

FACTUAL HISTORY

This case has previously been before the Board. In an August 8, 2005 decision, the Board found that appellant did not meet his burden of proof to establish that he was entitled to wage-loss compensation for the period November 14, 2003 to January 21, 2004 causally related to his accepted right lateral epicondylitis and affirmed OWCP decisions dated June 1 and November 8, 2004.² The law and facts of the previous Board decision are incorporated herein by reference.

In the interim, by decision dated February 11, 2005, OWCP denied appellant's claim for wage-loss compensation beginning January 4, 2005 and continuing. On September 13, 2006 an OWCP hearing representative affirmed the February 11, 2005 decision.

On February 5, 2012 appellant filed a recurrence claim, alleging that the recurrence occurred on June 1, 2003. The injury compensation specialist noted on the claim form that he worked full duty until September 29, 2003 and that thereafter his restrictions were accommodated until he was dismissed for cause effective November 13, 2003.

In letters dated February 14 and 24, 2012, OWCP informed appellant of the evidence needed to support his recurrence claim. Appellant did not respond and, in a March 15, 2012 decision, OWCP denied his claim.

On April 16, 2012 appellant requested reconsideration and submitted reports dated March 29, 2012 in which Dr. Theodore Boehm, Board-certified in family and sports medicine, noted a history that appellant was injured in June 2003 and had complaints of right elbow pain. Dr. Boehm's report indicated that he was providing physical examination findings for the left elbow. He diagnosed right elbow pain secondary to chronic lateral epicondylitis and radial tunnel syndrome. Dr. Boehm advised that appellant had no physical restrictions.

Additional medical evidence relevant to the claimed periods of disability includes a February 3, 2004 report in which Dr. Mehdi N. Adham, Board-certified in plastic and hand surgery, diagnosed radial tunnel syndrome and lateral epicondylitis. Dr. Adham advised that appellant could continue working regular duty. He recommended elbow surgery, performed on April 18, 2004. Dr. Robert S. Unsell, a hand surgeon, performed additional right elbow surgery on November 16, 2004. In reports dated January 3 and 31, 2005, he reported appellant's postoperative care, noting that his main complaint was weakness. Dr. Unsell advised that appellant could return to light duty with a lifting restriction of 10 pounds initially, raised to 20 pounds on January 31, 2005.

² Docket No. 05-758 (issued August 8, 2005). On October 9, 2003 appellant, a machinist, filed an occupational disease claim, alleging that he sustained employment-related tennis elbow. He did not stop work and his supervisor noted that he began working limited duty on September 29, 2003. On November 6, 2003 OWCP accepted that appellant sustained work-related right lateral epicondylitis. Appellant was removed for cause on November 13, 2003. He had right elbow surgery on March 18 and November 16, 2004 and received wage-loss compensation for the period March 18, 2004 through January 3, 2005. Appellant filed a claim for compensation thereafter.

By report dated November 8, 2005, Dr. Robert J. Gunderson, a Board-certified orthopedic surgeon, noted the history of injury and appellant's past medical history. He reported appellant's complaint of right elbow pain and provided physical examination findings. Dr. Gunderson advised that appellant was status post tennis elbow release, doing well and status post radial nerve decompression, doing okay. He indicated that appellant needed no further surgery and recommended electromyography (EMG) studies, a functional capacity evaluation, an impairment rating and vocational rehabilitation. On May 10, 2006 Dr. Gunderson wrote appellant, stating that he would no longer treat him because appellant had not followed the physician's recommendation.

In a November 14, 2006 report, Dr. J. Arden Blough, a Board-certified family physician, noted the history of injury and appellant's medical history. He provided physical examination findings and diagnosed right lateral epicondylitis, radial and cubital tunnel syndrome, status post right epicondylectomy and status post revision of right epicondylectomy. Dr. Blough advised that appellant had ongoing complaints of pain, weakness and loss of strength in the right arm/elbow which was supported by clinical examination. He recommended an EMG study and a functional capacity evaluation. A February 15, 2007 EMG study was consistent with a mild right median neuropathy at the wrist.

In reports dated October 1, 2007, Dr. Adham noted appellant's complaint of problems with right shoulder range of motion and pain and discomfort. He diagnosed right shoulder pain and recommended a magnetic resonance imaging (MRI) scan study of the shoulder and advised that appellant could return to regular work. An October 24, 2007 right shoulder MRI scan study demonstrated mild impingement with mild tendinosis of the supraspinatus tendon. On October 30, 2007 Dr. Adham noted that appellant indicated that his right elbow pain had subsided but that he had significant right shoulder pain. He diagnosed right shoulder pain and referred appellant to Dr. Anthony L. Cruse, a Board-certified osteopath specializing in orthopedic surgery, for follow-up care. In a January 9, 2008 report, Dr. Cruse noted that appellant injured his right shoulder on June 1, 2003. He diagnosed right shoulder pain and advised that appellant could perform regular work.

In a merit decision dated May 30, 2012, OWCP denied appellant's claim for disability compensation on the grounds that the medical evidence was insufficient to establish the claim.

LEGAL PRECEDENT

Under FECA, the term "disability" is defined as incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.³ Disability is thus not synonymous with physical impairment which may or may not result in an incapacity to earn the wages. An employee who has a physical impairment causally related to a federal employment injury but who nonetheless has the capacity to earn wages he or she was receiving at the time of injury has no disability as that term is used in FECA,⁴ and whether a particular injury causes an employee disability for employment is a medical issue which must be resolved

³ See *Prince E. Wallace*, 52 ECAB 357 (2001).

⁴ *Cheryl L. Decavitch*, 50 ECAB 397 (1999); *Maxine J. Sanders*, 46 ECAB 835 (1995).

by competent medical evidence.⁵ Whether a particular injury causes an employee to be disabled for work and the duration of that disability, are medical issues that must be proved by a preponderance of the reliable, probative and substantial medical evidence.⁶

The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.⁷ Furthermore, it is well established that medical conclusions unsupported by rationale are of diminished probative value.⁸

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁹ The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.¹⁰

ANALYSIS

The Board finds that appellant did not meet his burden of proof to establish that he was totally disabled for the periods January 21 to March 18, 2004 and from January 4, 2005 and continuing due to the accepted right lateral epicondylitis.

Appellant filed a recurrence claim, stating that he sustained a recurrence of disability on June 3, 2003. The record supports that he did not stop work until November 13, 2003 when he was removed for cause. The Board previously found that appellant was not entitled to wage-loss compensation for the period November 14, 2003 to January 21, 2004 causally related to his accepted right lateral epicondylitis.¹¹ In the absence of further review by OWCP on the issue addressed by the prior Board decision, the subject matter reviewed was *res judicata* and not subject to further consideration by the Board.¹²

Appellant had right elbow surgery on March 18 and November 16, 2004 and received wage-loss compensation for the period March 18, 2004 through January 3, 2005. Thus, the issue

⁵ *Donald E. Ewals*, 51 ECAB 428 (2000).

⁶ *Tammy L. Medley*, 55 ECAB 182 (2003); see *Donald E. Ewals*, *id.*

⁷ *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁸ *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

⁹ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁰ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

¹¹ *Supra* note 2.

¹² *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

in this case is whether he is entitled to wage-loss compensation for the period January 21 to March 18, 2004 and beginning January 4, 2005 and continuing.

Regarding the period January 21 to March 18, 2004, in a February 3, 2004 report, Dr. Adham diagnosed radial tunnel syndrome and lateral epicondylitis, recommended surgery and advised that appellant could continue working regular duty. He performed right elbow surgery on March 18, 2004, when appellant began receiving wage-loss compensation.

Regarding the period beginning January 4, 2005 and continuing, none of the medical evidence of record indicates that appellant could not perform the modified duties he was performing when dismissed for cause on November 13, 2003. Neither a right wrist nor a right shoulder condition has been accepted as employment related. Therefore, the February 15, 2007 EMG study, the October 24, 2007 right shoulder MRI scan study, Dr. Adham's October 2007 reports and that of Dr. Cruse dated January 9, 2008 are of limited probative value as they are in regard to wrist and shoulder conditions.

Dr. Gunderson, who performed right elbow surgery on November 16, 2004, advised on January 3 and 31, 2005 that appellant could perform light duty. Appellant had been accommodated with light duty until dismissed for cause in November 2003. On November 8, 2005 Dr. Gunderson reported that appellant was doing well following right shoulder surgery and on May 10, 2006 dismissed appellant from his care because appellant would not follow the physician's recommendations.

In his November 14, 2006 report, Dr. Blough did not comment on appellant's work capabilities. There were no medical reports of record from the January 2008 report from Dr. Cruse, discussed above, or the March 29, 2012 report from Dr. Boehm. In the latter report, while Dr. Boehm diagnosed chronic lateral epicondylitis and radial tunnel syndrome, he also indicated that appellant had no physical restrictions.

The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.¹³ As there is no medical evidence of record that finds that appellant is totally disabled for the periods of claimed disability, he failed to establish entitlement to wage-loss compensation for the periods.

Finally, regarding appellant's argument on appeal that he is entitled to an impairment rating, the record before the Board does not contain a schedule award claim.

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.

¹³ *William A. Archer, supra* note 8.

CONCLUSION

The Board finds that appellant did not establish that he is entitled to disability compensation for the period January 21 to March 18, 2004 and from January 4, 2005 and continuing.

ORDER

IT IS HEREBY ORDERED THAT the May 30, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 11, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board