

shoulder from holding his duty pistol while shooting. According to a March 29, 2011 statement from an employing establishment compensation administrator, appellant held an M9 Beretta pistol for approximately one minute 45 seconds while shooting during a weaponry at qualification session.

OWCP accepted the claim on May 11, 2011 for right rotator cuff sprain of the shoulder and upper arm.

By report dated May 23, 2011, Dr. David Gonzalez, a Board-certified orthopedic surgeon, indicated that appellant could return to light-duty work. According to an employing establishment letter dated June 3, 2011, a light-duty job was available, but appellant had not returned to work due to a nonwork-related back injury.

On June 16, 2011 OWCP advised that appellant would receive wage-loss compensation as of May 7, 2011. The record indicates that appellant received compensation payments covering the period May 7 to 21, 2011 on June 17, 2011, and for the period May 22 to June 22, 2011 on July 29, 2011.

In a nursing evaluation report dated July 27, 2011, a nurse indicated that appellant had returned to work, but was not “coming to work regularly.” Appellant received a right shoulder corticosteroid injection on August 17, 2011.

In a report dated August 24, 2011, Dr. Gonzalez indicated that appellant continued to have right shoulder pain. He indicated that appellant was scheduled for cervical spine surgery. Dr. Gonzalez stated that appellant should avoid range firing and physical agility testing.

Appellant filed a claim for compensation (Form CA-7) for disability from August 31 to September 1, 2011. He also filed a Form CA-7 for the period September 15 to December 12, 2011. On January 6, 2012 OWCP paid compensation for the period August 31 to September 1, 2011, and for September 15 to 21, 2011.

On September 15, 2011 appellant underwent an anterior cervical discectomy with fusion of C3-7. This surgical procedure was not authorized by OWCP. In a report of that date, Dr. Dominic Meza, a Board-certified internist, stated that appellant had been having neck and shoulder pain for five months after he had gone to a shooting range.

The record indicates that, on October 18, 2011, OWCP accepted the claim for “other affections of shoulder region not elsewhere classified, right” (ICD-9 726.2) and neck sprain.

In a report dated January 13, 2012, Dr. Anthony Hicks, a Board-certified internist, provided a history that appellant reported pistol firing range activities caused pain in his shoulders and neck. He provided results on examination. Dr. Hicks stated that, after his examination, the “cervical/trapezial/thoracic/right shoulder [and] right upper extremity/left shoulder/gluteal mass and multiple neurological complaints” were more than likely directly and solely caused by the work incident. He reported that appellant was asymptomatic prior to the work injury. Dr. Hicks listed, as the basis for this opinion on causal relationship with employment, general statements such as the history of injury given, results on examination, and “the likely mechanical mechanism of injury.” He indicated that appellant should be off work.

Dr. Hicks also submitted reports dated February 17 and March 15 and 23, 2012, which noted that appellant was disabled for work. He provided similar statements with respect to causal relationship with employment, as those contained in his January 13, 2012 report.

On March 23, 2012 appellant filed a Form CA-7 claiming compensation for the period December 10, 2011 through March 17, 2012. He also submitted a Form CA-7 on April 2, 2012 for compensation from March 18 to May 12, 2012.

On April 19, 2012 appellant underwent additional cervical surgery. This surgical procedure was also not authorized by OWCP. In a report of that date Dr. Frank Kuwamura, a Board-certified orthopedic surgeon, diagnosed cervical spinal stenosis C3 to 7 with radiculomyelopathy. He reported that appellant underwent decompression of laminectomy at C3 to 7.

By decision dated May 7, 2012, OWCP denied appellant's claim for compensation for the period December 10, 2011 to March 17, 2012. By decision dated May 24, 2012, it found that he had returned to work on June 23, 2011 in a light-duty job and his actual earnings fairly and reasonably represented his wage-earning capacity. OWCP advised that appellant would be paid compensation based on loss of wage-earning capacity as of May 6, 2012.

Appellant requested a hearing before an OWCP hearing representative with respect to the May 24, 2012 decision. By decision dated September 7, 2012, the hearing representative vacated the May 24, 2012 decision and remanded the case to OWCP. She found a retroactive wage-earning capacity determination was not appropriate, as appellant had stopped working August 31, 2011, did not return to work, and was claiming wage-loss compensation. The hearing representative remanded the case for OWCP to properly determine whether he was entitled to wage-loss compensation from August 31 to September 21, 2011 and March 18 to May 12, 2012.

By decision dated October 23, 2012, OWCP denied the claims for compensation for the periods September 2 to 21, 2011 and March 18 to May 12, 2012. It found that the medical evidence was insufficient to establish the claims.

Appellant requested a hearing before an OWCP hearing representative, which was held on March 29, 2013. By decision dated June 5, 2013, the hearing representative noted that OWCP had paid compensation from August 31 to September 1, 2011 and September 15 to 21, 2011. Therefore, the claimed periods of compensation were September 2 to 14, 2011 and March 18 to May 12, 2012. The hearing representative noted that appellant had undergone cervical spine surgeries on September 15, 2011 and April 19, 2012, which were not accepted as causally related to his employment injury. He thereafter affirmed the level of appellant's claims, finding that the medical evidence was insufficient to establish an employment-related disability for the claimed periods.

On August 1, 2013 appellant requested reconsideration and submitted a report dated August 1, 2013 from Dr. Kuwamura, who provided a history that appellant was required to visit a firing range. Dr. Kuwamura stated that "the recoil of a firearm caused [appellant] to have significant worsening neurologic complications and unfortunately to this date [he] still has not

recovered and probably never will recover.” He noted that appellant had cervical surgeries in September 2011 and April 2012. Dr. Kuwamura stated that appellant’s condition was misdiagnosed probably for many years and he had significant spinal cord compression and damage at the time of initial evaluation on April 6, 2011.

By decision dated January 8, 2014, OWCP denied modification. It found that the evidence was insufficient to establish that appellant was disabled during the claimed periods due to the accepted March 22, 2011 injury.

In a letter dated May 30, 2014, appellant, through counsel, again requested reconsideration. He submitted reports dated March 31 and April 9, 2014 from Dr. Hicks, indicating that he remained unable to work. Appellant also submitted a May 12, 2014 report from Dr. Avinash Ramchandani, a Board-certified physiatrist, providing results on examination.

By decision dated November 5, 2014, OWCP reviewed the merits of the claim and denied modification. It found that the medical evidence of record was insufficient to establish that appellant was disabled due to the accepted employment injury during the periods August 31 to September 21, 2011 and March 18 to May 12, 2012.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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.³ 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.⁴

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.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 regarding an employee’s ability to work consist only of repetition of the employee’s complaints that he hurts 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.⁶ The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of

² *Id.*

³ *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ 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).

⁵ *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁶ *Id.*

disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.⁷

To establish a causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.⁸ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁹ The opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship.¹⁰ Medical rationale is a medically sound explanation for the opinion offered.¹¹

ANALYSIS

In the present case, there are two periods of claimed wage-loss compensation that have been denied by OWCP: September 2 to 14, 2011 and March 18 to May 12, 2012.¹² Appellant has filed CA-7 form claims for compensation and it is his burden of proof to establish that the disability for the periods claimed is casually related to his March 22, 2011 employment injury.¹³

As to the period September 2 to 14, 2011, there is no medical evidence addressing an employment-related disability. None of the physicians of record address the issue of disability for the period September 2 to 14, 2011. Dr. Kuwamura noted that appellant had cervical surgery on September 15, 2011, but did not discuss disability prior to the surgery. OWCP has not accepted that the September 15, 2011 cervical surgery was causally related to the accepted employment injury March 22, 2011.¹⁴

With respect to the period March 18 to May 12, 2012, the Board notes that Dr. Hicks provided a report dated March 23, 2012 finding that appellant was disabled. Dr. Hicks had initially treated appellant on January 13, 2012 and he continued to opine that appellant was

⁷ *Id.*

⁸ *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

⁹ *Elizabeth Stanislav*, 49 ECAB 540 (1998).

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

¹¹ See *Ronald D. James, Sr.*, Docket No. 03-1700 (issued August 27, 2003); *Kenneth J. Deerman*, 34 ECAB 641 (1983) (the evidence must convince the adjudicator that the conclusion drawn is rational, sound, and logical).

¹² Although the November 5, 2014 decision on appeal found that, the medical evidence of record was insufficient to establish disability for the period August 31 to September 21, 2011 and as noted above, OWCP had paid compensation from August 31 to September 1, 2011 and September 15 to 21, 2011. Thus, the period of compensation at issue on appeal is September 2 to 14, 2011 and March 18 to May 12, 2012.

¹³ See *Barbara Murphy*, Docket No. 03-1742 (issued October 17, 2013).

¹⁴ In *M.S.*, Docket No. 14-1925 (issued April 20, 2015), appellant claimed disability following a surgical procedure which was not authorized by OWCP, the Board found that the medical evidence of record did not support the alleged period of disability, absent a medical report addressing the specific dates of disability and explaining why appellant was totally disabled for these dates due to the accepted employment injury.

disabled. However, his reports do not establish causal relationship between disability and the March 22, 2011 employment injury. The Board notes that Dr. Hicks did not provide a detailed description of the March 22, 2011 employment incident. The record indicates that appellant fired a pistol for less than two minutes at a firing range. Dr. Hicks referred generally to pistol firing range activities without demonstrating a clear understanding of the nature and duration of the employment incident. As to causal relationship with employment, he stated that appellant was asymptomatic prior to the injury, but this does not establish causal relationship.¹⁵ Dr. Hicks referred to cervical/trapezial/thoracic/right shoulder, right upper extremity/left shoulder/gluteal mass, and multiple neurological complaints, all as being solely caused by the employment incident. His explanation for this opinion is a general reference to such factors as the “history,” the “examination,” and the “mechanism of injury,” but a rationalized medical opinion is more than just a recitation of general factors. The reports from Dr. Hicks therefore do not constitute sound medical rationale with respect to the issues presented.

The record indicates that appellant underwent a second cervical surgery on April 19, 2012, but again the medical evidence does not contain a rationalized opinion that any disability commencing on that date was employment related. Dr. Kuwamura noted that appellant had a cervical surgery in April 2012, without providing a rationalized medical opinion relating the surgery and any related disability to the employment injury. In addition, he reported that appellant had significant neurologic worsening and complications without providing further explanation.

The Board accordingly finds that appellant did not meet his burden of proof in this case. The medical evidence of record is insufficient to establish employment-related disability for the claimed periods.

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 established an employment-related disability from September 2 to 14, 2011 or March 18 to May 12, 2012.

¹⁵ See *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996) (because the employee is symptomatic after an incident is not sufficient to establish causal relationship without supporting rationale).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 5, 2014 is affirmed.

Issued: August 24, 2015
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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