

FACTUAL HISTORY

On December 17, 2003 appellant, then a 42-year-old nursing assistant, sustained injury while lifting a patient from his chair to a bed, she lost her footing and the patient landed on top of her. She noted that her right knee was bruised. On April 22, 2004 OWCP accepted appellant's claim for a right knee sprain and thigh contusion. The claim was subsequently accepted for degenerative lumbar discs and a herniated cervical disc at C5-6 and C6-7. On July 22, 2004 appellant underwent a lumbar laminectomy and fusion at L4-5 and L5-S1. Subsequently, she underwent an anterior cervical fusion at C6-7 on September 14, 2005.² OWCP paid wage-loss compensation and medical compensation benefits for intermittent periods of disability. Appellant returned to work at light duty.

The record reflects that appellant also sought acceptance of a right shoulder condition. Diagnostic tests submitted to the record documented a full thickness tear of the supraspinatus tendon. OWCP developed the claim, by referring appellant to Dr. Gilbert Shapiro, for a second opinion. On April 6, 2011 Dr. Shapiro advised that appellant's right shoulder condition was not employment related. In a June 7, 2011 decision, OWCP denied authorization for right shoulder surgery. Appellant requested a hearing before a hearing representative. In a December 28, 2011 decision, OWCP's hearing representative remanded the case for further development, finding that the opinion of Dr. Shapiro was not based on a complete or accurate factual background.

During the pendency of the claim before the Branch of Hearings and Review, appellant filed a notice of a recurrence of disability, Form CA-2a on September 12, 2011.³

The record also reflects that on November 10, 2011 appellant underwent surgery by Dr. George J. Raukar, a Board-certified orthopedic surgeon, for the tear of the right shoulder supraspinatus tendon. The procedure consisted of a right shoulder arthroscopy and arthroscopic acromioplasty with open distal clavicle excision. On November 23, 2011 Dr. Raukar noted that appellant was doing well and had significant improvement in her right shoulder pain almost immediately after the surgery. In a January 5, 2012 report, he indicated that she continued with physical therapy.

On February 15, 2012 OWCP accepted appellant's claim for the tear of the supraspinatus tendon, right shoulder.

In a March 15, 2012 report, Dr. Raukar indicated that appellant was status postsurgery of November 10, 2011. He found that her wounds were in excellent condition, the right extremity was neurovascularly intact and demonstrated a full range of motion. Dr. Raukar stated that appellant could return to her activities as tolerated. On April 27, 2012 he noted that she was having trouble sleeping and had developed a sharp pain on the posterior aspect of the shoulder in the region of the shoulder blade. Dr. Raukar stated that appellant had otherwise been able to do her daily activities. In a May 15, 2012 report, he noted that she was disabled from work following surgery until March 30, 2012. Dr. Raukar noted that appellant had restricted activities,

² Appellant underwent additional cervical surgery on February 4, 2009.

³ Appellant subsequently submitted a claim for compensation through June 6, 2012.

including no use of the right upper extremity. He further noted that she required physical therapy at the time for pain relief and recovery.

On May 10, 2012 OWCP accepted appellant's claim for a recurrence of disability commencing September 12, 2011. On May 11, 2012 it informed her that, based on the medical evidence of record, compensation would be paid from September 13 to November 10, 2011. Appellant was requested to submit medical evidence that support disability after November 10, 2011 due to the accepted conditions.

In a May 17, 2012 report, Dr. Katherine L. Yutangco, a Board-certified internist, diagnosed appellant with chronic neck, right shoulder and low back pain with limited mobility secondary to chronic pain. In a May 23, 2012 report, she noted that appellant had chronic neck and lower back pain. Dr. Yutangco noted that appellant was unable to work due to chronic pain.

On May 25, 2012 Dr. Raukar completed an attending physician's form, listing his dates of treatment of appellant. He noted that the period of disability commenced on November 10, 2011, that she was discharged from treatment on April 27, 2012 and able to resume her regular work as of May 27, 2012.

In a June 6, 2012 attending physician's form, Dr. Steven K. Jacobs, noted that appellant had a neck and lumbar sprain/strain caused by her employment injury in 2003. As of September 12, 2011, appellant was totally disabled, from November 12, 2011 to June 5, 2012 she was partially disabled and, as of June 5, 2012, she was capable of sedentary work.

By decision dated August 9, 2012, OWCP denied appellant's claim for wage-loss compensation from November 11, 2011 to June 6, 2012. It found that the June 6, 2012 form report of Dr. Jacobs and the reports of Dr. Yutangco were not sufficient to establish her disability for work for the period claimed. The decision listed only Dr. Raukar's May 25, 2012 attending physician's report, finding that the physician did not provide a clear explanation of how appellant was disabled from performing her job duties.

On November 7, 2012 appellant requested review of the written record by an OWCP hearing representative.

By decision dated December 6, 2012, OWCP denied appellant's request finding that it was untimely filed. It exercised its discretion and denied a hearing on the basis that the issues could be equally well addressed by requesting reconsideration and submitting new evidence.

LEGAL PRECEDENT -- ISSUE 1

A claimant has the burden of establishing the essential elements of his or her claim, including that the medical condition for which compensation is claimed is causally related to the employment injury.⁴ Compensation for wage loss due to disability is available for periods during which an employee's work-related medical condition prevents him or her from earning the wages earned before the work-related injury.⁵ The claimant must submit medical evidence showing that the condition claimed is disabling.⁶ The evidence submitted must be reliable, probative and substantial.⁷ The physician's opinion must be based on the facts of the case and the complete medical background of the employee, must be one of reasonable medical certainty and must include objective findings in support of its conclusions.⁸

ANALYSIS -- ISSUE 1

The Board finds that the case is not in posture for decision and will be remanded for further development of the medical evidence.

Appellant's claim for her right shoulder supraspinatus tear was accepted by OWCP on February 15, 2012. She underwent surgery for this condition by Dr. Raukar on November 10, 2011. Dr. Raukar submitted postoperative reports to the record addressing appellant's recovery from surgery, physical therapy and disability for work, but these reports were not considered in the August 9, 2012 OWCP decision. It only addressed a May 25, 2012 attending physician's form report submitted from Dr. Raukar.

OWCP paid compensation from September 12 to November 10, 2011, the date of appellant's right shoulder surgery. At the time of surgery, it had not yet accepted the supraspinatus tear as causally related. The medical record clearly reflects that surgery was for treatment of a condition accepted in this claim and that appellant had a period of disability on and after November 10, 2011 related to surgery as addressed by her surgeon. The case will be remanded to OWCP for consideration of the medical evidence of record from Dr. Raukar pertaining to appellant's surgery, period of physical therapy and recovery. If Dr. Raukar's reports are not sufficient on the issue of the period of disability for work due to appellant's surgery, it should request that he clarify his medical opinion.

⁴ 20 C.F.R. § 10.115(e); see *Tammy L. Medley*, 55 ECAB 182, 184 (2003). Causal relationship is a medical question which generally requires rationalized medical opinion to resolve the issue. See *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

⁵ *Id.* at § 10.500(a).

⁶ *Id.* at § 10.115(f).

⁷ *Id.* at § 10.115.

⁸ *Id.* at § 10.501(a)(2).

OWCP is not a disinterested arbiter but rather performs the role of adjudicator on the one hand and gatherer of the relevant facts and protector of the compensation fund on the other, a role that imposes an obligation on it to see that its administrative processes are impartially and fairly conducted.⁹ Although the claimant has the burden of establishing entitlement to compensation, it shares responsibility in the development of the evidence.¹⁰ A supplemental report from Dr. Raukar is needed to clarify appellant's period of disability resulting from the November 10, 2011 surgery. After such development as OWCP deems necessary, it should issue a *de novo* decision on appellant's claim for compensation.

Given the Board's holding with respect to the first issue presented, the second issue related to the denial of appellant's request for review of the written record is moot.

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the December 6 and August 9, 2012 decisions of the Office of Workers' Compensation Programs be set aside. The case is remanded for further action in conformance with this decision.

Issued: August 27, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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

⁹ *K.P.*, Docket No. 13-676 (issued June 11, 2013).

¹⁰ *William J. Cantrell*, 34 ECAB 1233 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).