



as much as possible to develop flexibility of her fingers. Appellant experienced pain in her left shoulder and filed a recurrence of disability.

On October 30, 2000 appellant, then a mail handler, filed a recurrence of disability claim, alleging on that date that she sustained a recurrence of her February 2, 2000 employment injury. She stated that, after her original injury, she returned to light duty and was only able to lift less than 15 pounds with her right hand. Appellant noted that she experienced left shoulder rotator cuff tear which she believed was due to her original injury. In her narrative statement, she alleged at the time of the original injury that she pushed the postal container with her left shoulder to remove her left hand from between the containers.

By decision dated August 7, 2002, OWCP denied appellant's claim that she sustained an additional condition as a result of her February 2, 2000 employment injury. Appellant filed a request for reconsideration on August 18, 2003 alleging that OWCP had previously accepted her claim by decision dated August 20, 2001, submitting a copy of this decision. On August 11, 2006 OWCP accepted her claim for recurrence on October 30, 2001.

Appellant submitted her leave usage from 2000 to 2006 and claimed compensation in the amount of \$23,161.30. In a report dated May 25, 2000, her attending physician, Dr. Edgardo Gonzalez, a Board-certified orthopedic surgeon, found that appellant was totally disabled due to her accepted employment injury from February 2 until April 2, 2000. Appellant requested leave without pay from March 22 through April 2, 2000. OWCP authorized compensation through April 2, 2000. In a letter dated June 25, 2007, it noted that appellant received continuation of pay intermittently from February 3 to April 3, 2000 and was not entitled to additional compensation for wage loss during the period that continuation of pay was paid.

Dr. Gonzalez released her to perform light duty on April 3, 2000 and examined appellant on May 2, July 12, September 18 and 29, December 8 and 18, 2000 completing duty status reports supporting partial disability. Appellant submitted a summary of her medical treatment beginning in May 2000 through September 6, 2002. On July 13, 2000 she underwent a magnetic resonance imaging scan of her left shoulder. Appellant saw Dr. Gonzalez on August 20, 2001 as well as October 5, 2001 and was released to light-duty work. She sought treatment on October 12, December 7 and 17, 2001. Appellant received medical treatment on January 25, July 8 and November 8, 2002 as documented by duty status reports of those dates indicating that she could perform light-duty work. She also received medical treatment on January 31, February 28 and July 11, 2003. Appellant submitted duty status reports dated February 6 and April 2, 2004.

Appellant filed additional claims for compensation requesting wage-loss compensation from December 30, 2000 through January 12, 2001, January 24 through November 17, 2003, December 22, 2003 through November 29, 2004 and December 26, 2005 through December 11, 2006. In a letter dated July 31, 2008, OWCP requested additional factual and medical evidence from her. Appellant submitted duty status reports from Dr. Gonzalez dated February 6, July 9 and 21, 2004, January 14, March 11, June 10, August 26, October 14, December 12 and 16 2005. She submitted a duty status report dated September 5, 2006.

In a memorandum to the file, the claims examiner noted that appellant included her mother and two godchildren as dependents.

On October 6, 2008 OWCP informed appellant that she was entitled to utilize only four hours per doctor's visit without extenuating circumstances. It also noted that she had not submitted medical documentation of her shoulder surgery on June 27, 2003. OWCP allowed 30 days for a response.

On August 21, 2008 a physician whose signature is illegible completed a duty status report and stated that appellant was performing limited duties and accommodation in accordance with a Federal Court decision.

On February 23, 2006 appellant accepted a limited-duty assignment. She submitted work release notes from Dr. Gonzalez dated July 16, 2004 indicating that she was totally disabled from July 8 through 16, 2004 and from November 16 through December 5, 2005.

Appellant filed a notice of recurrence of disability on July 14, 2009 alleging on April 22, 2009 that she had developed a re-rupture of her left rotator cuff. By decision dated October 22, 2009, OWCP denied her claim for recurrence of disability.<sup>2</sup>

By decision dated January 24, 2011, OWCP denied appellant's claim for compensation from March 22, 2000 through December 11, 2001. It stated that she failed to clarify the dates that she was claiming intermittent wage loss and failed to explain how the dates of intermittent wage loss were related to her accepted condition.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> 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.<sup>4</sup> 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, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.<sup>5</sup>

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.<sup>6</sup> Findings on examination are generally

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<sup>2</sup> Appellant did not appeal this decision to the Board within 180 days and therefore, the Board does not have jurisdiction to review this decision on appeal. 20 C.F.R. § 501.3(e).

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *G.T.*, 59 ECAB 447 (2008); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> 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).

<sup>6</sup> *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

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 she hurt 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.<sup>7</sup> 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.<sup>8</sup>

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.<sup>9</sup> Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical 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 claimant.<sup>10</sup> Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>11</sup>

### ANALYSIS

OWCP initially accepted that appellant sustained a left hand injury on February 2, 2000 when her hand was trapped between two postal containers. Appellant received continuation of pay from February through April 2, 2000. She then filed a series of claims for compensation alleging intermittent periods of disability due to her accepted employment injury and recurrence of disability. OWCP accepted appellant's claim for a recurrence of disability beginning on October 30, 2001 and August 11, 2006. The Board is unable to determine from the August 20, 2001 and August 11, 2006 decisions what was accepted through these decisions and the basis for the acceptance. It is not clear whether OWCP has accepted appellant's claim for a left shoulder injury resulting from her February 2000 employment injury as alleged in her October 30, 2000 claim for recurrence of disability or some other basis for disability nor is it clear how OWCP reached the date of recurrence of October 30, 2001. The Board has held and OWCP's regulations provide that a final decision of OWCP shall contain findings of fact and a statement of reasons.<sup>12</sup> The findings should be sufficiently detailed so that the claimant can understand the

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>10</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>11</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>12</sup> *O.R.*, 59 ECAB 432 (2008). 20 C.F.R. § 10.126.

reasoning behind the decision.<sup>13</sup> The August 20, 2001 and August 11, 2006 decisions do not explain what aspect of appellant's claimed recurrence of disability was accepted, an especially salient fact as her entitlement to compensation for medical treatment is based on whether the treatment was for an accepted condition. Therefore, if OWCP has not accepted her claim for the cause of her alleged recurrence of disability, her additional employment-related condition of left shoulder rotator cuff tear, then medical evidence supporting the need for treatment or disability related to the left shoulder condition would not be compensable. The Board finds that the case is not in posture for decision as OWCP's merit decisions do not contain the necessary findings of fact and statements of reason to determine what conditions are accepted by OWCP as causally related to appellant's employment injury and therefore what period's she is entitled to compensation.

The Board further notes that in support of her claim, appellant submitted a series of form reports from her attending physician, Dr. Gonzalez, indicating that she was partially disabled due to her left hand and left shoulder conditions. OWCP informed her that she was not entitled to more than four hours of compensation for a doctor's visit associated with her accepted employment injury. As it has not clearly stated what conditions are accepted, neither OWCP nor the Board can determine whether appellant is entitled to any or all of the intermittent periods of disability alleged. As the decisions issued and the record forwarded by OWCP will not allow the Board an opportunity for an informed adjudication of the appeal, the case record will be returned to OWCP for an appropriate decision issued on her claim in order to preserve her right of appeal to the Board.

### CONCLUSION

The Board finds that the case is not in posture for decision. On remand OWCP should clarify the accepted conditions and review the evidence submitted by appellant to determine what if any intermittent periods of disability she has established as related to her employment.<sup>14</sup> It should issue an appropriate decision addressing the central issues in this case.

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<sup>13</sup> See *Paul M. Colosi*, 56 ECAB 294 (2005).

<sup>14</sup> The Board notes that, if appellant has established that medical treatment was due to an accepted injury, she is entitled to be compensated for the lost time at work due to doctor's appointments.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 24, 2011 decision of Office of Workers' Compensation Programs is set aside and remanded for further development consistent with this decision of the Board.

Issued: March 1, 2012  
Washington, DC

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

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

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