

² The Board notes that, following issuance of the September 18, 2012 OWCP decision, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1).

met her burden of proof to establish that the recurrence of her disability on the dates June 17 and 29, July 1 and 4, 2012 was causally related to her employment injury.

On appeal, appellant contends that she was disabled and thus entitled to compensation for the dates claimed.

FACTUAL HISTORY

OWCP accepted that appellant, then a 41-year-old transportation security officer, sustained bilateral carpal tunnel syndrome due to factors of her federal employment. Appellant underwent right carpal tunnel release surgery on April 23, 2012. OWCP paid her wage-loss compensation.

Appellant filed a claim on April 10, 2012 for compensation (Form CA-7) for March 22, 2012. She submitted a March 21, 2012 report by Dr. Harrison G. Tuttle, a Board-certified orthopedic surgeon, who noted that she continued to work and indicated that the keyboard she used required fairly repetitious typing which seemed to bother her. Dr. Tuttle recommended wearing splints when she used the keyboard at work. On March 26, 2012 he took appellant off of work due to pain.

By letter dated April 20, 2012, OWCP requested additional medical evidence establishing disability for work on March 22, 2012 and afforded 30 days for submission.

Appellant submitted reports by Dr. Tuttle dated April 18 through May 23, 2012 indicating that she had been off of work since May 9, 2012 due to recovery from her April 23, 2012 surgery. On May 22, 2012 Dr. Tuttle stated that he prescribed pain medication that made appellant drowsy and, thus, she had been unable to work. He advised that she was unable to work as long as she was on narcotic medication.

By decision dated June 8, 2012, OWCP denied appellant's claim of disability for March 22, 2012 finding that the medical evidence was not sufficient to support disability due to the employment injury.

In a June 19, 2012 report, Dr. Tuttle released appellant to work effective June 20, 2012 with the following restrictions: no lifting over five pounds; no pushing or pulling over five pounds; no repetitive motions and no repetitive use of either arm.

In a July 10, 2012 letter, the employing establishment advised that appellant returned to work on June 21, 2012 with restrictions of no lifting/pushing/pulling over five pounds and no repetitive use of either arm. Appellant worked five hours a day with restrictions due to an employment-related lumbar condition.³ Her tour of duty was from 11:30 a.m. to 4:30 p.m. Wednesday through Sunday. Appellant received three hours of wage-loss compensation a day, five days per week.

³ Appellant's lumbar condition was accepted under OWCP File No. xxxxxx714.

On July 27, 2012 appellant filed a claim for compensation (Form CA-7) for the period June 17 to July 14, 2012. She submitted a time analysis form (Form CA-7a) claiming that she was unable to work on June 17 and 29, July 1 and 4, 2012 due to prescribed medicine. Appellant also submitted physical therapy notes dated June 20 to July 19, 2012.

In a July 25, 2012 report, Dr. Tuttle indicated that the right carpal tunnel syndrome had resolved, although appellant still had some right wrist soreness and left carpal tunnel syndrome.

By letter dated August 14, 2012, OWCP authorized payment for 14 hours of wage-loss compensation for physical therapy during the period June 17 to July 14, 2012.⁴ It advised appellant that it had not received any evidence to support disability for the dates June 17 and 29, July 1 and 4, 2012 due to prescribed medicine. OWCP requested additional medical evidence to establish disability afforded appellant 30 days for submission. Subsequently, appellant submitted physical therapy notes and appointment records.

By decision dated September 18, 2012, OWCP denied appellant's claim for disability for June 17 and 29, July 1 and 4, 2012 on the basis that the medical evidence submitted was not sufficient to support disability due to the employment injury.

LEGAL PRECEDENT -- ISSUES 1 & 2

Section 8102(a) of FECA⁵ sets forth the basis upon which an employee is eligible for compensation benefits. That section provides: "The United States shall pay compensation as specified by this subchapter for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty...." In general the term "disability" under FECA means "incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury."⁶ This meaning, for brevity, is expressed as disability for work.⁷ 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.⁸ Whether a particular injury caused an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by the preponderance of the reliable probative and substantial medical evidence.⁹

Disability is not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to his

⁴ OWCP authorized payment for two hours of wage-loss compensation on each of the following dates for appellant to attend physical therapy: June 20 to 21, June 27 to 28, July 5 and 11 to 12, 2012.

⁵ 5 U.S.C. § 8102(a).

⁶ 20 C.F.R. § 10.5(f). See also *William H. Kong*, 53 ECAB 394 (2002); *Donald Johnson*, 44 ECAB 540, 548 (1993); *John W. Normand*, 39 ECAB 1378 (1988); *Gene Collins*, 35 ECAB 544 (1984).

⁷ See *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

⁸ See *William A. Archer*, 55 ECAB 674 (2004).

⁹ See *Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

or her federal employment, but who nonetheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used under FECA and is not entitled to compensation for loss of wage-earning capacity. The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the particular period of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that appellant has not established that she was disabled on March 22, 2012 causally related to her employment injury. While OWCP accepted that she sustained an employment injury, she bears the burden to establish through medical evidence that she was disabled during the claimed time periods and that her disability was causally related to her accepted injury.¹¹ The Board finds that appellant submitted no rationalized medical evidence explaining how the employment injury materially worsened or aggravated her bilateral carpal tunnel syndrome and caused her to be disabled for work on March 22, 2012.

On March 21, 2012 Dr. Tuttle advised that appellant continue work and use splints. On March 26, 2012 he took her off of work due to pain; however, he failed to provide a rationalized medical explanation as to whether she was disabled on March 22, 2012 due to residuals of the employment injury. Dr. Tuttle's reports do not address appellant's work capacity on the day of disability claimed. He failed to offer any probative medical opinion on whether she was disabled on March 22, 2012 due to her accepted condition. Dr. Tuttle's reports are of diminished probative value.¹² Thus, appellant has not met her burden of proof to establish that she was disabled for work due to the employment injury.

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.

ANALYSIS -- ISSUE 2

The Board finds that appellant has not established that she was disabled on the dates June 17 and 29, July 1 and 4, 2012 causally related to her employment injury. While OWCP accepted that she sustained an employment injury, she bears the burden to establish through medical evidence that she was disabled during the claimed time periods and that her disability was causally related to her accepted injury.¹³ The Board finds that appellant submitted insufficient rationalized medical evidence explaining how the employment injury materially worsened or aggravated her bilateral carpal tunnel syndrome and caused her to be disabled for work for the periods claimed.

¹⁰ *Id.*

¹¹ See *supra* notes 8 and 9. See also *V.P.*, Docket No. 09-337 (issued August 4, 2009).

¹² See *Sandra D. Pruitt*, 57 ECAB 126 (2005). See also *V.P.*, *supra* note 11.

¹³ See *supra* note 11.

Dr. Tuttle noted that appellant underwent right carpal tunnel release surgery April 23, 2012 and had been off of work since May 9, 2012 due to recovery. On May 22, 2012 he opined that she was unable to work as long as she was on pain medication which made her drowsy. Dr. Tuttle released appellant to return to work effective June 20, 2012. Appellant returned to work on June 21, 2012 with restrictions. On July 25, 2012 Dr. Tuttle indicated that the right carpal tunnel syndrome had resolved, although she still had some right wrist soreness and left carpal tunnel syndrome. Although he opined that appellant was disabled for work as long as she was on pain medication, he did not offer any medical opinion on whether she was disabled on the dates claimed due to her accepted condition. Dr. Tuttle's reports are of diminished probative value.¹⁴ The Board finds that appellant has not met her burden of proof to establish that she was disabled for work due to the employment injury.

The physical therapy notes and appointment records do not constitute medical evidence as they were not prepared by a physician.¹⁵ As such, the Board finds that appellant did not meet her burden of proof with these submissions.

Appellant has not submitted any rationalized medical evidence establishing that she was disabled on the dates June 17 and 29, July 1 and 4, 2012 causally related to the employment injury. Thus, she has not met her burden of proof to establish that she is entitled to compensation for any disability.

On appeal, appellant contends that she established her employment-related disability. For the reasons stated above, the Board finds that her argument is not substantiated.

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 not met her burden of proof to establish that her disability on the dates March 22, June 17 and 29, July 1 and 4, 2012 was causally related to her employment injury.

¹⁴ See *supra* note 12.

¹⁵ Physical therapists are not physicians under FECA. See 5 U.S.C. § 8101(2).

ORDER

IT IS HEREBY ORDERED THAT the September 18 and June 8, 2012 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 1, 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