

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

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**K.C., Appellant**

**and**

**U.S. POSTAL SERVICE, MAIN POST OFFICE,  
Coeur d'Alene, ID, Employer**

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**Docket No. 12-820  
Issued: October 16, 2012**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
PATRICIA HOWARD FITZGERALD, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On March 5, 2012 appellant filed a timely appeal of the December 2, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her claim for disability compensation. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) 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 she was totally disabled commencing October 3, 2011 due to her November 30, 2010 employment injuries.

On appeal, appellant contends that she is totally disabled for work because her modified work duties were outside her physical restrictions. She further contends that she is entitled to wage-loss compensation for eight hours a day during the period of disability.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

OWCP accepted that on November 30, 2010 appellant, then a 37-year-old clerk, sustained left bicipital tenosynovitis and left shoulder sprain when she slipped and fell on a wet floor in front of the ladies' room door at work. She stopped work on December 1, 2010. Appellant worked part time at modified duty and stopped work on September 26, 2011.<sup>2</sup>

On October 7 and 24, November 4 and 18 and December 2, 2011 appellant filed claims for wage-loss compensation (Form CA-7) for disability from September 26 to November 18, 2011. Treatment notes from her physical therapists addressed the treatment of her left shoulder condition from May 27 to October 17, 2011.

An October 4, 2011 medical report of Dr. Steven J. Malek, a Board-certified family practitioner, stated that appellant had an acute exacerbation of chronic left shoulder tendinitis. Appellant was placed off work for six days.

In an October 10, 2011 report, Dr. Timothy F. Burns, an attending Board-certified family practitioner, listed appellant's physical restrictions and advised that she could not perform her regular work duties.

In an October 26, 2011 disability certificate, Mary Duff, a nurse practitioner, stated that appellant could not work from October 17 to 20, 2011.

By letter dated October 27, 2011, OWCP advised appellant that she had been paid wage-loss compensation from September 24 to October 7, 2011.<sup>3</sup> It could not pay her for 7.74 hours claimed on October 3, 2011 or 8 hours a day claimed from October 4 to 7, 2011. OWCP stated that it would pay appellant compensation for four hours a day commencing October 3, 2011 since she had returned to part-time work on September 22, 2011. It advised her that the medical evidence submitted was insufficient to establish her claims. OWCP addressed the medical evidence appellant needed to submit to support disability.

In reports dated October 10, 20 and 21 and November 8, 2011, Dr. Burns listed a history of the November 30, 2010 employment injuries. He noted appellant's complaints of worsening left shoulder and neck pain after engaging in repetitive motion above and below shoulder level at work. Appellant stated that the activity exceeded her physical restrictions. Dr. Burns listed findings on physical examination of the neck and left shoulder. He diagnosed left shoulder pain secondary to the accepted November 30, 2010 employment injuries. Dr. Burns also diagnosed chronic pain syndrome secondary to recurrent persistent tendinitis and bursitis and neck pain.

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<sup>2</sup> On September 22, 2011 appellant returned to a modified lead sales and service associate position, four hours a day based on the physical restrictions set forth on August 27, 2011 by Dr. James R. Schwartz, a Board-certified orthopedic surgeon. The position involved window/retail work. The physical requirements of the position included reaching at or above the shoulder 2 hours a day, 15 minutes at a time, lifting no more than 20 pounds intermittently 2 hours a day, fine manipulation 3 hours a day and simple grasping 3 to 4 hours a day.

<sup>3</sup> OWCP fiscal payment worksheet indicated that appellant stopped work on October 3, 2011 because she was required to work outside her restrictions.

He recommended that appellant stop performing repetitive work activity that required the use of her left arm as it aggravated her condition.

In an October 10, 2011 prescription, Dr. Burns ordered physical therapy to treat appellant's recurrent persistent shoulder pain and bicep tendinitis. In an October 6, 2011 progress note, signed and certified by him, a physical therapist listed physical examination findings related to her neck and left shoulder and recommended continued therapy for her pain.

In an October 18, 2011 report, Ms. Duff advised that appellant had shoulder pain.

Reports from appellant's physical therapists addressed the treatment of her left shoulder and neck from October 3 to November 4, 2011.

In a November 8, 2011 report signed and certified by Dr. Burns, a physical therapist advised that appellant had left shoulder pain and recommended continued occupational therapy.

On December 2, 2011 OWCP issued a decision finding that the medical evidence was insufficient to establish that appellant was totally disabled commencing October 3, 2011 due to her accepted conditions.

### **LEGAL PRECEDENT**

With respect to a claimed period of disability, an employee has the burden of establishing 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> The medical evidence required to establish a period of employment-related disability is rationalized medical evidence.<sup>7</sup> Rationalized medical evidence is medical evidence based on a complete factual and medical background of the claimant, of reasonable medical certainty, with an opinion supported by medical rationale.<sup>8</sup> The Board, however, will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is

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<sup>4</sup> *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).

<sup>7</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>8</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

claimed.<sup>9</sup> To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.<sup>10</sup>

### ANALYSIS

OWCP accepted that appellant sustained left bicipital tenosynovitis and left shoulder sprain on November 30, 2010 while working as a clerk. Appellant claimed compensation for total disability commencing October 3, 2011. OWCP noted she would receive compensation for four hours a day as of October 3, 2011. On December 2, 2011 it denied compensation for the period commencing October 3, 2011. Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed disability and the accepted conditions.<sup>11</sup> The Board finds that she did not submit sufficient medical evidence to establish total disability for the period claimed due to her accepted injuries.

The reports from Dr. Burns are insufficient to establish appellant's claim. He listed findings on physical examination of the neck and left shoulder. Dr. Burns opined that appellant had left shoulder pain secondary to the accepted employment injuries. He further opined that she had chronic pain syndrome secondary to recurrent persistent tendinitis and bursitis and neck pain. Dr. Burns advised that appellant could not perform her regular work duties which required repetitive use of her left arm and aggravated her condition. Dr. Burns recommended that she stop performing such activity; but he did not provide any medical rationale explaining how her neck and left shoulder conditions caused total disability aggravated by the window/retail work activity. Prior to stopping work appellant had been restricted to four hours a day. The Board has held that an opinion on causal relationship based solely on continuing symptoms after a work incident, without supporting rationale and explanation, is of diminished probative value.<sup>12</sup> Dr. Burns' prescription and progress notes ordered physical and occupational therapy to treat appellant's recurrent persistent shoulder pain and bicep tendinitis. He failed to address whether her treatment and claimed disability commencing October 3, 2011 were causally related to the accepted conditions. He did not discuss her capacity for part-time work or how the work she performed necessitated her to stop work completely. Dr. Burns did not address the part-time work restrictions recommended by Dr. Schwartz as of August 27, 2011. The Board has held that a physician's opinion, which does not address causal relationships, is of diminished probative value.<sup>13</sup> The Board finds that Dr. Burns' reports are insufficient to establish appellant's total disability commencing October 3, 2011.

The October 10, 2011 report from Dr. Malek has no probative value in establishing appellant's claim of disability as it was not signed. It is not clear whether a physician under

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<sup>9</sup> *Sandra D. Pruitt*, 57 ECAB 126 (2005).

<sup>10</sup> *See William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, *supra* note 6.

<sup>11</sup> *Alfredo Rodriguez*, 47 ECAB 437 (1996).

<sup>12</sup> *See Frederick H. Coward, Jr.*, 41 ECAB 843 (1990); *Lillian M. Jones*, 34 ECAB 379 (1982).

<sup>13</sup> *See A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

FECA prepared the report. It is well established that medical evidence lacking proper authentication is of no probative medical value.<sup>14</sup>

The treatment notes and reports from appellant's physical therapists or Ms. Duff are of no probative value. Neither a physical therapist<sup>15</sup> nor a nurse practitioner is a physician<sup>16</sup> as defined under FECA.

Appellant failed to submit rationalized medical evidence to establish her total disability commencing October 3, 2011 resulted from residuals of her accepted employment-related left shoulder conditions.

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 failed to establish that she was totally disabled commencing October 3, 2011 due to her November 30, 2010 employment injuries.

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<sup>14</sup> *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004); *Merton J. Sills*, 39 ECAB 572 (1988).

<sup>15</sup> See 5 U.S.C. § 8101(2); *A.C.*, Docket No. 08-1453 (issued November 18, 2008).

<sup>16</sup> *L.D.*, 59 ECAB 648 (2008).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 2, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 16, 2012  
Washington, DC

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

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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