



## **FACTUAL HISTORY**

This case was previously before the Board. In a decision dated January 10, 2013, the Board affirmed OWCP's April 23, 2012 decision, finding that appellant did not meet her burden of proof to establish that her disability commencing November 30, 2010 was causally related to her July 27, 2010 employment injury.<sup>2</sup> The facts of the case, as set forth in the prior decision, are incorporated by reference.<sup>3</sup>

By letter dated January 15, 2013, appellant, through her attorney, requested reconsideration and submitted an April 24, 2012 magnetic resonance imaging (MRI) scan of the right shoulder.<sup>4</sup>

In a July 30, 2012 report, Dr. John Janda, an orthopedic surgeon, reviewed appellant's medical history and noted that she was injured at work on July 27, 2010. He diagnosed status post right shoulder injury with chronic right shoulder impingement, prior MRI scan evidence on September 2, 2010 with inflammatory capsulitis, degenerative joint disease at the acromioclavicular (AC) joints, type II acromion and subacromial subdeltoid bursitis with a prior nonfull thickness bursal surface partial tear of the supraspinatus and infraspinatus in the conjoined anatomic area, status post gunshot wound to the left temple and left hand, nonemployment related, with resultant ulnar nerve damage in the left hand and clinical right cubital tunnel syndrome. Dr. Janda advised that appellant would benefit from an MRI scan arthrogram of the right shoulder in the labral area and a repeat electromyogram and nerve conduction study (EMG/NCS). He opined that appellant was "temporarily, totally disabled for this day only due to her visit" and released her to work effective July 31, 2012.

Appellant submitted reports dated August 22 through December 13, 2012 from Dr. Sanjay Chauhan, a Board-certified neurologist, who stated that she was seen for right shoulder pain with numbness in the right arm and hand after a July 27, 2010 employment injury. Dr. Chauhan reviewed appellant's medical history and noted that she returned to modified work in January 2012 with a restriction of no lifting, pushing or pulling. Appellant complained that in spite of the restrictions, repetitive data entry and typing was very difficult to do because of the right shoulder pain. Dr. Chauhan stated that her prior attending physician had given her a note to limit the typing, however, the employing establishment had not been honoring it and it caused frustration and increased pain in the shoulder. Upon examination, he found inspection of the right shoulder was negative, impingement sign was positive and range of motion was limited due

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<sup>2</sup> Docket No. 12-1265 (issued January 10, 2013). OWCP accepted that appellant, then a 37-year-old clerk, sustained right shoulder bursitis and tendinitis as a result of picking up a tub in the performance of duty on July 27, 2010. Appellant received continuation of pay (COP) for the period September 14 through October 8, 2010. OWCP paid temporary total disability compensation for the period October 9 through November 28, 2010.

<sup>3</sup> By letter dated January 9, 2013, OWCP notified appellant that her claim had been doubled and her new occupational disease claim under File No. xxxxxx425 was the master case file. Appellant's claim was accepted for aggravation of disorder of bursae and tendons in right shoulder region, unspecified. OWCP closed the case for medical treatment and indicated that appellant should notify all her medical providers that reports of treatment and medical authorization should be submitted under her new claim.

<sup>4</sup> On January 17, 2013 OWCP reiterated that appellant's case was closed for medical treatment since aggravation of her previously accepted condition was accepted under File No. xxxxxx425.

to pain. Dr. Chauhan diagnosed adjustment disorder with mixed anxiety and depressed mood, adjustment reaction with physical symptoms of weight gain, exacerbation of irritable bowel syndrome and insomnia causally related to a December 7, 2010 injury at work and right shoulder pain with partial thickness rotator cuff tear and impingement causally related to the July 27, 2010 employment injury. Dr. Chauhan opined that appellant was not capable of modified work and was temporarily totally disabled for the period August 22, 2012 through January 26, 2013. He further opined that appellant had not reached maximum medical improvement and recommended surgery.

In a November 3, 2012 report, Dr. Peter Simonian, a Board-certified orthopedic surgeon, obtained a history that appellant was injured at work on July 27, 2010 and was still symptomatic. He diagnosed symptomatic impingement, symptomatic AC joint arthritis and partial thickness rotator cuff tear versus tendinitis. Dr. Simonian indicated that the plan for appellant was to proceed with decompression and debridement, treatment of any rotator cuff or labral pathology in either arthroscopic or mini-open fashion and distal clavicle excision.

By decision dated April 12, 2013, OWCP denied modification of its April 23, 2012 decision.

### **LEGAL PRECEDENT**

Section 8102(a) of FECA<sup>5</sup> 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.”<sup>6</sup> This meaning, for brevity, is expressed as disability for work.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup>

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

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<sup>5</sup> 5 U.S.C. § 8102(a).

<sup>6</sup> 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).

<sup>7</sup> *See Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

<sup>8</sup> *See William A. Archer*, 55 ECAB 674 (2004).

<sup>9</sup> *See Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

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.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has not established that she was disabled commencing November 30, 2010 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 disability was causally related to her accepted injury.<sup>11</sup> The Board finds that appellant submitted insufficient medical evidence explaining how the employment injury materially worsened or aggravated her right shoulder conditions and caused her to be disabled for work beginning November 30, 2010.

Dr. Chauhan diagnosed right shoulder pain with partial thickness rotator cuff tear and impingement causally related to the July 27, 2010 employment injury. He noted that appellant returned to modified work in January 2012 with a restriction of no lifting, pushing or pulling at all. Appellant complained that in spite of the restrictions, the repetitive data entry and typing was difficult to perform because of her right shoulder pain. Upon examination, Dr. Chauhan found inspection of the right shoulder was negative, impingement sign was positive and range of motion was limited due to pain. He opined that appellant was not capable of modified work and was temporarily totally disabled for the period August 22, 2012 through January 26, 2013. Dr. Chauhan did not specifically address the issue of her disability commencing November 30, 2010. The Board has held that when a physician's statement regarding an employee's ability to work consists only of a repetition of the employee's complaints that she hurts too much to work without objective signs of disability being shown, the physician has not presented a rationalized medical opinion on the issue of disability or a basis for payment of compensation.<sup>12</sup> Dr. Chauhan provided a firm diagnosis and opined that appellant was disabled, in 2012 but failed to provide a rationalized medical opinion on her disability commencing in 2010 or how the residuals of the employment injury prevented her from continuing in her federal employment. The Board finds that Dr. Chauhan's reports are not sufficient to establish appellant's claim.

On July 30, 2012 Dr. Janda diagnosed status post right shoulder injury with chronic right shoulder impingement, prior MRI scan evidence on September 2, 2010 with inflammatory capsulitis, degenerative joint disease at the AC joints, type II acromion and subacromial subdeltoid bursitis with a prior nonfull thickness bursal surface partial tear of the supraspinatus and infraspinatus in the conjoined anatomic area, status post gunshot wound to the left temple and left hand, nonemployment related, with resultant ulnar nerve damage in the left hand and clinical right cubital tunnel syndrome. He indicated that appellant would benefit from an MRI

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

<sup>11</sup> See *supra* notes 8-9. See also *V.P.*, Docket No. 09-337 (issued August 4, 2009).

<sup>12</sup> See *William A. Archer, supra* note 8.

scan arthrogram of the right shoulder in the labral area and a repeat EMG/NCS. Dr. Janda opined that appellant was “temporarily, totally disabled for this day only due to her visit” and released her to work effective July 31, 2012. Although he provided a firm diagnoses and opined that appellant was disabled on July 30, 2012 due to her examinations, he failed to provide any medical explanation as to appellant’s employment-related residuals or disability for the period on or after November 30, 2010. Appellant has not met her burden of proof to establish that she was disabled for work due to the July 27, 2010 employment injury.

In a November 3, 2012 report, Dr. Simonian indicated that appellant was injured at work on July 27, 2010 and was still symptomatic. He diagnosed symptomatic impingement, symptomatic AC joint arthritis and partial thickness rotator cuff tear versus tendinitis. Dr. Simonian failed to offer any probative medical opinion on whether appellant was disabled as of November 30, 2010 or thereafter due to her accepted conditions. His report is of diminished probative value.<sup>13</sup>

Similarly, the April 24, 2012 MRI scan is diagnostic in nature and therefore does not address the issue of appellant’s disability commencing November 30, 2010. As such, the Board finds that it is insufficient to establish appellant’s claim.

Appellant has not submitted adequate medical evidence to establish that she was disabled commencing November 30, 2010 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 OWCP’s decision was contrary to fact and law. For the reasons stated above, the Board finds the attorney’s 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 commencing November 30, 2010 was causally related to her employment injury.

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<sup>13</sup> See *Sandra D. Pruitt*, 57 ECAB 126 (2005). See also *V.P.*, *supra* note 11.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 12, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 17, 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