

On appeal, appellant's attorney contends that the decision was contrary to fact and law.

FACTUAL HISTORY

On February 4, 2009 appellant, then a 47-year-old immigration information officer, filed an occupational disease claim (Form CA-2) alleging left arm, hand, wrist and finger conditions due to factors of her federal employment. OWCP accepted the claim for left carpal tunnel syndrome.³

In a September 28, 2011 report, Dr. Jacob Tauber, a Board-certified orthopedic surgeon, advised that appellant had pain in her right shoulder and left hand. He found significant pain, numbness and tingling in the left hand and a positive Tinel's sign. Dr. Tauber opined that appellant was temporarily totally disabled.

OWCP authorized left carpal tunnel surgery which appellant underwent on January 12, 2012.

Appellant filed claims for compensation (Form CA-7s) for the following periods: December 19 to 31, 2011, January 2 to 13 and January 16 to 28, 2012. She submitted a January 6, 2012 chest x-ray which revealed no significant acute process and a January 6, 2012 preoperative medical clearance report for the left carpal tunnel release surgery.

OWCP authorized disability compensation from January 12 to 28, 2012 due to appellant's temporary total disability due to surgery.

By letter dated February 6, 2012, OWCP requested additional medical evidence to establish appellant's disability for work from December 19, 2011 through January 11, 2012. It allotted 30 days for submission. Subsequently, appellant submitted pharmaceutical reports from Dr. Tauber dated January 12 and 26, 2012.

By decision dated March 23, 2012, OWCP denied appellant's claim for disability from December 19, 2011 through January 11, 2012 on the grounds that the medical evidence submitted was not sufficient to support total disability due to the accepted employment injury.

On March 28, 2012 appellant requested reconsideration and submitted physical therapy notes dated January 24 through March 27, 2012.

In a February 13, 2012 report, Dr. Tauber stated that appellant remained temporarily totally disabled. Although appellant's surgery was performed on January 12, 2012, as of December 19, 2011 she was unable to carry out any fine function or gripping or grasping with her hand, as her pain had progressed to the point where she was unable to function. Dr. Tauber stated that she had severe carpal tunnel identified intraoperatively due to the thickening of the ligament and, therefore, her account was corroborated by the intraoperative findings. He

³ Appellant filed claims for disability compensation for the dates December 21, 2009 and February 17, 2011. By decisions dated May 19, 2010 and June 22, 2011, OWCP denied the claims on the basis that the medical evidence submitted was not sufficient to support temporary total disability on the dates claimed.

concluded that appellant had been disabled since December 19, 2011. On March 15, 2012 Dr. Tauber indicated that she reported that her long and small fingers of her left hand were triggering and she had continuing pain and weakness.

By decision dated June 29, 2012, OWCP denied modification of the March 23, 2012 decision.

LEGAL PRECEDENT

Section 8102(a) of FECA⁴ 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.”⁵ This meaning, for brevity, is expressed as disability for work.⁶ 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.⁷ 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.⁸

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.⁹

ANALYSIS

The Board finds that appellant has not established that she was disabled for the period December 19, 2011 through January 11, 2012 causally related to her employment injury. While OWCP accepted that she sustained an employment injury, appellant bears the burden to establish through medical evidence that she was disabled during the claimed time periods and that her

⁴ 5 U.S.C. § 8102(a).

⁵ 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).

⁶ *See Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

⁷ *See William A. Archer*, 55 ECAB 674 (2004).

⁸ *See Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

⁹ *Id.*

disability was causally related to her accepted injury.¹⁰ The Board finds that she submitted insufficient rationalized medical evidence that addresses her left carpal tunnel syndrome caused her to be disabled for work from December 19, 2011 through January 11, 2012, prior to surgery.

Dr. Tauber opined generally that appellant was temporarily totally disabled. Although her left carpal tunnel surgery was performed on January 12, 2012, appellant was unable to carry out any fine function or gripping or grasping with her hand as of December 19, 2011. Dr. Tauber explained that she had severe carpal tunnel identified intraoperatively due to the thickening of the ligament and her history was corroborated by the intraoperative findings. He reiterated that appellant had been disabled since December 19, 2011. Although Dr. Tauber opined that she was disabled, he failed to provide a fully rationalized medical explanation as to the relationships between the reported residuals and the accepted condition of left carpal tunnel syndrome. He did not address how the carpal tunnel condition prevented appellant from performing her federal employment duties. Dr. Tauber did not address her work activities and appeared to base his opinion on “her history.” Appellant has not met her burden of proof to establish that she was disabled for work due to the employment injury.

The physical therapy notes dated January 24 through March 27, 2012 do not constitute medical evidence as they were not prepared by a physician.¹¹ As such, the Board finds that appellant did not meet her burden of proof with these submissions.

Appellant has not submitted any rationalized medical evidence establishing that she was disabled during the period December 19, 2011 through January 11, 2012 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.

On appeal, counsel contends that the decision was contrary to fact and law. For the reasons stated above, the Board finds that counsel argument is not substantiated.

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 her disability for the period December 19, 2011 through January 11, 2012 was causally related to her employment injury.

¹⁰ See *supra* notes 6 and 7. See also *V.P.*, Docket No. 09-337 (issued August 4, 2009).

¹¹ Physical therapists are not physicians under FECA. See 5 U.S.C. § 8101(2).

ORDER

IT IS HEREBY ORDERED THAT the June 29, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 18, 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