

On appeal appellant contends that OWCP erroneously commingled two of his claims and that he never did any work that was in conflict with his medical restrictions or his physician's endorsement.

FACTUAL HISTORY

OWCP accepted that appellant, then a 61-year-old letter carrier, sustained a left shoulder and upper arm sprain and right elbow contusion due to a slip and fall in the performance of duty on October 27, 2009. Appellant received disability compensation for intermittent periods from December 14, 2009 to May 26, 2010.

Appellant, through his attorney, filed a claim on June 30, 2010 for compensation (Form CA-7) for the period May 27 to June 30, 2010. He submitted a June 15, 2010 report by Dr. Philip B. Bovell, an orthopedic surgeon, indicating that appellant could return to work part time effective May 3, 2010 for four hours per day. Appellant later submitted three time analysis forms indicating that he worked for a total of four hours a day during the period May 27 to June 30, 2010.

In a June 29, 2010 Form Ca-20, attending physician's report, Dr. Bovell indicated that appellant was partially disabled for the period May 3 to June 29, 2010.

By letter dated July 2, 2010, OWCP requested additional evidence establishing disability for work during the period claimed and afforded appellant 30 days for submission of such evidence, including additional information regarding his employment with Montgomery County Ride On.

In a June 30, 2010 progress report, Dr. Bovell indicated that appellant had some increased pain over the left shoulder.

A July 6, 2010 statement from appellant's supervisor at Montgomery County Ride On reported that appellant was employed as a substitute bus operator and worked 22 to 25 hours per week as of May 26, 2010.

In two reports dated August 9, 2010, Dr. Bovell opined that appellant was partially disabled for the period May 3 to August 9, 2010 and advised that appellant was able to return to limited-duty work for eight hours per day.

By decision dated September 17, 2010, OWCP denied appellant's claim for partial disability for the period May 27 to June 30, 2010. It found that appellant's second employer, Montgomery County Ride On, confirmed his employment during the period claimed and to prevent an overpayment he was not entitled to compensation. OWCP also noted that Dr. Bovell's August 9, 2010 report supported appellant's ability to work eight hours a day with restrictions.

On September 25, 2010 appellant, through his attorney, requested a hearing before an OWCP hearing representative, which was held *via* telephone on February 10, 2011. He submitted a June 28, 2010 report from Dr. Bovell indicating that appellant was able to return to light-duty work for four hours a day until July 30, 2010 and pending.

On January 11, 2011 appellant's second employer, Montgomery County Ride On, updated its reporting and indicated that appellant worked 30 hours per week as a substitute bus operator from May 26, 2010 to January 11, 2011.

On March 3, 2011 OWCP notified appellant that it combined two of his claims³ for administrative case management purposes to prevent duplication of information, confusion and to provide a historical background of his condition.

By decision dated April 26, 2011, an OWCP hearing representative denied appellant's claim for partial disability for the period May 27 to June 30, 2010 on the basis that the medical evidence submitted was not sufficient to support partial disability due to the October 27, 2009 employment injury.

LEGAL PRECEDENT

Section 8102(a) of FECA⁴ 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."⁵ This meaning, for brevity, is expressed as disability for work.⁶ 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.⁷ 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.⁸

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 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

³ OWCP Claim No. xxxxxx433 and xxxxxx175.

⁴ 5 U.S.C. § 8102(a).

⁵ 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).

⁶ *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

⁷ *William A. Archer*, 55 ECAB 674 (2004).

⁸ *Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

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.⁹

ANALYSIS

The Board finds appellant has not established that he was partially disabled for the period May 27 to June 30, 2010 causally related to the October 27, 2009 employment injury. While OWCP accepted that appellant sustained an employment injury, appellant bears the burden to establish through medical evidence that he was disabled during the claimed time period and that his disability was causally related to his accepted injury.¹⁰ The Board finds that appellant submitted no rationalized medical evidence explaining how the October 27, 2009 employment injury materially worsened or aggravated his left shoulder, upper arm or right elbow conditions and caused him to be disabled for work for the period May 27 to June 30, 2010.

In his reports, Dr. Bovell indicated that appellant was partially disabled for the period May 3 to August 9, 2010. On August 9, 2010 he opined that appellant was able to return to limited-duty work for 8 hours per day. Although Dr. Bovell opined that appellant was disabled, he failed to provide a rationalized medical explanation as to why appellant had employment-related residuals and how the residuals of the October 27, 2009 employment injury prevented him from continuing in his federal employment. Moreover, appellant's second employer indicated that appellant had been working 30 hours per week as a substitute bus operator from May 26, 2010 to January 11, 2011. The Board finds that Dr. Bovell's opinion is of diminished probative value as the reasons for the disability were not addressed. The mere fact that a period of disability may arise during employment does not, without more by way of medical rationale, establish causal relationship.

Appellant has not submitted any rationalized medical evidence establishing that he was partially disabled during the period May 27 to June 30, 2010 causally related to the October 27, 2009 employment injury. Thus, appellant has not met his burden of proof to establish that he is entitled to any wage-loss compensation.

On appeal appellant contends that OWCP erroneously commingled two of his claims. However, the Board finds that OWCP may combine his claims for ease of administrative case management¹¹ and did so with proper notification to him on March 3, 2011. Appellant further contends that he never did any work that was in conflict with his medical restrictions or his physician's endorsement. The issue on appeal is whether he met his burden of proof to establish that he was partially disabled for the period May 27 to June 30, 2010 causally related to his

⁹ *Id.*

¹⁰ *See V.P.*, Docket No. 09-337 (issued August 4, 2009).

¹¹ *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8 (February 2000). Under Chapter 2.400.8(c), cases should be doubled when correct adjudication of the issues depends on frequent cross-reference between files, including when: (1) a new injury case is reported for an employee who previously filed an injury claim for a similar condition or the same part of the body; (2) two or more separate injuries (not recurrences) have occurred on the same date; and (3) adjudication or other processing will require frequent reference to a case which does not involve a similar condition or the same part of the body.

employment injury. For the reasons stated above, the Board finds appellant's 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 his burden of proof to establish that he was partially disabled for the period May 27 to June 30, 2010 causally related to the October 27, 2009 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the April 26, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 8, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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