

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

C.L., Appellant)

and)

U.S POSTAL SERVICE, PROCESSING &)
DISTRIBUTION CENTER, Akron, OH,)
Employer)

**Docket No. 12-1483
Issued: January 9, 2013**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
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 June 28, 2012 appellant, through her attorney, filed a timely appeal from a May 23, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 established entitlement to wage-loss compensation from August 6 to October 23, 2011.

FACTUAL HISTORY

On January 11, 2010 appellant, then a 56-year-old clerk, filed a traumatic injury claim (Form CA-1) for her left shoulder after she lifted a tray of mail on January 5, 2010. She did not

¹ 5 U.S.C. § 8101 *et seq.*

stop working. In a letter dated April 15, 2011, appellant stated that her left shoulder hurt in December 2010 and lifting caused pain. In a report dated March 17, 2011, Dr. David Fantelli, a Board-certified internist, listed a history and noted left shoulder pain. He diagnosed acromioclavicular (AC) sprain/strain.

By letter dated May 9, 2011, OWCP accepted left AC sprain. A magnetic resonance imaging (MRI) scan report dated June 10, 2011 diagnosed a complex rotator cuff tear.

In a report dated July 14, 2011, Dr. Steven Jackson, an osteopath, provided a history of injury and results on examination. Appellant had significant pain with activity. Dr. Jackson diagnosed AC joint arthritis, rotator cuff syndrome, MRI scan evidence for partial thickness articular surface tears of the supraspinatus and infraspinatus as well as subscapularis rotator cuff musculature of her left shoulder and left shoulder AC joint sprain. He discussed conservative treatment with appellant, including corticosteroid injections and physical therapy.

By report dated August 5, 2011, Dr. Jackson stated that appellant's "physical exam[ination] remains unchanged from her previous office visit." He reported that she stated that she could not perform light-duty work, and he had previously recommended that she be restricted to no overhead work and 20 pounds lifting. Dr. Jackson diagnosed left shoulder impingement syndrome, AC joint osteoarthritis, rotator cuff tear and AC joint sprain.

The record contains two work status notes from Dr. Jackson dated August 5, 2011. Dr. Jackson advised that appellant be off work until October 10, 2011, unless there was light-duty work available. He stated that she had a five-pound lifting restriction with no overhead work. On September 8, 2011 Dr. Jackson kept appellant off work until October 10, 2011.

Appellant stopped work and submitted claims for compensation (Form CA-7) from August 6 through October 23, 2011. In a letter dated October 14, 2011, the employing establishment stated that it did not send her home because no work was available. On October 5, 2011 Dr. Jackson stated that appellant had elected to undergo left shoulder surgery on October 24, 2011.

By decision dated November 2, 2011, OWCP denied compensation for wage loss from August 6 to October 23, 2011. It found that the medical evidence was insufficient to establish employment-related disability. On November 2, 2011 OWCP accepted appellant's claim for left shoulder osteoarthritis, left shoulder joint stiffness, left bursae and tendon disorder and left rotator cuff rupture. Appellant received compensation for wage loss as of October 24, 2011.

Appellant requested a hearing before an OWCP hearing representative, which was held on March 16, 2012. At the hearing, she asserted that there was no limited duty available for the period claimed. Appellant submitted additional medical evidence relevant to left shoulder surgery to be performed on April 9, 2012. In a report dated March 14, 2012, Dr. Jackson reviewed her medical treatment. He noted that on August 5, 2012 appellant received a corticosteroid injection. Dr. Jackson added that her "work release was updated from no overhead lifting and no lifting of weights greater than 20 pounds to her left upper extremity to completely off work until [September 19, 2011] secondary to unavailability of a return to work with restrictions for the patient."

By decision dated May 23, 2012, OWCP's hearing representative affirmed the November 2, 2011 decision. The hearing representative found that the medical evidence was insufficient to establish the claim.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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.³ 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.⁴

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.⁵ To establish a causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.⁶ The opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship.⁷

ANALYSIS

In the present case, appellant underwent left shoulder surgery on October 24, 2011 and OWCP has paid compensation commencing on the date of surgery. The issue is the period from August 6 to October 23, 2011, prior to the date of surgery. Appellant had continued to work until August 2, 2011, when she used sick leave and then claimed compensation from August 6, 2011. It appears from the record that she was working a modified-duty position when she stopped working. Dr. Jackson stated that he had placed restrictions of no overhead work and a 20-pound lifting restriction prior to his August 5, 2011 report, although the July 14, 2011 report of record provided no specific work restrictions. OWCP's hearing representative stated that appellant had been "accommodated prior to her work stoppage." With respect to light-duty work, there was no evidence that light duty was withdrawn on or about August 6, 2011. The employing establishment stated that appellant was not sent home due to a lack of work, but had claimed total disability.

² *Id.* at §§ 8101-8193.

³ *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ 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).

⁵ *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁶ *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

⁷ *Leslie C. Moore*, 52 ECAB 132 (2000).

Dr. Jackson stated in his August 5, 2011 report that he was placing appellant off work until September 19, 2011. In a note dated September 8, 2011, he indicated that she should be off work until October 10, 2011. The record also contains a note stating that appellant could work through October 10, 2011 with restrictions of no overhead lifting and a five-pound lifting restriction. It is, as noted above, appellant's burden to establish the period of disability. The medical evidence of record lacks any supporting medical rationale as to the period of disability. Dr. Jackson stated on August 5, 2011 that appellant's examination was unchanged from his previous examination on July 14, 2011. He does not explain why her employment-related condition now prevented her from performing her current job duties. Dr. Jackson reported that appellant had stated that she could not perform light-duty work, which is of little probative value. A claimant's own statement as to perceived disability does not establish entitlement to compensation.⁸ Dr. Jackson must support an opinion as to disability and he does not provide a rationalized medical opinion on the issue.

In his March 14, 2012 report, Dr. Jackson stated that he changed appellant's work status from no overhead lifting and a 20-pound lifting restriction to total disability from August 6 to September 19, 2011 due to "unavailability of a return to work with restrictions." He does not clearly explain his statement. Appellant asserted at the March 16, 2012 hearing that no light-duty work was available. However, there was no probative evidence of record that any existing light-duty job was unavailable. The medical issue is whether the evidence establishes that there was an employment-related condition causing disability for the current job. To the extent that Dr. Jackson is asserting that there was a change in appellant's employment-related work restrictions on August 5, 2011, he again did not provide any medical rationale explaining the basis for a change.

The September 8, 2011 note from Dr. Jackson does not provide any medical rationale with respect to disability through October 10, 2011. There is no medical evidence discussing disability for work from October 11 to 23, 2011. Based on a review of the medical evidence, the Board finds that appellant has not established an employment-related disability from August 6 to October 23, 2011.

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 established entitlement to wage-loss compensation from August 6 to October 23, 2011.

⁸ See *supra* note 5.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 23, 2012 is affirmed.

Issued: January 9, 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