

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

M.F., Appellant

and

**U.S. POSTAL SERVICE, PRINCETON POST
OFFICE, Princeton, NJ, Employer**

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**Docket No. 12-1532
Issued: February 7, 2013**

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 9, 2012 appellant, through her attorney, filed a timely appeal of the May 1, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying disability compensation. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that she had any disability causally related to her accepted aggravation of bilateral traumatic thoracic outlet syndrome.

On appeal, appellant's attorney contends that OWCP's May 1, 2012 decision should be reversed on the grounds that the termination of appellant's compensation benefits did not consider the medical opinion of Dr. Dean L. Carlson, an orthopedic surgeon and an impartial medical specialist, who found that she had thoracic outlet syndrome and resultant continuing disability due to the accepted January 10, 2001 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board with regard to the termination of appellant's compensation benefits.² In a May 4, 2007 decision, the Board affirmed OWCP's January 24, 2005 termination of appellant's wage-loss compensation and medical benefits effective January 25, 2005 on the grounds that she no longer had any residuals or disability causally related to her January 10, 2001 employment-related contusions of the left hip and bilateral knees, cervical and lumbar strains and right knee meniscus tear. The Board also found that appellant did not establish any continuing employment-related residuals or disability after January 25, 2005. The facts as set forth in the Board's decision are incorporated by reference.³

On February 2, 2009 appellant submitted medical reports dated November 18, 2008 from Dr. David O. Weiss, an attending Board-certified orthopedic surgeon, which addressed her back pain, physical limitations and permanent impairment to her bilateral upper and lower extremities.

In reports dated September 9, 2010 and October 18, 2011, Dr. Carlson advised that appellant had bilateral traumatic thoracic outlet syndrome due to the April 15, 2001 employment incident and aggravated by the January 10, 2001 employment incident.⁴ He determined that under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* she had 3 percent impairment to the right upper extremity, 24 percent impairment to the left upper extremity and 1 percent impairment to the right lower extremity. Dr. Carlson concluded that appellant reached maximum medical improvement on September 9, 2010.

In a January 18, 2012 decision, OWCP accepted appellant's claim for aggravation of bilateral traumatic thoracic outlet syndrome.

By letter dated January 27, 2012, appellant, through her attorney, requested that OWCP reopen her claim for merit reconsideration under 5 U.S.C. § 8128(a). Counsel noted that OWCP's January 25, 2005 termination decision was based on a May 27, 2004 report of Dr. Robert Dennis, a Board-certified orthopedic surgeon and an impartial medical specialist, which found that appellant had thoracic outlet syndrome, but concluded that the diagnosed condition was not causally related to either the April 15, 2000 or January 10, 2001 employment

² Docket No. 06-1640 (issued May 4, 2007).

³ Under File No. xxxxxx163 OWCP accepted that on January 10, 2001 appellant, then a 34-year-old part-time flexible city carrier, sustained contusions of the left hip and bilateral knees, cervical and lumbar strains and a right knee meniscus tear as a result of a motor vehicle accident which occurred in the performance of duty. It authorized right knee arthroscopic surgery which she underwent on December 27, 2001. On July 7, 2003 and April 6, 2006 OWCP accepted that appellant sustained a recurrence of disability on May 24, and 29, 2001, respectively, causally related to her January 10, 2001 employment injuries. Under a prior claim assigned File No. xxxxxx523, it accepted that on April 15, 2000 appellant sustained neck and lumbar strains due to a motor vehicle accident. These claims have been consolidated, with File No. xxxxxx523 serving as the master file.

⁴ The Board notes that Dr. Carlson was selected as an impartial medical specialist to resolve a conflict in medical opinion between Dr. Weiss and Dr. David Rubinfeld, a Board-certified orthopedic surgeon and an OWCP referral physician, as to whether appellant had any permanent impairment causally related to her accepted employment injuries.

injuries.⁵ He further noted Dr. Carlson's opinion that appellant had thoracic outlet syndrome due to the January 10, 2001 employment incident and contended that the termination decision should be reversed because it was based on an erroneous factual and medical background. Counsel requested that OWCP retroactively authorize the left first rib resection appellant underwent on March 12, 2004 to treat her accepted left thoracic outlet syndrome.

Appellant submitted a November 23, 2011 report from a physician whose signature is illegible which indicated that she had post-traumatic thoracic outlet syndrome and listed her physical restrictions.

In a February 15, 2012 work capacity evaluation, Dr. Stuart Hochron, a Board-certified internist, advised that appellant was unable to perform her regular work duties, but she could work eight hours per day with permanent restrictions secondary to her thoracic outlet syndrome.

In a May 1, 2012 decision, OWCP reopened appellant's claim under section 8128(a) of FECA and denied her request for disability compensation. It found that there was no evidence establishing that the January 24, 2005 termination decision was made in error with regard to the originally accepted employment injuries. OWCP further found that no medical evidence submitted subsequent to the issuance of the termination decision established any disability causally related to the accepted thoracic outlet syndrome. It, however, found that appellant was entitled to medical benefits for this accepted condition only and retroactively authorized her March 12, 2004 left rib resection procedure.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.⁶ For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.⁷ Whether a particular injury causes an employee to become disabled for work and the duration of that disability, are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.⁸ The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific diagnosis of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify his or her disability and entitlement to compensation.⁹

⁵ The Board notes that Dr. Rubinfield opined in a February 12, 2004 report that appellant's thoracic outlet syndrome was not due to the accepted January 10, 2001 employment incident or disabling.

⁶ See *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

⁷ See *Amelia S. Jefferson*, *supra* note 6; see also *David H. Goss*, 32 ECAB 24 (1980).

⁸ See *Edward H. Horton*, 41 ECAB 301 (1989).

⁹ See *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.¹⁰ The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable 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 employee.¹¹

Under FECA, the term disability means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.¹² Disability is not synonymous with physical impairment, which may or may not result in incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as the term is used in FECA.¹³

ANALYSIS

OWCP initially accepted appellant's claim for contusions of the left hip and bilateral knees, cervical and lumbar strains and a right knee meniscus tear. On January 24, 2005 it terminated her wage-loss compensation and medical benefits effective January 25, 2005 on the grounds that she no longer had any residuals or disability causally related to these accepted conditions. OWCP subsequently accepted appellant's claim for aggravation of bilateral traumatic thoracic outlet syndrome. Appellant claimed compensation for disability, contending that OWCP's January 24, 2005 termination decision was improper as it was based on an erroneous factual and medical background with regard to this accepted condition.¹⁴ On May 1, 2012 OWCP denied her claim for disability. Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed disability and the accepted conditions.¹⁵ The Board finds that she did not submit sufficient medical evidence to establish the claimed disability due to her accepted aggravation of bilateral traumatic thoracic outlet syndrome.

Dr. Weiss' November 18, 2008 reports addressed appellant's back pain, physical limitations and permanent impairment to her bilateral upper and lower extremities. Dr. Hochron's February 15, 2012 work capacity evaluation found that, although appellant could not perform her regular work duties, she could work eight hours per day with permanent restrictions secondary to her accepted thoracic outlet syndrome. Neither physician provided a

¹⁰ See *Viola Stanko (Charles Stanko)*, 56 ECAB 436 (2005); see also *Naomi A. Lilly*, 10 ECAB 560, 572-573 (1959).

¹¹ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 464 (2005).

¹² *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

¹³ *Cheryl L. Decavitch*, 50 ECAB 397, 401 (1999).

¹⁴ The Board notes that the issue of disability causally related to the accepted employment-related contusions of the left hip and bilateral knees, cervical and lumbar strains and a right knee meniscus tear has already been addressed in the Board's prior May 4, 2007 decision in this case. *Supra* note 2.

¹⁵ *Alfredo Rodriguez*, 47 ECAB 437 (1996).

rationalized medical opinion addressing appellant's disability for work due to the accepted thoracic condition. The Board has held that a physician's opinion, which does not address causal relationship, is of diminished probative value.¹⁶ The Board finds, therefore, that the reports of Drs. Weiss and Hochron are insufficient to establish appellant's burden of proof.

The November 23, 2011 report which contained an illegible signature lacks probative medical value as the author cannot be identified as a physician.¹⁷

Appellant has failed to submit rationalized medical evidence establishing that her claimed disability resulted from residuals of her accepted employment-related thoracic condition.

Appellant's attorney contended before OWCP and on appeal that OWCP's termination decision should be reversed on the grounds that it did not consider Dr. Carlson's opinion that she had employment-related thoracic outlet syndrome and resultant continuing disability. While Dr. Carlson's report found that appellant's thoracic condition was causally related to the accepted April 15, 2001 employment incident and aggravated by the January 10, 2001 employment incident, this evidence was not before OWCP at the time it issued its final termination decision. The evidence at that time, as represented by the opinions of Drs. Dennis and Rubinfeld established that appellant did not sustain thoracic outlet syndrome due to the April 15, 2000 and January 10, 2001 employment injuries. Moreover, Dr. Carlson only addressed the extent of appellant's permanent impairment under the A.M.A., *Guides*. He did not provide a medical opinion addressing her disability due to the accepted thoracic condition.¹⁸ The Board finds that appellant has failed to establish that she sustained any disability causally related to the accepted employment-related thoracic outlet syndrome.

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 establish that she had any disability causally related to her accepted aggravation of bilateral traumatic thoracic outlet syndrome.

¹⁶ See *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

¹⁷ See *Ricky S. Storms*, 52 ECAB 349 (2001); *Morris Scanlon*, 11 ECAB 384, 385 (1960).

¹⁸ *A.D.*, *supra* note 16.

ORDER

IT IS HEREBY ORDERED THAT the May 1, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 7, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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