



## **FACTUAL HISTORY**

The case was before the Board on a prior appeal.<sup>2</sup> In a May 21, 2012 decision, the Board noted that, although appellant had filed a claim for a recurrence of disability as of November 29, 2010,<sup>3</sup> the claim was properly developed one for a new injury. Appellant alleged that she began a new position in August 2010 that required repetitive lifting of trays, as well as loading and unloading conveyor belts. The Board found that the medical evidence from Dr. Eugene Cherny, a Board-certified plastic surgeon with a subspecialty in hand surgery, was sufficient to require further development of the evidence. The history of the case as provided in the Board's prior decision is incorporated herein by reference.

The record indicates that on March 2, 2011 the employing establishment offered appellant a light-duty position. As of May 23, 2011 appellant was working light duty. In a note dated October 17, 2011, Dr. Cherny stated "no use of bilateral extremities, no work until released from medical care." On October 26, 2011 appellant underwent surgery of the left arm, described by Dr. Cherny as multiple nerve decompressions. In a report dated November 3, 2011, Dr. Cherny stated that appellant had been diagnosed with bilateral carpal tunnel, cubital tunnel, ulnar tunnel and pronator syndromes and these conditions were causally related to her repetitive activity at work. On December 28, 2011 appellant underwent right arm surgery.

On August 7, 2012 OWCP stated that the claim was accepted for the following bilateral syndromes: carpal tunnel, cubital tunnel, ulnar tunnel and pronator.<sup>4</sup> By letter dated September 27, 2012, it stated that the claim was also accepted for left keloid scar and injury to the right ulnar nerve.<sup>5</sup>

On September 27, 2012 appellant submitted a claim for compensation (Form CA-7) from October 17, 2011 to March 6, 2012. The record indicates that OWCP paid compensation for wage loss commencing October 26, 2011, the date of the left arm surgery.

By decision dated December 13, 2012, OWCP denied appellant's claim for disability commencing October 17, 2011. It found that the medical evidence did not establish an employment-related disability.

## **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>6</sup> has the burden of establishing the essential elements of his or her claim, including that any disability or specific condition for which

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<sup>2</sup> Docket No. 12-234 (issued May 21, 2012).

<sup>3</sup> Appellant had a filed a claim for intermittent compensation commencing June 21, 1996 that was accepted for bilateral carpal tunnel syndrome under OWCP File No. xxxxxx614.

<sup>4</sup> There is no indication OWCP had referred appellant for a second opinion examination. The record indicates OWCP subsequently developed the medical evidence with respect to a permanent impairment.

<sup>5</sup> The letter also stated that the previously accepted conditions were bilateral carpal tunnel syndrome, bilateral ulnar nerve lesion and bilateral "other mononeuritis of upper limb."

<sup>6</sup> 5 U.S.C. §§ 8101-8193.

compensation is claimed is causally related to the employment injury.<sup>7</sup> 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.<sup>8</sup>

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.<sup>9</sup> Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work. When a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that he or she hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.<sup>10</sup>

To be of probative value, the medical evidence must be rationalized. Rationalized medical evidence is medical evidence that is based on a complete factual and medical background of the claimant, one of reasonable medical certainty and supported by medical rationale explaining the opinion offered.<sup>11</sup>

### ANALYSIS

Appellant filed Form CA-7 claims for compensation from October 17, 2011 to March 6, 2012. The record indicates that OWCP paid compensation for wage loss commencing October 26, 2011, the date appellant underwent left arm surgery. Therefore the issue is limited to a claim for compensation from October 17 to 25, 2011.

In this regard, Dr. Cherny provided a brief note dated October 17, 2011 stating that appellant was disabled until released from medical care. He did not provide any history, results on examination or opinion on causal relationship between her disability and federal employment. The acceptance of the October 26, 2011 surgery as employment related does not, by itself, establish a period of employment-related disability prior to the surgery.<sup>12</sup> Dr. Cherny did not provide a rationalized medical opinion as to the nature or extent of employment-related disability commencing October 17, 2011.

The additional reports from Dr. Cherny do not discuss the specific period from October 17 to 25, 2011 or provide a rationalized medical opinion establishing that appellant had

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<sup>7</sup> *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>8</sup> 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).

<sup>9</sup> *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>10</sup> *Id.*

<sup>11</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>12</sup> *See R.W.*, Docket No. 12-282 (issued June 12, 2012).

an employment-related disability for the light-duty position. Based on the evidence of record, the Board finds that appellant did not establish an employment-related disability from October 17 to 25, 2011. It is appellant's burden of proof to establish the claim, and for the reasons stated, she did not meet her burden of proof.

On appeal, appellant states that her claim is a recurrence of a previous injury, that she was sent to an employing establishment physician and OWCP would not accept her finding. It is not clear from the record the employing establishment physician to which she is referring. There was some development of the medical evidence with respect to a schedule award, but that issue is not previously before the Board on this appeal. As to the information needed to establish an employment-related disability from October 17 to 25, 2011, the medical evidence must document disability for the period claimed and provide a rationalized opinion as to causal relationship between disability and federal employment. Appellant may submit new evidence or argument with a written application 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 an employment-related disability from October 17 to 25, 2011.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 13, 2012 is affirmed.

Issued: June 11, 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