

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

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| L.R., Appellant |) | |
| |) | |
| and |) | Docket No. 12-952 |
| |) | Issued: January 2, 2013 |
| U.S. POSTAL SERVICE, POST OFFICE, |) | |
| Santa Clarita, CA, Employer |) | |
| |) | |

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| <i>Appearances:</i> <i>Appellant, pro se</i> <i>Office of Solicitor, for the Director</i> | <i>Case Submitted on the Record</i> |
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DECISION AND ORDER

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

JURISDICTION

On March 29, 2012 appellant filed a timely appeal from a February 14, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied her claim for disability compensation. Pursuant to the Federal Employees' Compensation Act¹ (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 met her burden of proof to establish that her disability for the period November 9, 2010 to March 29, 2011 was causally related to her employment injury.

FACTUAL HISTORY

On December 8, 2010 appellant, then a 43-year-old distribution clerk, filed an occupational disease claim (Form CA-2) alleging a left shoulder condition due to factors of her

¹ 5 U.S.C. § 8101 *et seq.*

federal employment. OWCP accepted the claim for left bicipital tenosynovitis and other affections of shoulder region not elsewhere classified, left.

In a March 30, 2011 report, Dr. Pierre Hendricks, a Board-certified orthopedic surgeon, diagnosed left bicep tendinitis. He noted that appellant was off work for the period November 17, 2010 to March 29, 2011. Dr. Hendricks released her to return to work with restrictions on February 16, 2011 and full duty by April 20, 2011.

On June 22, 2011 Dr. Hendricks reiterated his diagnosis and opined that it was causally related to factors of appellant's federal employment. He advised that she was totally disabled for the period January 27 to February 16, 2011 and partially disabled for the periods December 15, 2010 to January 10, 2011 and March 16 to April 14, 2011.

On July 12, 2010 appellant filed a claim for compensation (Form CA-7) for the period November 9, 2010 to March 29, 2011. She submitted time analysis forms indicating that she was off work for a total of 518.69 hours during the period claimed and that she worked 8.47 hours on November 9, 2010, 1.31 hours on December 6, 2010, and a total of 93.36 hours in January 2011.

On August 2, 2011 OWCP requested additional medical evidence establishing disability for work during the period November 9, 2010 to March 29, 2011 and allotted 30 days for submission.

Subsequently, appellant submitted reports by Dr. Richard W. Kling, a Board-certified family medicine physician, who placed her on temporary total disability from November 16 to 28, 2010.

In an August 3, 2011 report, Dr. Hendricks diagnosed left shoulder proximal biceps tendinitis and opined that appellant was able to continue working with no restrictions.

On August 10, 2011 Dr. Hendricks stated that he began treating appellant on November 17, 2010 and noted that her job duties included lifting trays of mail repetitively from waist to shoulder and head levels. Appellant was placed on work restrictions of no work above shoulder level and no lifting greater than 10 pounds from November 17 to December 17, 2010. She reported that, when she showed the note to her supervisors, she was told that there was no modified work available and she was sent home. Dr. Hendricks released appellant to full duty without restrictions as of January 10, 2011. Later, appellant was retroactively placed on temporary total disability for the period January 27 to February 16, 2011. She returned to work with restrictions of no lifting with the left hand greater than 5 pounds for the period February 16 to April 1, 2011 and no lifting greater than 20 pounds for the period March 16 to April 20, 2011. Dr. Hendricks released appellant to full duty with no restrictions effective April 14, 2011.

On September 21, 2011 Dr. Hendricks opined that appellant developed left shoulder proximal biceps tendinitis due to an employment-related cumulative trauma injury resulting from repetitive lifting with the upper extremities as part of her work as a machine operator for the employing establishment. He found that appellant had reached maximum medical improvement and had no permanent work restrictions.

By decision dated February 14, 2012, OWCP denied appellant's claim for disability for the period November 9, 2010 to March 29, 2011 on the grounds that the medical evidence submitted was not sufficient to support disability due to the employment injury.

LEGAL PRECEDENT

Section 8102(a) of FECA² 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."³ This meaning, for brevity, is expressed as disability for work.⁴ 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.⁵ 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.⁶

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 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.⁷

ANALYSIS

The Board finds that appellant has not established that she was disabled for the period November 9, 2010 to March 29, 2011 causally related to her employment injury. While OWCP accepted that appellant sustained an employment injury, she bears the burden to establish through probative medical evidence that she was disabled during the claimed time periods and that her disability was causally related to her accepted injury.⁸ The Board finds that appellant

² 5 U.S.C. § 8102(a).

³ 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).

⁴ *See Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

⁵ *See William A. Archer*, 55 ECAB 674 (2004).

⁶ *See Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

⁷ *Id.*

⁸ *See supra* notes 6 and 7. *See also V.P.*, Docket No. 09-337 (issued August 4, 2009).

submitted insufficient rationalized medical evidence explaining how the employment injury materially worsened or aggravated her left shoulder condition and caused her to be disabled for work for the period November 9, 2010 to March 29, 2011.

Dr. Hendricks diagnosed left shoulder proximal biceps tendinitis and opined that the condition was causally related to an employment-related cumulative trauma injury resulting from repetitive lifting with the upper extremities as part of appellant's work as a machine operator for the employing establishment. On March 30, 2011 he indicated that she was off work for the period November 17, 2010 to March 29, 2011. Dr. Hendricks released appellant to return to work with restrictions on February 16, 2011. On June 22, 2011 he indicated that she was totally disabled for the period January 27 to February 16, 2011 and partially disabled for the periods December 15, 2010 to January 10, 2011 and March 16 to April 14, 2011. Although Dr. Hendricks provided a firm diagnosis and opined that appellant was disabled, he failed to provide a rationalized medical explanation as to how and why the mechanism of appellant's performance of her duties disabled her for work. Thus, appellant has not met her burden of proof to establish that she was disabled for work due to the employment injury.

Dr. Kling placed appellant on temporary total disability from November 16 to 28, 2010; but failed to offer any probative medical opinion on why she was disabled on the dates at issue due to her accepted conditions. His reports are of diminished probative value.⁹

Appellant has not submitted any rationalized medical evidence establishing that she was disabled during the period November 9, 2010 to March 29, 2011 causally related to the employment injury. Thus, she has not met her burden of proof to establish that she is entitled to compensation for any disability.

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 her burden of proof to establish that she was disabled for the period November 9, 2010 to March 29, 2011 causally related to her employment injury.

⁹ See *V.P.*, *supra* note 8.

ORDER

IT IS HEREBY ORDERED THAT the February 14, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 2, 2013
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