mr. Allen advised that appellant could immediately return to work with restrictions that included a 10-pound limitation with respect to lifting and pulling/pushing, no rotary motion or repetitive movements of either shoulder and no ladder or pole climbing.

In a February 23, 2009 decision, the Office denied appellant's claim for wage-loss compensation.

Appellant requested an oral hearing, which was held on June 11, 2009.

By decision dated September 15, 2009, an Office hearing representative affirmed the denial of wage-loss compensation.

LEGAL PRECEDENT

A claimant has the burden of establishing the essential elements of his claim, including that the medical condition for which compensation is claimed is causally related to the employment injury.⁵ For wage-loss benefits, the claimant must submit medical evidence showing that the condition claimed is disabling.⁶ The evidence submitted must be reliable, probative and substantial.⁷

⁴ Appellant stated that on October 19, 2004 he was "working as a window clerk weighing parcels, etc." He stated that he was removing parcels from a stack to deposit in a large BMC. Appellant then lifted a parcel approximately shoulder high with his left hand and it slipped from his grasp. He reacted quickly to try to catch it and immediately felt a sharp pain in his left shoulder.

⁵ 20 C.F.R. § 10.115(e) (2009); see *Tammy L. Medley*, 55 ECAB 182, 184 (2003). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. See *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

⁶ *Id.* at § 10.115 (f).

⁷ *Id.* at § 10.115.

ANALYSIS

The Office accepted that appellant sustained a left rotator cuff tear on October 19, 2004. The record establishes that he stopped work on or about January 1, 2005.⁸ Dr. Turner first examined appellant on January 2, 2005 and diagnosed left shoulder derangement with an October 28, 2004 date of injury. He released appellant to return to work on January 3, 2005 with restrictions; however, Dr. Turner took appellant off work the next day, which he later extended through January 14, 2005. When Dr. Turner next saw appellant on January 15, 2005, he diagnosed left rotator cuff tear, which reportedly occurred on October 28, 2004. He advised that appellant could return to work with a left hand lifting restriction of five pounds and a left hand pulling/pushing restriction of three to five pounds. Dr. Turner also restricted left shoulder rotary motion and above shoulder activity with the left hand. Climbing and driving a company vehicle were also precluded. Dr. Turner saw appellant again on January 23, 2005 but did not provide any specific information regarding work status.

Appellant's counsel argues that, wage-loss compensation should be awarded because appellant stopped work due to an employment-related left shoulder condition, he then received work restrictions due to that same condition and the employing establishment did not subsequently offer modified duty. Counsel further argues that the same well-rationalized medical evidence the Office relied upon in accepting the claim should suffice for purposes of establishing appellant's entitlement to disability compensation.

The Board finds that Dr. Turner's reports are insufficient to establish appellant's disability on or after January 1, 2005. Dr. Turner incorrectly identified October 28, 2004 as the date of injury. Moreover, he did not clearly identify any subjective or objective basis for the work restrictions imposed. Dr. Turner did not specifically relate appellant's left shoulder condition to his attempt to catch a falling parcel on October 19, 2004 as accepted by the Office.

After Dr. Turner saw appellant on January 23, 2005 there is a 10-month gap in medical treatment. On November 30, 2005 appellant returned to the same medical facility where Dr. Turner had previously treated him. However, the November 30, 2005 follow-up treatment records are illegible in part or include any discernable information regarding his work status. These reports do not provide any opinion explaining why appellant was able to work following the accepted injury and became disabled for work on or about January 4, 2005.

Dr. Ziebelman began treating appellant on February 22, 2006 for complaints of left shoulder pain that reportedly began "approximately [four] months ago." The Office accepted that appellant injured his left shoulder some 16 months prior. At the time, Dr. Ziebelman was unsure whether appellant had been involved in an industrial accident. Other than noting shoulder region joint pain, he did not provide a specific diagnosis. Dr. Ziebelman treated appellant with a corticosteroid injection, but did not address his disability for work. When he saw appellant on April 27, 2006, he diagnosed left rotator cuff tear and he administered another corticosteroid

⁸ In the February 23, 2009 decision, the claims examiner incorrectly assumed that appellant worked after January 1, 2005. The claims examiner also incorrectly stated that April 20, 2005 was the first date he began to lose time from work. As counsel correctly notes, the leave analysis records provided by the employing establishment clearly do not support the claims examiner's assumption that appellant continued to work beyond January 1, 2005.

injection. Again, Dr. Ziebelman did not identify the cause of appellant's left shoulder injury or discuss appellant's work capacity.

It was not until a May 3, 2006 report, that Dr. Ziebelman attributed the diagnosed left rotator cuff tear to appellant's October 19, 2004 employment injury. The May 3, 2006 report included work restrictions that essentially duplicated Dr. Turner's January 15, 2005 restrictions. But Dr. Ziebelman neglected to address the subjective and/or objective reasons for the work restrictions imposed. The May 3, 2006 report does not include any physical examination findings. Dr. Ziebelman's April 27, 2006 treatment records also did not include physical examination findings and his February 22, 2006 report noted that appellant was in no acute distress and had 80 percent range of motion (ROM) in the left shoulder. He did not provide any narrative report providing a full or accurate medical history or listing the period of disability for work. There is also no explanation whether Dr. Ziebelman adopted Dr. Turner's January 15, 2005 work restrictions, which similarly lacked adequate justification.

Following Dr. Ziebelman's May 3, 2006 report, there is a 16-month gap in medical treatment. Appellant was seen by Mr. Allan, a physician's assistant on September 28, 2007. He imposed work restrictions with respect to both shoulders. Because Mr. Allen is not a "physician" as defined under the Federal Employees' Compensation Act, his September 28, 2007 work status report is not entitled to any probative medical weight.⁹

The medical reports from Dr. Turner and Dr. Ziebelman are insufficient to establish that appellant was disabled due to his October 19, 2004 employment injury. Although the Office relied on Dr. Ziebelman's May 3, 2006 report in accepting the claim for left rotator cuff tear, his reports are insufficient to establish disability from October 19, 2004 through September 21, 2007, as claimed. As such, the Office properly denied wage-loss compensation for the claimed period.

CONCLUSION

Appellant failed to establish entitlement to wage-loss compensation for the period October 19, 2004 through September 21, 2007.

⁹ 5 U.S.C. § 8101(2) (2006); 20 C.F.R. § 10.5(t); *see J.M.*, 58 ECAB 303, 307 (2007).

ORDER

IT IS HEREBY ORDERED THAT the September 15, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 14, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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