



## **FACTUAL HISTORY**

OWCP accepted that on October 28, 2011 appellant, then a 57-year-old supervisory collection representative, sustained a left shoulder strain when she tripped and bumped her left shoulder on a door frame at work.<sup>3</sup> She stopped work on October 31, 2011 and returned to regular work shortly thereafter. Appellant received compensation for periodic medical and physical therapy appointments and for intermittent periods of disability from work.

In January 13, 2012 report, Dr. Paul H. Steinfield, an attending orthopedic surgeon, noted that appellant reported that her left shoulder pain had not changed. On physical examination, appellant complained of tenderness over her left anterior shoulder capsule and periscapular muscle groups.

In a January 12, 2012 note, Dr. Richard J. Berger, an attending osteopath, stated that appellant could only work four hours a day for five days a week due to the condition caused by her work injury.

In a Claim for Compensation (Form CA-7) completed on March 7, 2012, appellant claimed that she was totally disabled from February 12 to 25, 2012.<sup>4</sup>

In a February 13, 2012 note, Dr. Eric Ratner, an attending Board-certified anesthesiologist, advised that appellant had a medical procedure and should stay off work from February 13 to 14, 2012. Appellant could return to work on February 15, 2012. In notes dated in February and March 2012, Dr. Berger noted that she should be off work from February 15 to 19, February 22 to 26 and February 27 to March 1, 2012. In a note dated March 9, 2011, Dr. Rocco Costabile, an attending Board-certified family practitioner, stated that appellant had been under his care since March 8, 2012 and could return to work on March 16, 2012.

In a March 30, 2012 letter, OWCP referenced appellant's filing of CA-7 forms and her submission of medical evidence indicating periods of total disability. It noted that she submitted a January 12, 2012 note positing that she could only work four hours a day for five days a week. OWCP stated that the medical evidence was more than 30 days old and was insufficient to support appellant's recent CA-7 forms. It stated:

“It appears your circumstances have changed and you are claiming a recurrence and so you must file a [r]ecurrence Form CA-2a and submit it to OWCP for adjudication.

“Until then, OWCP will not make any further [Form] CA-7 claims payments, unless they are for scheduled physician appointments and/or physical therapy related to your accepted condition.

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<sup>3</sup> The findings of November 3, 2011 magnetic resonance imaging testing of appellant's left shoulder showed minimal degenerative changes, but no fracture, dislocation or soft-tissue calcification.

<sup>4</sup> Appellant later filed a series of CA-7 forms claiming that she was totally disabled from February 26, 2012 and continuing.

“There is insufficient medical evidence in your file to date to accept a recurrence and you have not filed the proper claims form either, a [Form] CA-2a. You were previously paid through February 10, 2012 based on the January 12, 2012 medical evidence referred to herein. However, this is not sufficient to support any ongoing partial/total disability claims.

“You must file a [Form] CA-2a and complete it in its entirety. Then OWCP will adjudicate your [r]ecurrence. Until then, all future claims for partial and/or total disability as well as those already submitted and referenced herein, which were not paid for the reasons stated herein, remain under development until the recurrence is adjudicated.”

In a March 27, 2012 report, Dr. Ratner stated that appellant continued to complain of cervical pain.<sup>5</sup> In a March 30, 2012 note, Dr. Berger indicated that she should stay off work from March 5 to May 2, 2012.<sup>6</sup>

In a May 21, 2012 decision, OWCP denied appellant’s claim finding that she failed to establish total disability on or after February 12, 2012 due to her October 28, 2011 work injury. Regarding the reasons for denying the claim, it stated:

“Claimant submitted medical evidence dated January 12, 2012 from her physician, Dr. Berger, stating that she was capable of working 4 hrs/day and 5 days/week.

“On March 30, 2012 OWCP mailed claimant a letter informing her that the January 12, 2012 medical report from Dr. Berger was more than 30 days old and was insufficient to support temporary total disability which she claimed on a CA-7 and CA-7a [forms] had started on February 10, 2012.

“Claimant was also informed in the same March 30, 2012 letter that since it appeared, from the facts, that she was claiming a recurrence of temporary total disability she must file Form CA-2a. Claimant was given 30 days to submit the requested evidence. To date, there is no [Form] CA-2a in her file upon which OWCP may adjudicate her apparent recurrence. Therefore, as of this date, evidence is insufficient to support a recurrence of temporary total disability for work from February 13, 2012 and ongoing.”

### **LEGAL PRECEDENT**

The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence.

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<sup>5</sup> Dr. Ratner injected steroids into appellant’s neck on January 24 and February 28, 2012.

<sup>6</sup> In a February 6, 2012 note, Dr. Berger stated that appellant’s diagnoses due to “work-related injury” were C5-6 radiculopathy, cervical spinal stenosis and left shoulder strain with lateral tear. In a March 16, 2012 note, he diagnosed cervical radiculopathy. Dr. Berger indicated that appellant should be excused from work until she had a neurological evaluation and that she should be off work from March 5 to April 2, 2012.

Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the compensable employment factors. 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 claimant.<sup>7</sup>

Whether a particular employment injury causes disability for employment and the duration of that disability are medical issues, which must be proved by a preponderance of reliable, probative and substantial medical evidence.<sup>8</sup>

OWCP procedures provide that submission of an incorrect form is a technical error and it is improper for OWCP to deny a case on the basis that a claimant failed to submit the correct form.<sup>9</sup> The Board has held that enforcing technical requirements of pleading are inconsistent with the remedial purposes of FECA.<sup>10</sup>

In determining whether a claimant has discharged her burden of proof and is entitled to compensation benefits, OWCP is required by statute and regulation to make findings of fact.<sup>11</sup> OWCP procedures further specify that a final decision of OWCP must include findings of fact and provide clear reasoning which allows the claimant to "understand the precise defect of the claim and the kind of evidence which would tend to overcome it."<sup>12</sup> These requirements are supported by Board precedent.<sup>13</sup>

### ANALYSIS

OWCP accepted that appellant sustained a left shoulder strain. Appellant stopped work on October 31, 2011 and returned to regular work shortly thereafter. She received compensation for periodic medical and physical therapy appointments and for intermittent periods of disability from work. Appellant submitted several CA-7 forms alleging that she was totally disabled from February 12, 2012 and continuing.

In a May 21, 2012 decision, OWCP denied appellant's claim finding that she did not submit the proper claim Form CA-2a for recurrence of disability. It acknowledged that she was

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<sup>7</sup> See *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

<sup>8</sup> *W.D.*, Docket No. 09-658 (issued October 22, 2009).

<sup>9</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Development of Claims*, Chapter 2.800.3c(2) (June 2004).

<sup>10</sup> See *H.M.*, Docket No. 09-1548 (issued March 5, 2010); *Dale M. Newbigging*, 44 ECAB 551 (1993).

<sup>11</sup> 5 U.S.C. § 8124(a) provides that OWCP "shall determine and make a finding of facts and make an award for or against payment of compensation." 20 C.F.R. § 10.126 provides in pertinent part that the final decision of OWCP "shall contain findings of fact and a statement of reasons."

<sup>12</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.4 (March 1997).

<sup>13</sup> See *James D. Boller, Jr.*, 12 ECAB 45, 46 (1960).

claiming that she sustained total disability on or after February 12, 2012 due to her October 28, 2011 work injury. OWCP did not address any of the medical evidence submitted by appellant or explain why it was insufficient to establish that she had total disability on or after February 12, 2012 due to her October 28, 2011 work injury.

Appellant submitted numerous notes and reports indicating that she had total disability for various periods after February 12, 2012. OWCP may not deny her claim simply based on its belief that she filed an improper form.<sup>14</sup> Given that OWCP did not discuss the submitted medical evidence, appellant would not understand the precise defect of her claim and the kind of evidence which would tend to overcome it.<sup>15</sup>

The case shall be remanded to OWCP in order for it to properly review the medical evidence submitted by appellant in connection with her claim that she sustained total disability on or after February 12, 2012 due to her October 28, 2011 work injury. After such development as it deems necessary, OWCP shall issue an appropriate decision on this matter which contains adequate facts and findings.

### **CONCLUSION**

The Board finds the case is not in posture for decision regarding whether appellant met her burden of proof to establish that she sustained total disability on or after February 12, 2012 due to her October 28, 2011 work injury. The case is remanded for further development.

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<sup>14</sup> See *supra* notes 11 and 12.

<sup>15</sup> See *supra* note 13.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 21, 2012 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: March 26, 2013  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

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