

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

R.A., Appellant

and

DEPARTMENT OF JUSTICE, BUREAU OF
PRISONS, Miami, FL, Employer

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**Docket No. 14-1327
Issued: October 10, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 19, 2014 appellant filed a timely appeal from November 20, 2013 and March 28, 2014 merit decisions of the Office of Workers' Compensation Programs (OWCP) denying his claim. Pursuant to the Federal Employees' Compensation Act¹ 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 established that he is entitled to wage-loss compensation for the period of April 14 to May 4, 2013.

FACTUAL HISTORY

On February 27, 2013 appellant, then a 36-year-old cook foreman, filed a traumatic injury claim (Form CA-1) alleging that he sustained injury that day to his right rib cage after he slipped and landed on the corner of a desk. He stopped work and sought emergency medical treatment on February 27, 2013. The employing establishment controverted the claim.

¹ 5 U.S.C. § 8101 *et seq.*

In a February 27, 2013 emergency room report, Dr. Karin A. Arnold-Dobal, Board-certified in emergency medicine, reported that appellant slipped on a wet floor at work and fell, striking his right chest on the corner of a desk. Appellant complained of right chest pain radiating into his back and elbow. A chest x-ray revealed no active disease and a right elbow x-ray revealed no acute process. Dr. Arnold-Dobal diagnosed contusion to the chest and right elbow.

In a March 4, 2013 OWCP Form CA-16, Dr. Alexandra Calandriello, Board-certified in internal medicine, reported that appellant fell at work on February 27, 2013 and hit his right side against a desk. She diagnosed right upper quadrant pain, right rib pain and right elbow lateral epicondylitis. Dr. Calandriello checked the box marked "yes" when asked if she believed the condition was caused or aggravated by the employment incident, stating that appellant developed pain after his work injury. She listed appellant totally disabled from February 27 to March 11, 2013, until he could be reevaluated at his next appointment on March 11, 2013.

In a March 11, 2013 medical report, Dr. Cindy C. Hsu, Board-certified in family medicine, reported that appellant fell on February 27, 2013 and struck his right rib cage against the edge of a desk, landing on his back and possibly on his elbow. She noted no history of elbow pain prior to the onset of injury. Physical examination revealed pain at the lateral epicondyle, radiating down into the forearm. Dr. Hsu diagnosed right lateral epicondylitis, right upper quadrant and rib pain.

On April 19, 2013 Dr. Hsu reported that appellant complained of continued right elbow pain and diagnosed right lateral epicondylitis. She noted that the right upper quadrant and rib pain had resolved. The physician restricted appellant from working due to persistent right elbow pain, noting that it was not safe for him to work as a prison security officer when he was unable to pull and push with his right wrist due to pain. Dr. Hsu restricted appellant from pulling, pushing or lifting with the right arm.

By decision dated April 25, 2013, OWCP accepted the claim for contusion of right chest wall and right elbow contusion.

On April 30, 2013 appellant filed a claim for compensation (Form CA-7) for leave without pay for the period of April 14 through May 4, 2013.

By letter dated May 8, 2013, the employing establishment controverted the claim stating that despite claiming disability, appellant worked for his own company from March 13 to May 4, 2013.

In a May 10, 2013 report, Dr. Steven P. Kalandiak, a Board-certified orthopedic surgeon, diagnosed right tennis elbow. He administered a cortisone injection, noting pain relief postinjection. Dr. Kalandiak advised that appellant could return to full-duty work without restrictions beginning May 10, 2013.

By letter dated May 17, 2013, OWCP informed appellant that the medical evidence of record was insufficient to support his claim for total disability from April 14 through May 4, 2013. Appellant was asked to submit medical evidence establishing disability for the periods claimed.

By letters dated May 28 and June 25, 2013, appellant stated that he owned a company and was not performing tasks that involved physical labor. He only answered his cell phone and organized his work schedule during the period of disability. Appellant further stated that the employing establishment did not accept light-duty assignments and he could not return to work until he was cleared for full duty.

In a June 25, 2013 report, Dr. Hsu provided a timeline of treatment for appellant's February 27, 2013 injury.

By decision dated July 18, 2013, OWCP denied appellant's claim for disability compensation for the period of April 14 through May 4, 2013. It found that the medical evidence failed to establish that he was totally disabled as a result of the February 27, 2013 employment injury.

On July 28, 2013 appellant requested review of the written record. He argued that his long recovery time was due to his inability to obtain authorization for the recommended tests. OWCP did not accept his claim until two months after the February 27, 2013 injury. Appellant further asserted that he was unable to return to work at the employing establishment until he was cleared for full duty.

By letter dated July 25, 2013, Dr. Hsu reported that appellant sustained a work-related fall on February 27, 2013. On March 4, 2013 Dr. Calandriello diagnosed right lateral epicondylitis, right rib contusion and abdominal pain. Appellant was referred to physical therapy and an orthopedic specialist due to complaints of continued pain, but approval of such services took a long time. He was released to light-duty work on March 11, 2013 but there was no available work within his restrictions. Dr. Hsu stated that appellant's right elbow pain did not resolve until May 10, 2013, when he received a cortisone injection from Dr. Kalandiak. She noted that because appellant could not get the recommended tests and specialist visits authorized, his injuries took longer to recover. Dr. Hsu noted that an abdominal ultrasound, physical therapy (which was never approved) and orthopedic visit were requested because appellant had persistent abdominal pain, rib pain and elbow pain without clear explanation.

By letter dated September 18, 2013, OWCP requested that the employing establishment submit any comment or evidence related to appellant's claim or his July 28, 2013 statement. The employing establishment did not respond.

By decision dated November 20, 2013, the Branch of Hearings and Review affirmed the July 18, 2013 decision. The hearing representative found that appellant failed to establish that he was totally disabled for the period of April 14 through May 4, 2013 as he had not provided sufficient evidence.

By letter dated February 8, 2013, appellant requested reconsideration. He referenced a January 10, 2014 medical report from Dr. Hsu. Appellant argued that he was released to work with restrictions on March 11, 2013, but that the employing establishment had no available work which could accommodate him.

In a January 10, 2014 attending physician's report (Form CA-20), Dr. Hsu reported that on February 27, 2013 appellant slipped on water and fell at work. He struck his right rib and right elbow. Dr. Hsu diagnosed right rib contusion and right elbow epicondylitis. She checked

the box marked “yes” to the form question of whether the condition was caused or aggravated by the employment activity. Dr. Hsu stated that appellant was totally disabled from February 27 through May 13, 2013. She advised that he could return to work on May 10, 2013.

By letter dated January 10, 2014, the employing establishment reported that on the date appellant was released to work in a light-duty capacity, there were no temporary-duty assignments being offered. An article discussing lateral epicondylitis (tennis elbow) was also submitted to the records.

By decision dated March 28, 2014, OWCP affirmed the November 20, 2013 decision. It found that the medical evidence of record was not sufficient to establish appellant’s disability for the period claimed.

LEGAL PRECEDENT

Under FECA,² the term disability is defined as incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.³ Disability is not synonymous with a physical impairment which may or may not result in an incapacity to earn the wages. An employee who has a physical impairment causally related to a federal employment injury but who nonetheless has the capacity to earn wages he or she was receiving at the time of injury has no disability as that term is used in FECA.⁴

Whether a particular injury causes an employee to be disabled and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.⁵ Findings on examination are generally needed to support a physician’s opinion that an employee is disabled for work. When a physician’s statements consist only of a repetition of the employee’s complaints that excessive pain caused an inability to work, without making an objective finding of disability, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.⁶ The Board will not require OWCP to pay compensation for disability without 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.⁷

For conditions not accepted by OWCP as being employment related, it is the employee’s burden to provide rationalized medical evidence sufficient to establish causal relation, not OWCP’s burden to disprove such relationship.⁸

² 5 U.S.C. §§ 8101-8193.

³ See *Prince E. Wallace*, 52 ECAB 357 (2001).

⁴ *Cheryl L. Decavitch*, 50 ECAB 397 (1999); *Maxine J. Sanders*, 46 ECAB 835 (1995).

⁵ See *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001); *Edward H. Horton*, 41 ECAB 301, 303 (1989).

⁶ *G.T.*, 59 ECAB 447 (2008).

⁷ *Id.*

⁸ *G.A.*, Docket No. 09-2153 (issued June 10, 2010); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Alice J. Tysinger*, 51 ECAB 638 (2000).

ANALYSIS

OWCP accepted that appellant sustained a contusion of right chest wall and contusion of right elbow due to the February 27, 2013 employment injury. Appellant has the burden of proving by the weight of the substantial, reliable and probative evidence a causal relationship between his claimed disability from April 14 through May 4, 2013 to the accepted February 27, 2013 employment injury.⁹ The Board finds that the reports of his physicians do not provide a rationalized medical opinion addressing his disability for the claimed period due to his accepted injuries. Therefore, the medical evidence submitted is insufficient to meet appellant's burden of proof.¹⁰

In support of his claim, appellant submitted medical reports dated March 11, 2013 through January 10, 2014 from Dr. Hsu. The Board finds that the reports of Dr. Hsu are not well rationalized.¹¹

Dr. Hsu's April 19, 2013 report provided work restrictions due to appellant's elbow pain, noting a diagnosis of right lateral epicondylitis and resolved right upper quadrant and rib pain. Her July 25, 2013 letter noted that appellant's right elbow pain did not resolve until May 10, 2013 when he received a cortisone injection. Dr. Hsu's assessment that appellant was unable to work due to elbow pain is deficient. The April treatment note did not provide adequate opinion addressing disability for work. Dr. Hsu's June 25, 2013 narrative consisted of a timeline without sufficient explanation. Other reports of record provided checkmarks in response to an opinion of causal relation.

Dr. Hsu's January 10, 2014 Form CA-20 provided a diagnosis of right rib contusion and right elbow epicondylitis. The physician stated that appellant was totally disabled from February 27 to May 13, 2013. The Board notes that Dr. Hsu's April 19, 2013 report indicated that the rib injury had resolved. The diagnosis of right lateral epicondylitis, however, has not been accepted as a compensable condition. Dr. Hsu failed to provide a sufficient explanation on how appellant's right lateral epicondylitis was causally related to the accepted February 27, 2013 employment injury.

The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" on a medical form report without further explanation or rationale is of diminished probative value.¹² While Dr. Hsu opined that appellant was off work during the specific dates claimed, she failed to provide a fully rationalized explanation as to why appellant was disabled on those dates due to his accepted conditions. Other than noting restrictions of no pulling, pushing or lifting, Dr. Hsu did not demonstrate sufficient knowledge of appellant's job duties or provide a rationalized explanation as to why he could not work for the claimed periods.¹³ She failed to attribute disability to the accepted conditions of right elbow contusion

⁹ See *Amelia S. Jefferson*, 57 ECAB 183 (2005).

¹⁰ *Alfredo Rodriguez*, 47 ECAB 437 (1996).

¹¹ *R.W.*, Docket No. 13-656 (issued July 16, 2013).

¹² *Alberta S. Williamson*, 47 ECAB 569 (1996).

¹³ *A.J.*, Docket No. 13-614 (issued July 9, 2013).

and right contusion of chest wall for the period of April 14 through May 4, 2013, her reports are insufficient to meet appellant's burden of proof.¹⁴

The remaining medical evidence is also insufficient to establish appellant's claim for disability for the period of April 14 through May 4, 2013. Dr. Arnold-Dobal's February 27, 2013 report predates the period of disability claimed due to right lateral epicondylitis. Dr. Calandriello's March 4, 2013 report provided a diagnosis of right elbow lateral epicondylitis, but failed to provide a rationalized opinion that this condition was causally related to the accepted February 27, 2013 employment incident.¹⁵ She found that appellant was disabled from February 27 to March 11, 2013 and did not address the specific dates of disability in question.¹⁶ Dr. Kalandiak's May 10, 2013 report diagnosed right tennis elbow and opined that appellant could return to full-duty work without restrictions beginning May 10, 2013 due to pain relief from a cortisone injection. As noted, Dr. Kalandiak also did not address the specific dates of disability claimed, April 14 to May 4, 2013, or provide medical rationale or reasoning to explain why appellant was disabled due to the accepted conditions.¹⁷ Without reasoned medical evidence supporting that he had employment-related disability during the period in question, appellant has not met his burden of proof to establish his claim for wage-loss compensation for the period of April 14 to May 4, 2013.¹⁸

The Board notes that OWCP has not accepted the condition of right elbow lateral epicondylitis. It is appellant's burden to establish that this condition was causally related to the accepted February 27, 2013 employment injury.¹⁹ There is insufficient medical evidence of record addressing how this condition was caused by the accepted injury. Because appellant has not submitted any reasoned medical opinion evidence to show that he was disabled for the period of April 14 to May 4, 2013 as a result of his accepted conditions right elbow and right chest contusion, the Board finds that OWCP properly denied his claim for disability compensation.²⁰

¹⁴ *L.J.*, Docket No. 14-523 (issued August 7, 2014).

¹⁵ *Supra* note 13.

¹⁶ *Supra* note 15.

¹⁷ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value). Furthermore, for conditions not accepted or approved by OWCP, appellant bears the burden of proof to establish that the condition is causally related to the employment injury. See *Jaja K. Asaramo*, 55 ECAB 200 (2004).

¹⁸ *D.H.*, Docket No. 11-1739 (issued April 18, 2012).

¹⁹ Medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof. *Ceferino L. Gonzales*, 32 ECAB 1591 (1981). The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record and provide medical rationale explaining the relationship between the diagnosed condition and the established incident or factor of employment. See *Lee R. Haywood*, 48 ECAB 145 (1996).

²⁰ 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. *L.L.*, Docket No. 13-2146 (issued March 12, 2014). See also *William A. Archer*, 55 ECAB 674, 679 (2004).

On appeal, appellant argues that he was unable to work because the employing establishment could not accommodate his work restrictions. This argument is irrelevant as appellant's physicians do not attribute any disability or work restrictions to the accepted conditions of right elbow and chest contusion for the period of April 14 to May 4, 2013.²¹

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 failed to establish that he was disabled due to his February 27, 2013 injury for the period of April 14 to May 4, 2013.

ORDER

IT IS HEREBY ORDERED THAT the March 28, 2014 and November 20, 2013 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 10, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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

²¹ See generally *E.W.*, Docket No. 09-6 (issued February 17, 2009).