

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

M.J., Appellant

and

**U.S. POSTAL SERVICE, W. WABASH
STATION, Evansville, IN, Employer**

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**Docket No. 11-1092
Issued: December 14, 2011**

Appearances:
Appellant, pro se
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 March 29, 2011 appellant filed a timely appeal of a November 18, 2010 and March 16, 2011 Office of Workers' Compensation Programs' merit decisions. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish that she sustained a recurrence of disability on October 30, 2009; and (2) whether appellant met her burden of proof to establish that she was disabled for the period July 30, 2010 to February 11, 2011.

On appeal, appellant alleged that OWCP's decision contained factual errors.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 19, 2007 appellant, then a 52-year-old rural carrier, filed a traumatic injury claim alleging that she injured her left arm lowering a heavy box onto a porch on January 17, 2007. OWCP assigned File No. xxxxxx709 and accepted a left shoulder strain. Dr. Glenn T. Johnson, II, an orthopedic surgeon, released appellant to full-duty work on January 17, 2007. On January 29, 2007 he examined her and stated that she could work without restrictions. Dr. Johnson completed a report on February 26, 2007 and noted that appellant reported that her shoulder was feeling better. He noted that she was performing her regular work, but was having the steering wheel moved to the other side of her car. Appellant filed a notice of recurrence of disability on October 3, 2009 alleging that on January 30, 2007 her left shoulder pain recurred. OWCP accepted her claim for left shoulder sprain on October 8, 2009.

In a letter dated October 8, 2009, OWCP requested information from appellant informed her that her claim was open for medical treatment and advised her to file a claim for compensation for wage loss.

Dr. Johnson completed notes on October 1 and November 5, 2009 and stated that appellant's left shoulder had no evidence of a rotator cuff tear, but mild joint arthrosis. He also diagnosed carpal tunnel syndrome. On June 7, 2010 Dr. Johnson noted appellant's diagnoses of bilateral carpal tunnel releases and left shoulder pain. He diagnosed impingement syndrome left shoulder on July 15, 2010. Dr. Johnson recommended shoulder arthroscopy and acromioplasty.

Appellant filed a second notice of recurrence of disability on July 28, 2010 alleging a recurrence of disability of the January 17, 2007 shoulder injury and noting that she had undergone carpal tunnel surgery on both hands. In a letter dated July 30, 2010, OWCP requested additional factual and medical information from her regarding her claimed recurrence.

The employing establishment responded on July 30, 2010 and stated that appellant had been off work for several months due to another accepted claim for bilateral carpal tunnel syndrome. The employing establishment noted that she returned to work with no restrictions due to carpal tunnel syndrome on July 28, 2010 and filed a claim for recurrence of disability on that date.

Appellant responded and stated that she sought medical treatment for her left shoulder on October 30, 2009 because of pain. She stated that she required surgery. Appellant filed a claim for compensation requesting compensation from July 28, 2010.

In a report dated October 10, 2010, Dr. Johnson noted appellant's history of left shoulder injury and noted that she had cased, hauled and delivered over 200 pounds of mail daily, pulling mail bundles over the seat, delivering parcels weighing up to 75 pounds, driving on the right hand side of her car, steering and shifting for approximately 65 miles every day using her left arm. He stated that based on his examination of her she had pain with rotator cuff strength testing, pain with impingement testing and she was precluded from performing her normal job. Dr. Johnson stated that appellant could lift less than 10 pounds and could not perform her date-of-injury position.

In a decision dated November 18, 2010, OWCP denied appellant's claim for recurrence of her left shoulder sprain. It found that she had implicated new employment factors for a new occupational disease claim for her left shoulder condition.

On November 29, 2010 appellant filed an occupational disease claim alleging that she developed left rotator cuff tendinitis and impingement with pain as a result of her employment duties of driving and gathering mail from the back seat with her left arm. OWCP assigned File No. xxxxxx183 with File No. xxxxxx709 as the Master File No.

OWCP completed a letter dated December 15, 2010 and requested that appellant provide additional medical evidence regarding her left shoulder condition. Dr. Johnson completed a report on December 27, 2010 and stated that her occupation was the major contributing factor to her rotator cuff injury. He again recommended surgery.

By decision dated January 14, 2011, OWCP accepted appellant's claim for impingement syndrome of the left shoulder and left shoulder tendinitis.

Appellant filed claims for compensation beginning on October 26, 2009. OWCP authorized compensation benefits from November 2, 2009 through January 11, 2010. It notified appellant on February 1 and 15, 2011 that there was insufficient medical evidence to support total disability from July 28 through December 3, 2010. OWCP requested additional medical evidence.

Dr. Johnson submitted a note dated March 1, 2011 and recommended surgery to appellant's conditions of pain left shoulder, impingement syndrome left shoulder, rotator cuff and tendinitis left shoulder.

By decision dated March 16, 2011, OWCP denied appellant's claim for compensation for the period July 28, 2010 to February 11, 2011 on the grounds that the medical evidence was not sufficient to establish that she was totally disabled due to her accepted conditions beginning July 28, 2010.

LEGAL PRECEDENT -- ISSUE 1

A 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 or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.²

A claimant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her recurrence of disability and an employment

² 20 C.F.R. § 10.5(x).

injury.³ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁴

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained a left shoulder strain as a result of her January 17, 2007 employment injury. Appellant returned to full duty and then stopped work due to her accepted condition of bilateral carpal tunnel in a separate claim. Dr. Johnson released her to return to work on July 28, 2010 with no restrictions due carpal tunnel syndrome. Appellant returned to work and filed a recurrence of disability alleging that she was totally disabled from that date due to her accepted left shoulder strain.

Dr. Johnson completed a narrative report on October 10, 2010. He listed appellant's employment duties of casing, hauling and delivering over 200 pounds of mail daily, as well as pulling mail bundles over the seat, delivering parcels weighing up to 75 pounds, driving on the right hand side of her car and steering and shifting for approximately 65 miles every day with her left arm. Dr. Johnson advised that these activities contributed to her left shoulder condition. Based on his examination, appellant had pain with rotator cuff strength testing, pain with impingement testing and was precluded from performing her normal job. Dr. Johnson stated that appellant could lift less than 10 pounds and could not perform her date-of-injury position.

This report does not establish a causal relationship between appellant's accepted left shoulder strain in 2007 and her current shoulder condition. Rather, Dr. Johnson attributed her left shoulder condition to the daily occupational duties of her position as a rural mail carrier. These constitute new employment exposures rather than spontaneous recurrence and may be the basis for a new occupational claim. There is no other medical evidence in the record supporting that appellant's left shoulder condition in 2009 was due to her accepted left shoulder strain. The Board finds that she failed to meet her burden of proof in establishing a causal relationship between her accepted condition and her current condition or disability.

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. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under FECA⁵ has the burden of establishing the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁶ The term disability is

³ *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-9 (1982).

⁴ *See Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *G.T.*, 59 ECAB 447 (2008); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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.⁷

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.⁸ 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 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.⁹ 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.¹⁰

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.¹¹ Rationalized medical evidence is medical evidence which includes a physician's rationalized 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.¹² 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.¹³

ANALYSIS -- ISSUE 2

Appellant filed a claim alleging that she had developed left shoulder conditions as a result of her employment duties. OWCP accepted this claim for impingement syndrome of the left shoulder and left shoulder tendinitis based on the reports from Dr. Johnson. Appellant filed claims for compensation requesting wage-loss compensation from July 28, 2010 due to her

⁷ 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).

⁸ *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹² *Leslie C. Moore*, 52 ECAB 132 (2000).

¹³ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

accepted shoulder conditions. The Board finds that the medical evidence in the record is not sufficient to establish that she was totally disabled due to her accepted left shoulder conditions beginning on July 28, 2010.

The medical evidence consists of reports from Dr. Johnson. On July 15, 2010 he diagnosed impingement syndrome left shoulder and recommended shoulder arthroscopy and acromioplasty. Dr. Johnson did not address appellant's ability to work or provide any work restrictions in this note. Without an opinion that appellant was totally disabled, this note is not sufficient to establish her entitlement to compensation.

In his October 10, 2010 report, Dr. Johnson provided a diagnosis of appellant's left shoulder condition and attributed these conditions to her employment duties. However, he indicated that, while she could not perform her date-of-injury position, she could lift up to 10 pounds and was therefore not totally disabled. This report did not support appellant's claim for total disability and cannot establish her entitlement to compensation benefits.

The record does not contain medical evidence establishing that appellant was totally disabled for work beginning in July 2010. In fact, the medical evidence consisting of Dr. Johnson's reports indicate that in October 2010 she was capable of performing light-duty work. The Board finds that appellant has not submitted the necessary medical opinion evidence to establish that she was totally disabled beginning in July 2010 due to her accepted shoulder conditions.

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. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has failed to meet her burden of proof in establishing a recurrence of disability causally related to her January 17, 2007 employment injury. The Board further finds that she has not submitted the necessary medical opinion evidence to establish that she was disabled beginning on July 28, 2010 due to her accepted left shoulder conditions.

ORDER

IT IS HEREBY ORDERED THAT March 16, 2011 and November 18, 2010 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 14, 2011
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