

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

J.L., Appellant

and

**DEPARTMENT OF THE ARMY, ARMY
CORPS OF ENGINEERS, Seattle, WA,
Employer**

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**Docket No. 13-784
Issued: July 10, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 19, 2013 appellant, through her attorney, filed a timely appeal of a December 6, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her claim for compensation.¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether appellant established that she was disabled for the period August 26 through September 28, 2012 due to her accepted employment injury.

¹ OWCP issued two final decisions after the February 19, 2013 appeal date. On February 25, 2013 it denied appellant's claim for a subsequent period of disability and on March 28, 2013 OWCP suspended her compensation benefits due to her refusal to submit to a scheduled medical examination. Appellant has not appealed from these decisions in the current appeal. *See* 20 C.F.R. § 501.3(a).

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 12, 2012 appellant, then a 29-year-old realty specialist, filed an occupational disease claim alleging cervicalgia, bulging discs, chest, neck, elbow and wrist pain and difficulty breathing due to repeated stress and strain due to her federal employment. She first became aware of her condition on April 26, 2012 and first related it to her employment on that date. On July 11, 2012 OWCP accepted appellant's claim for degeneration of cervical intervertebral disc.

On July 16, 2012 appellant's attending physician, Dr. John M. Tudela, a Board-certified internist, stated that she was disabled through August 1, 2012. In a report dated July 27, 2012, Dr. ChiKit Gall, a Board-certified internist, examined appellant and noted slow improvement of her discomfort with physical therapy and light-duty work four hours a day. She stated that appellant should consider ergonomic evaluation of her office space before she returned to work. Dr. Gall stated, "Should return to her regular workout as tolerated."

On October 5, 2012 appellant filed claims for compensation.

In a letter dated October 10, 2012, OWCP stated that appellant's claim for compensation for the period May 6 through August 11, 2012 was not payable as additional information was needed from the employing establishment. On October 15, 2012 it stated that the additional periods of compensation claimed, April 26 through May 6 and August 12 through September 28, 2012, were not currently payable as the employing establishment had not submitted the necessary information. OWCP also noted that additional medical evidence was necessary for compensation claims beginning August 11, 2012.

On October 1, 2012 Dr. Tudela stated that appellant continued to work from home and experienced episodic spasms of the neck, which caused physical impairment at times. He diagnosed degeneration of cervical intervertebral disc and noted spasm of the trapezius. Dr. Tudela stated that appellant's condition was improving and recommended continued massage and physical therapy.

OWCP authorized compensation benefits for the period April 26 through August 25, 2012. In a letter dated November 2, 2012, it requested additional medical evidence to support appellant's disability claimed from August 26 through September 28, 2012. OWCP allowed 30 days for a response.

By decision dated December 6, 2012, OWCP denied appellant's claim for compensation for the period August 26 through September 28, 2012. It found that the medical evidence from Drs. Gall and Tudela did not specifically address appellant's disability for the period in question.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of establishing the essential elements of his or her claim, including that any disability or specific condition for which

³ 5 U.S.C. §§ 8101-8193.

compensation is claimed is causally related to the employment injury.⁴ The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.⁵

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.⁶ Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work. When a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that he or 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.⁷ The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.⁸

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.⁹ Rationalized medical evidence is medical evidence which includes a physician's detailed 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 Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹¹

ANALYSIS

OWCP accepted that appellant developed degeneration of cervical intervertebral disc due to her employment duties. It authorized compensation benefits through August 25, 2012, but

⁴ *G.T.*, 59 ECAB 477 (2008); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ 20 C.F.R. § 10.5(f); *see, e.g., Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury but no loss of wage-earning capacity).

⁶ *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁷ *Id.*

⁸ *Id.*

⁹ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁰ *Leslie C. Moore*, 52 ECAB 132 (2000).

¹¹ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

requested additional medical evidence supporting her disability after that date. By decision dated December 6, 2012, OWCP denied appellant's claim for compensation from August 26 through September 28, 2012.

The Board finds that appellant has not established that she was disabled for the period August 26 through September 28, 2012. Appellant's attending physician, Dr. Tudela, opined on July 16, 2012 that she was disabled through August 1, 2012. Dr. Gall examined appellant on July 27, 2012 and found improvement of her discomfort while performing light-duty work four hours a day. She recommended ergonomic evaluation of appellant's work space at the employing establishment. Dr. Gall advised that appellant could return to her regular work. On October 1, 2012 Dr. Tudela noted that appellant continued to work from home. He noted only that she experienced periods of disability due episodic spasms of the neck. Dr. Tudela recommended further treatment.

The medical evidence does not address the specific period of disability claimed. Neither Dr. Tudela nor Dr. Gall explained whether appellant was disabled on or after August 26, 2012. Dr. Tudela noted that appellant was continuing to work from home and that she experienced some periods of disability, but he did not opine that it was medically necessary that appellant work light duty or provide any list of periods of disability. Appellant has not submitted sufficient medical evidence to establish that she was disabled for the period August 26 through September 28, 2012 due to her accepted employment injury. She has not met her burden of proof to establish that she is entitled to compensation during that period.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8218(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish her disability for the period August 26 through September 28, 2012 as causally related to her accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the December 6, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 10, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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