United States Department of Labor
Employees' Compensation Appeals Board

G.B., Appellant	)	
and	)	**Docket No. 13-1343**
	)	**Issued: January 27, 2014**
U.S. POSTAL SERVICE, GOLDSBORO MAIN POST OFFICE, Goldsboro, NC, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 14, 2013 appellant, through her attorney, filed a timely appeal from a January 25, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying a period of disability. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether appellant established that she was disabled for work from August 11 to 24, 2012 due to an accepted lumbar sprain.

On appeal, counsel asserts that OWCP's January 25, 2013 decision is contrary to fact and law.

[1] 5 U.S.C. § 8101 *et seq.*

[2] Counsel did not appeal a January 31, 2013 decision affirming the prior denial of wage-loss compensation from March 12 to 21, 2012. He also did not appeal an April 24, 2013 decision denying compensation for the period January 26 to February 8, 2013. Therefore, the Board will not address these decisions on the present appeal.

FACTUAL HISTORY

OWCP accepted that on July 14, 2001 appellant, then a 41-year-old city letter carrier, sustained a lumbar sprain and right shoulder and wrist sprains when she was attacked by a dog.[3] It subsequently accepted bilateral carpal tunnel syndrome. Appellant underwent a left median nerve release on December 16, 2003 and a right median nerve release on July 16, 2004.[4] She underwent right shoulder arthroscopy with decompression on February 1, 2005. Appellant received wage-loss compensation for intermittent work absences associated with her surgeries and periods of recovery. She returned to full-time modified duty in April 2005 and remained on light duty through 2007.

Appellant received wage-loss compensation for intermittent work absences from September 2010 to February 2012 when no work was available within her medical restrictions.[5] On March 22, 2012 she underwent an arthroscopic right rotator cuff tear repair and open revision of an acromioclavicular resection. Appellant remained off work through June 18, 2012, and then returned to full-time light duty. She had intermittent absences in June and July 2012.

On September 4, 2012 appellant filed a claim for compensation (Form CA-7) for temporary total disability from August 11 to 24, 2012.

In an August 8, 2012 report, Dr. David C. Miller, an attending Board-certified orthopedic surgeon, held appellant off work from August 8 to September 17, 2012 "due to lumbar pain from injection." Appellant also submitted August 8 and September 14, 2012 reports by Joe Williams, a physician's assistant.

In a September 11, 2012 letter, OWCP advised appellant of the evidence needed to establish her claim. It requested a medical report from her attending physician supporting that she was disabled for work from August 11 to 24, 2012 due to the accepted injuries. OWCP afforded appellant 30 days in which to submit such evidence.

By decision dated October 12, 2012, OWCP denied appellant's claim for wage-loss compensation from August 11 to 24, 2012. It found that the medical evidence did not establish total disability for work for the claimed period. OWCP found that Mr. Williams' reports were of no probative value as a physician's assistant was not a physician under FECA. It further found that Dr. Miller did not provide medical rationale supporting that the accepted lumbar injury disabled appellant for work.

[3] OWCP initially denied the claim by decision issued September 14, 2001. Following additional development, it issued a December 3, 2001 decision accepting the claim and vacating the September 14, 2001 decision.

[4] By decision dated April 9, 2009, OWCP issued appellant a schedule award for five percent impairment of each upper extremity due to residuals of bilateral carpal tunnel syndrome. The period of the award ran from July 27, 2005 to March 2, 2006.

[5] OWCP issued a December 28, 2010 decision denying intermittent compensation from October 12 to November 3, 2010. It set the December 28, 2010 decision aside on March 16, 2011 as OWCP had already paid wage-loss compensation for this period. By notice dated July 17, 2012 and finalized September 12, 2012, OWCP found an overpayment of $1,363.83 occurred in appellant's case as she received compensation for total disability from June 18 to 30, 2012 after she had returned to full-time work on June 18, 2012.

In a letter received on November 9, 2012, appellant requested reconsideration. She submitted October 16 and December 12, 2012 notes from Dr. Miller holding her off work from August 8 to September 17, 2012. Dr. Miller explained that appellant was recommended to have a lumbar epidural steroid injection on August 8, 2012 but authorization was not provided until August 22, 2012. Appellant received the injection on September 12, 2012 and was released to work on September 17, 2012. She also provided a November 14, 2012 duty status report from Dr. Miller noting that she was "out of work from August 8 to September 17, 2012 for back pain."[6]

By decision dated January 25, 2013, OWCP denied appellant's claim for wage loss from August 11 to 24, 2012. It found that the evidence did not establish that she was totally disabled for work for the claimed period. OWCP noted that Dr. Miller did not explain why he held appellant off work beginning on August 8, 2012 for an epidural injection that was not administered until September 12, 2012.[7]

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.[8] Under FECA, the term "disability" is defined as an inability, due to an employment injury, to earn the wages the employee was receiving at the time of the injury, *i.e.*, an impairment resulting in loss of wage-earning capacity.[9] For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.[10] Whether a particular injury causes an employee to become disabled for work and the duration of that disability are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.[11] The fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[12] The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed.

[6] Appellant submitted a duplicate Form CA-7 claiming compensation from August 11 to 24, 2012 as she was under medical care. An attached a timekeeping record noting that she was under medical care from August 11 to 24, 2012 and "no work available." Appellant also submitted medical reports that did not address the period August 11 to 24, 2012.

[7] The Board notes that OWCP's January 25, 2013 decision mentions language and case precedent applicable to a claim for recurrence of disability while on light duty. However, OWCP developed and adjudicated the claim as one for a period of disability, without finding that appellant had claimed a recurrence of disability.

[8] *Joe D. Cameron*, 41 ECAB 153 (1989).

[9] *See Prince E. Wallace*, 52 ECAB 357 (2001).

[10] *Dennis J. Balogh*, 52 ECAB 232 (2001).

[11] *Gary J. Watling*, 52 ECAB 278 (2001).

[12] *Manuel Garcia*, 37 ECAB 767 (1986).

To do so would essentially allow an employee to self-certify her disability and entitlement to compensation.[13]

ANALYSIS

OWCP accepted that appellant sustained lumbar and upper extremity injuries in the performance of duty on July 14, 2001. Appellant claimed that she was totally disabled for work from August 11 to 24, 2013 due to accepted lumbar injury. She has the burden of establishing by the weight of the substantial, reliable and probative evidence that she was totally disabled for work for the claimed period due to the accepted injuries.[14] The medical evidence appellant provided demonstrates that his physicians did not find her totally disabled for work for the claimed period due to her accepted work-related conditions.

Dr. Miller, an attending Board-certified orthopedic surgeon, submitted an August 8, 2012 report holding appellant off work from August 8 to September 17, 2012 due to lumbar pain from an epidural injection. He notes holding her off work for the same period in a November 14, 2012 report due to "back pain." However, Dr. Miller acknowledged in October 16 and December 12, 2012 notes that she did not receive the injection until September 12, 2012. He did not explain why he found appellant totally disabled for work beginning on August 8, 2012 due to an epidural injection not administered until September 12, 2012. Also, Dr. Miller did not explain how and why the July 14, 2011 lumbar sprain would continue to disable her for work as of August 8, 2012. The lack of medical rationale greatly diminishes the probative value of his reports.[15]

Appellant also submitted August 8 and September 14, 2012 reports by Mr. Williams, a physician assistant. However, these reports are of no probative value as physician assistants are not considered physicians under FECA.[16]

The Board notes that OWCP advised appellant by September 11, 2012 letter of the type of evidence needed to establish her claim, including her physician's opinion as to why the accepted injuries would disable her for work from August 11 to 24, 2012. However, appellant did not submit such evidence. Dr. Miller did not provide sufficient medical rationale supporting that the accepted injuries totally disabled her for work for the claimed period. Therefore, OWCP's January 25, 2013 decision denying appellant's claim for total disability compensation from August 11 to 24, 2013 is proper under the law and facts of the case.

On appeal, counsel asserts that OWCP's April 24, 2013 decision was "[c]ontrary to fact and law." As stated, OWCP properly denied appellant's claim for compensation as she did not submit sufficient evidence to establish total disability for work for the claimed period.

[13] *Fereidoon Kharabi*, 52 ECAB 291 (2001).

[14] *Alfredo Rodriguez*, 47 ECAB 437 (1996).

[15] *Deborah L. Beatty*, 54 ECAB 340 (2003).

[16] 5 U.S.C. § 8101(2); *Richard E. Simpson*, 57 ECAB 668 (2006); *Vickey C. Randall*, 51 ECAB 357 (2000).

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 established that she was totally disabled for work from August 11 to 24, 2012 causally related to an accepted lumbar sprain.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 25, 2013 is affirmed.

Issued: January 27, 2014
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board