

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

J.V., Appellant)	
)	
and)	Docket No. 12-1389
)	Issued: January 10, 2013
DEPARTMENT OF THE TREASURY,)	
INTERNAL REVENUE SERVICE, Fresno, CA,)	
Employer)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 4, 2012 appellant filed a timely appeal from a May 11, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied his claim for 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 the case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he was totally disabled from June 6 to October 9, 2010 causally related to his accepted left elbow condition.

FACTUAL HISTORY

On April 19, 2010 appellant, then a 50-year-old letter customer service representative, filed a traumatic injury claim alleging that on April 15, 2010 he turned a handle on a door and

¹ 5 U.S.C. §§ 8101-8193.

injured his left elbow. He stopped work on April 27, 2010. On June 1, 2010 OWCP accepted appellant's claim for left lateral epicondylitis.² Appellant received continuation of pay from April 27 to June 6, 2010.

Appellant was treated by Dr. Sanjay J. Chauhan, a Board-certified neurologist, on April 27, 2010 for left elbow pain occurring after turning a heavy knob at work. Dr. Chauhan diagnosed left lateral epicondylitis, possible torn extensor communis tendon, bruising of the left upper arm and medial elbow and left forearm extensor and flexor tendinitis. He advised that appellant was totally disabled for two to three weeks. In an attending physician's report dated April 27, 2010, Dr. Chauhan made diagnoses and checked a box "yes" that appellant's condition was work related. He noted that appellant was totally disabled from April 27 to May 12, 2010. Dr. Chauhan submitted a magnetic resonance imaging (MRI) scan of the left forearm dated May 4, 2010 which was normal. An MRI scan of the left elbow revealed a nondisplaced fracture involving the radial head with evidence of edema and fluid in the radiocapitellar joint space consistent with lateral epicondylitis. May 4 and June 4, 2010 x-rays revealed a possible nondisplaced radial head fracture.

Beginning June 24, 2010, appellant filed CA-7 forms, claiming compensation for total disability for the period June 6 to October 9, 2010. An attached time analysis form indicated that claimed wage loss began on June 14, 2010.

In letters dated July 12 and 26, 2010, OWCP requested that appellant submit medical evidence establishing that he was totally disabled due to the accepted condition for the period claimed.

Appellant submitted reports from Dr. Chauhan dated May 12 to September 2, 2010. Dr. Chauhan noted that appellant reported left lateral elbow pain, left forearm pain and tingling in the digits. He diagnosed left lateral epicondylitis with possible fracture of the radial head and left forearm extensor and flexor tendinitis. Dr. Chauhan noted that causation was due to the April 15, 2010 injury when appellant turned a heavy doorknob. Because of the dysfunction and pain of the left elbow, as well as x-rays showing a possible fracture of the radial head, appellant was totally disabled from May 12 to June 15, 2010. In the July 21, 2010 report, Dr. Chauhan advised that appellant was unable to do light duty because of the pain from the fracture which might take weeks or months to subside. He noted that stress from pain caused an inability to perform any activities, even modified duties, using the affected limb. Dr. Chauhan stated that appellant was totally disabled since the April 15, 2010 injury through September 10, 2010. In work status notes dated July 20 and September 2, 2010 he noted that appellant remained totally disabled from July 20 to October 6, 2010. On September 3, 2010 Dr. Chauhan noted that appellant presented with pain in the left lateral elbow with electric sensation, left forearm pain and tingling digits. He diagnosed left lateral epicondylitis with fracture of the radial head and left forearm extensor and flexor tendinitis. Dr. Chauhan noted causation was due to the April 15, 2010 injury and opined that appellant would be totally disabled through October 6, 2010.

² Appellant had previously filed an occupational disease claim on April 28, 2004, which was accepted for bilateral carpal tunnel syndrome, bilateral medial epicondylitis and bilateral wrist sprains, File No. xxxxxx164. On July 27, 2009 he filed an occupational disease claim which was accepted for bilateral tenosynovitis of the hand and wrist, File No. xxxxxx755.

On August 31, 2010 OWCP referred appellant for a second opinion to Dr. Alice Martinson, a Board-certified orthopedic surgeon. It provided her with the medical records, a statement of accepted facts and a detailed description of his work duties. In a report dated September 20, 2010, Dr. Martinson reviewed the records provided to her and performed an examination of appellant. She noted a history of his condition. Dr. Martinson found no swelling or deformity of the left elbow, a full range of motion, no deep tenderness over the radial head, no clicking or localized tenderness of the synovial folds or triceps, no pain or weakness with wrist or finger extension, some hypesthesia over the left ring and little fingers, with negative Tinel's and Phalen's signs, normal grip strength and no atrophy. She diagnosed a hyperextension strain of the left elbow, resolved, without residuals and left cubital tunnel syndrome. Dr. Martinson opined that appellant's radial head finding was not caused by the April 15, 2010 injury as the imaging evidence identified this as an old fracture without hemorrhage or edema. She opined that there was no evidence that his recent elbow injury would prevent him from returning to the preinjury job without restrictions. Dr. Martinson recommended a repeat electromyogram (EMG). In a work capacity evaluation, she noted that appellant could return to work full time with restrictions.

OWCP referred appellant for a diagnostic testing. An October 1, 2010 EMG revealed very mild right carpal tunnel syndrome involving the median nerve and radiculopathies along the left cervical spine at C8 and T1 nerve roots.

In an October 11, 2010 supplemental report, Dr. Martinson reviewed the EMG and noted that it showed no conduction abnormalities of the ulnar nerves on either side, only mild right median sensory delays. She advised that nothing in the study would preclude appellant from returning to work at his previous job using the modifications made for him in the past. Dr. Martinson diagnosed left C8 radiculopathy, etiology unknown, unrelated to the April 15, 2010 injury. She opined that appellant fully recovered from the mild elbow injury and was capable of performing his job and no further treatment is required. In response to OWCP's question as to periods of total disability due to the work-related condition, Dr. Martinson stated that, "at best" appellant would have been "totally disabled by this injury for a maximum of five days" and anything after that time was unnecessary.

In an October 5, 2010 report, Dr. Chauhan noted that appellant had presented with pain in the left lateral elbow with electric sensation, left forearm pain and tingling digits. Dr. Chauhan diagnosed left lateral epicondylitis with fracture of the radial head and left forearm extensor and flexor tendinitis and opined that appellant was totally disabled until November 20, 2010.

In a decision dated October 29, 2010, OWCP denied appellant's claim for compensation for total disability beginning June 6 to October 9, 2010 on the grounds that the evidence did not establish that his total disability was due to his accepted work injury.

Appellant requested an oral hearing which was held on March 8, 2011. In a November 5, 2010 report, Dr. Chauhan diagnosed left lateral epicondylitis with fracture of the radial head and left forearm tendinitis. He noted that appellant was returned to modified duties without keyboard use. Dr. Chauhan disagreed with Dr. Martinson's opinion and indicated that appellant had a significant sprain injury affecting the elbow and the period of total disability was appropriate. He noted that Dr. Martinson did not see or treat appellant at the time of injury when he was

dysfunctional and believed that he was totally disabled from the date of injury to November 4, 2010. In reports dated November 19, 2010 to April 13, 2011, Dr. Chauhan diagnosed left lateral epicondylitis with fracture of the radial head, left forearm tendinitis and cervical symptoms causally related to the April 15, 2010 work injury. He stated that appellant was returned to modified duties without keyboard use. On March 16, 2011 Dr. Chauhan opined that appellant reached maximum medical improvement. In a November 2, 2010 report, Dr. Toby Johnson, a Board-certified orthopedist, diagnosed cervical radiculopathy, cubital tunnel syndrome and carpal tunnel syndrome. He recommended a splint and arm brace.

In a decision dated May 12, 2011, an OWCP hearing representative affirmed the October 29, 2010 decision.

On August 3, 2011 appellant requested reconsideration. He submitted reports from Dr. Jacob E. Tauber, a Board-certified orthopedic surgeon, dated April 28 to June 23, 2011. Dr. Tauber diagnosed bilateral carpal tunnel syndrome, bilateral cubital tunnel syndrome and cervical radiculopathy. He opined that appellant performed repetitive motion duties at work that caused lateral epicondylitis, bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome. Dr. Tauber further noted that, with regard to the cervical spine, appellant performed extensive duties that caused wear and tear leading to cervical radiculopathy. On June 23, 2011 he reviewed Dr. Martinson's report and disagreed with her findings. Dr. Tauber indicated that the April 15, 2010 sprain/strain of the elbow was not resolved and that by protecting his left arm appellant aggravated other conditions of the left arm and caused a consequential injury to the right arm. He opined that appellant was totally disabled from June 6 to October 9, 2010 from the April 15, 2010 injury. Also submitted were reports from Dr. Chauhan dated June 7 to August 19, 2011 who diagnosed left lateral epicondylitis with fracture of the radial head and left forearm extensor and flexor tendinitis. He opined that appellant was returned to modified duties.

In a decision dated November 2, 2011, OWCP denied modification of the prior decision.

On February 9 and February 13, 2012 appellant requested reconsideration. He submitted reports from Dr. Chauhan dated October 27, 2011 to March 30, 2012. Dr. Chauhan noted that appellant was totally disabled from April 15 to November 3, 2010 so that the fracture of the left radial head would heal. Appellant had delayed healing with severe left elbow pain from the fracture. Dr. Chauhan opined that the period of disability due to the April 15, 2010 injury was reasonable and appropriate and that appellant could not have performed modified work because of the pain. In a January 9, 2012 report, Dr. Tauber asserted that appellant's elbow did not resolve and that he sustained a consequential injury to his right upper extremity by protecting his left arm.

In a decision dated May 11, 2012, OWCP denied modification of the prior decision.

LEGAL PRECEDENT

A claimant has the burden of proving by a preponderance of the evidence that he or she is disabled for work as a result of an accepted employment injury and submit medical evidence for

each period of disability claimed.³ Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues.⁴ The issue of whether a particular injury causes disability for work must be resolved by competent medical evidence.⁵ To meet this burden, a claimant must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting a causal relationship between the alleged disabling condition and the accepted injury.⁶

The Board 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 claimed. To do so, would essentially allow an employee to self-certify his or her disability and entitlement to compensation. For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.⁷

ANALYSIS

OWCP accepted appellant's claim for left lateral epicondylitis. Appellant stopped work on April 27, 2010. He received continuation of pay and then claimed wage-loss compensation from June 6 to October 9, 2010. The Board finds that the medical evidence is insufficient to establish that disability beginning June 6, 2010 was caused or aggravated by the accepted left lateral epicondylitis.⁸

Dr. Chauhan, in reports from May 12 to September 3, 2010, noted appellant's symptoms and diagnosed left lateral epicondylitis with possible fracture of the radial head and left forearm extensor and flexor tendinitis. He noted causation was due to the April 15, 2010 injury and opined that, because of the dysfunction and pain of the left elbow as well as x-rays showing a possible fracture of the radial head, appellant was totally disabled through October 6, 2010. On July 21, 2010 Dr. Chauhan advised that appellant was unable to perform any activities using the left arm due to pain from the fracture. Although these notes indicated that appellant was disabled, Dr. Chauhan failed to provide a reasoned opinion explaining why appellant was disabled for any particular period due to the accepted work injury of left lateral epicondylitis. As noted, part of appellant's burden of proof includes submitting rationalized medical evidence which supports a causal relationship between the alleged disabling condition and the accepted injury. Other reports from Dr. Chauhan dated November 4, 2010 to March 30, 2012 noted

³ See *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁴ *Id.*

⁵ See *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁶ C.S., Docket No. 08-2218 (issued August 7, 2009).

⁷ *Sandra D. Pruitt*, 57 ECAB 126 (2005).

⁸ As records from the employing establishment indicate that appellant received continuation of pay from April 27 to June 10, 2010, he would be precluded by OWCP regulations from receiving wage-loss compensation from June 6 to 10, 2010, as he may not received wage-loss compensation for a period in which he also received continuation of pay. See 20 C.F.R. § 10.401(a).

diagnoses and periods of disability. He noted that appellant was returned to modified duties without keyboard use. Dr. Chauhan disagreed with Dr. Martinson's opinion and indicated that appellant had a significant sprain injury affecting the elbow and he was totally disabled during the period at issue. In a December 13, 2011 report, he noted that appellant was placed on temporary total disability from April 15 to November 3, 2010 due to the fracture of the left radial head. Dr. Chauhan opined that the period of disability given to appellant in relation to the April 15, 2010 injury was reasonable and he could not have performed modified work because of the pain. However, he did not provide any medical rationale⁹ explaining the reasons why appellant was totally disabled on or after June 9, 2010 because of his accepted left lateral epicondylitis. Additionally, the Board notes that OWCP did not accept appellant's claim for a fractured left radial head. Therefore, these reports are insufficient to meet his burden of proof.

Reports from Dr. Tauber dated April 28, 2011 to January 9, 2012 diagnosed bilateral carpal tunnel syndrome, bilateral cubital tunnel syndrome and cervical radiculopathy. He opined that appellant performed repetitive motion duties in the course of employment which caused the lateral epicondylitis, bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome. On June 23, 2011 Dr. Tauber indicated that the April 15, 2010 sprain/strain of the elbow had not resolved; rather, appellant continued to have residuals and by protecting his left arm, aggravated other conditions of the left upper extremity and caused a consequential injury to the right upper extremity. He opined that appellant was temporarily totally disabled from June 6 to October 9, 2010 as a result of the injury of April 15, 2010. Although Dr. Tauber noted appellant's symptoms of left lateral epicondylitis and advised that appellant was unable to work beginning June 6, 2010, he did not specifically explain why appellant had any employment-related disability beginning June 6, 2010 causally related to his accepted left lateral epicondylitis. Other medical reports submitted by appellant are insufficient as they do not specifically address how the accepted left lateral epicondylitis caused the claimed disability.

To further develop the claim OWCP referred appellant to Dr. Martinson for a second opinion examination. It asked her to address the period of disability caused by the accepted condition. On September 20, 2010 Dr. Martinson opined that appellant's radial head finding was not caused by the April 15, 2010 injury as the imaging evidence showed that this was an old fracture. She opined that there was absolutely no indication that appellant's recent accepted elbow injury would have prevented him from returning to the preinjury job. In an October 11, 2010 supplemental report, Dr. Martinson reviewed an EMG and indicated that nothing in the study showed anything that would preclude him from returning to work at his previous job using the modifications made for him in the past. She opined that appellant had fully recovered from the mild elbow injury and was capable of performing his job with no further treatment required. Dr. Martinson indicated that at the most appellant would have been totally disabled for a maximum of five days due to the accepted condition.

The Board finds that Dr. Martinson's reports represents the weight of the medical evidence and that OWCP properly relied on her reports when they denied appellant's claim for compensation for the period of June 6 to October 9, 2010. Dr. Martinson's opinions are based on

⁹ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

proper factual and medical history as she reviewed a statement of accepted facts and his prior medical treatment and test results. She also related her comprehensive examination findings in support of her opinion that at best appellant would have been totally disabled from this injury for a maximum of five days. Dr. Martinson indicated that appellant did not have residuals from the accepted left lateral epicondylitis. There is no contemporaneous medical evidence of equal weight supporting total disability from June 6 to October 9, 2010 due to the accepted work injury.

On appeal, appellant asserts that the matter should be referred to an impartial specialist as there is a conflict of opinion between Dr. Martinson and Drs. Chauhan and Tauber with regard to whether he was totally disabled for the period at issue.¹⁰ As noted above, Drs. Chauhan or Tauber failed to provide any medical rationale¹¹ explaining why appellant was totally disabled on or after June 9, 2010 because of his accepted left lateral epicondylitis.¹²

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 his disability for the period of June 6 to October 9, 2010 is causally related to the accepted employment injury.

¹⁰ See 5 U.S.C. § 8123.

¹¹ *Supra* note 9.

¹² See *John D. Jackson*, 55 ECAB 465 (2004) (a simple disagreement between two physicians does not, of itself, establish a conflict; to constitute a conflict of medical opinion, the opposing physicians' reports must be of virtually equal weight and rationale).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 11, 2012 is affirmed.

Issued: January 10, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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