



## **FACTUAL HISTORY**

This case has previously been before the Board. In an October 18, 2012 decision, the Board reversed an October 27, 2011 OWCP decision terminating appellant's compensation benefits on the grounds that she had refused an offer of suitable work.<sup>2</sup> The Board found that OWCP erred in terminating her compensation benefits pursuant to 5 U.S.C. § 8106(c) as she had been performing the duties of the offered position. OWCP failed to consider whether appellant's actual earnings in the position fairly and reasonably represented her wage-earning capacity. The facts of the case as set forth in the Board's prior decision are incorporated herein by reference.<sup>3</sup>

In an April 21, 2011 return to work note Dr. Sanjay Misra, an attending Board-certified orthopedic surgeon, released appellant to full-duty work that day with no restrictions. The record also contains duty status reports (Form CA-17) from him dated January 4 through July 18, 2011. Dr. Misra released appellant to work for an eight-hour day with restrictions under claim number xxxxxx103 and claim number xxxxxx341.

OWCP received reports from Dr. Misra providing physical findings, diagnoses of complete rotator cuff rupture, upper arm and shoulder sprains and unspecified site of shoulder and upper arms and the treatment provided appellant over the period June 6, 2011 through September 14, 2012.

On July 11, 2011 the employing establishment notified appellant that she was being removed from federal employment effective July 22, 2011 due to her failure to accept a position. A July 22, 2011 notification of personnel action (Form SF50) stated that she was removed from her position that day.

On November 10, 2012 appellant submitted a claim for wage-loss compensation (Form CA-7) for the period July 23, 2011 to November 10, 2012.

By letter dated November 26, 2012, OWCP informed appellant that the evidence of record was insufficient to support her claim for wage-loss compensation. It instructed her to submit a medical report detailing how her condition had worsened such that she could no longer perform her job duties as of July 23, 2011. OWCP noted that appellant's treating physician

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<sup>2</sup> Docket No. 12-200 (issued October 18, 2012).

<sup>3</sup> On February 12, 2008 appellant, then a 49-year-old diagnostic radiological technician, filed a traumatic injury claim alleging that on that day she sustained a right arm and shoulder blade injury as a result of lifting water to the sink from the portable air conditioner. OWCP accepted the claim for right arm and upper shoulder strain, which was subsequently expanded to include complete right rotator cuff rupture.

On May 28, 2009 appellant filed an occupational disease claim alleging that on March 31, 2009 she first became aware of her left arm sprain due to overuse and its connection to her employment duties. OWCP assigned claim number xxxxxx341 and accepted the claim for left shoulder and upper arm sprain, left rotator cuff tear and other affections of the left shoulder region not classified elsewhere.

On March 24, 2011 appellant filed a traumatic injury claim alleging that on March 16, 2011 she sustained pain and swelling in her forearm when she hit it on the doorway going to her space. OWCP assigned claim number xxxxxx103 and accepted the claim for right forearm and elbow sprain. On April 5, 2012 it combined claim number xxxxxx103, claim number xxxxxx341 and claim number xxxxxx798 with claim number xxxxxx798 as listed as the master file number.

found that she had reached maximum medical improvement as of June 2, 2011 and released her to full-duty work with no restrictions as of April 21, 2011.

By decision dated January 25, 2013, OWCP denied appellant's claim for wage-loss compensation from July 23, 2011 to November 10, 2012. The medical evidence was not sufficient to establish that she was totally disabled from work due to her accepted employment injury.

On March 2, 2013 OWCP received appellant's undated request for reconsideration together with medical evidence. In a March 2, 2013 report, Dr. Helo Chen, a treating osteopath, stated that appellant was currently being treated for a right shoulder employment injury. The injury occurred at work on February 12, 2008 while working as an x-ray technician and she hit her arm on the sink while emptying a pan. Dr. Chen related that the employment injury caused a rotator cuff rupture and right rotator cuff surgery. He opined that appellant was totally disabled from July 23, 2011 through November 10, 2012 due to her accepted employment injury. Dr. Chen related that the residuals of her accepted employment injury has resulted in a period of disability for which she is entitled to receive wage-loss compensation.

On March 7 and 11, 2013 OWCP received personnel forms documenting appellant's removal from the employing establishment effective July 22, 2011 for failing to accept a directed assignment.

In an April 4, 2013 report, Dr. Misra diagnosed partial right shoulder rotator cuff tear with labral tear and right shoulder and arm strain/sprain. He provided physical examination findings, but offered no opinion on appellant's work capability.

On April 18, 2013 Dr. Misra reported that appellant sustained a left shoulder injury at work. He reported that she had limited movement of her left shoulder. A physical examination revealed infraspinatus tenderness, positive Hawkin's test, positive Neer's test and positive Speed's test. Dr. Misra offered no opinion regarding any work disability.

By decision dated June 18, 2013, OWCP denied appellant's request for wage-loss compensation for the period July 23, 2011 to November 10, 2012.<sup>4</sup>

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>5</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.<sup>6</sup> For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for

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<sup>4</sup> The Board notes that, following the June 18, 2013 decision, appellant submitted additional evidence. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision. *See* 20 C.F.R. §§ 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

<sup>5</sup> 5 U.S.C. §§ 8101-8193.

<sup>6</sup> *See Amelia S. Jefferson*, 57 ECAB 183 (2005); *see also Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

work as a result of the accepted employment injury.<sup>7</sup> 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.<sup>8</sup>

Under FECA the term “disability” means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>9</sup> Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.<sup>10</sup> 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 and is not entitled to compensation for loss of wage-earning capacity.<sup>11</sup> When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for any loss of wages.

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. To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.<sup>12</sup>

### ANALYSIS

OWCP accepted appellant’s claim for right arm strain, upper shoulder strain, right rotator cuff rupture under the current claim number xxxxx798. On April 5, 2012 it combined her claims under the master file number xxxxx798. Conditions accepted by OWCP under appellant’s claim number xxxxxx341 and claim number xxxxxx103 included left shoulder strain and upper arm sprain, left rotator cuff tear, other affections of the left shoulder region not classified elsewhere and right forearm and elbow sprain. Appellant filed a claim for wage-loss compensation concurring July 23, 2011, the day after she was removed from federal employment by the employing establishment based on her failure to accept a directed position. By decisions dated January 25 and June 18, 2013, OWCP denied her claim for wage-loss compensation on the grounds that the medical evidence of record failed to establish that she was totally disabled due to her accepted employment injuries. When determining whether a claimant has met his or her burden of proof, the Board considers factors such as whether there are objective findings, a thorough understanding of the job duties by the physician, a firm diagnosis and a rationalized,

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<sup>7</sup> See *Amelia S. Jefferson, id.*; see also *David H. Goss*, 32 ECAB 24 (1980).

<sup>8</sup> See *Edward H. Horton*, 41 ECAB 301 (1989).

<sup>9</sup> *S.M.*, 58 ECAB 166 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Conard Hightower*, 54 ECAB 796 (2003); 20 C.F.R. § 10.5(f).

<sup>10</sup> *Roberta L. Kaamoana*, 54 ECAB 150 (2002).

<sup>11</sup> *Merle J. Marceau*, 53 ECAB 197 (2001).

<sup>12</sup> See *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

unequivocal opinion that he or she was disabled due to the employment injury for the period claimed.<sup>13</sup> Appellant has not met her burden of proof in this case.

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. Appellant did not submit sufficient medical evidence explaining why she was totally disabled during the relevant time period and how her disability related to her accepted conditions of bilateral arm strain, bilateral upper shoulder strain, right rotator cuff rupture, left rotator cuff tear, other affections of the left shoulder region not classified elsewhere and right forearm and elbow sprain.

The medical evidence of record does not claim that appellant was totally disabled from working for the period July 23, 2011 through November 10, 2012 particularly as the date her disability began was the day following the termination of her employment. The only medical report which addresses her disability for the period in question is the March 2, 2013 report of Dr. Chen, who noted the history of the injury and diagnosed a right rotator cuff rupture and right rotator cuff surgery. Dr. Chen stated generally that appellant was totally disabled for work for the period July 23, 2011 through November 10, 2012 as a result of her medical condition. He did not address the medical findings to support his conclusion. Dr. Chen failed to sufficiently address why appellant was unable to work for the period July 23, 2011 through November 10, 2012 due to the accepted conditions. His opinion is conclusory and provides no medical reasoning addressing the causal relationship of appellant's accepted employment conditions to her disability. The Board has held that a medical opinion not fortified by medical rationale is of diminished probative value.<sup>14</sup> Thus, Dr. Chen's report is insufficient to support appellant's claim that her disability for the period July 23, 2011 through November 10, 2012 was employment related.

The record also contains duty status reports and medical reports from Dr. Misra, who released appellant to work for an eight-hour day with restrictions under claim number xxxxxx103 and claim number xxxxxx341 and to an eight-hour workday with no restrictions under claim number xxxxx798. The reports from Dr. Misra provided physical findings and addressed the treatment provided. He did not support total disability. The Board finds that Dr. Misra's reports are insufficient to support appellant's claim as he did not find that she was disabled for work.<sup>15</sup>

On appeal, appellant's representative contends that appellant is entitled to wage-loss compensation as her employment was terminated for refusing to accept a directed offer of employment. Her representative contends the offered job was unsuitable based on the Board's prior decision. Contrary to the representative's contention, the Board did not find that the job

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<sup>13</sup> *V.M.*, Docket No. 10-1056 (issued December 16, 2010); *see L.D.*, Docket No. 09-1503 (issued April 15, 2010); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

<sup>14</sup> *F.T.*, Docket No. 09-919, (issued December 7, 2009); *Elizabeth H. Kramm*, 57 ECAB 117, 124 (2005); *Franklin D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

<sup>15</sup> *See A.D.*, 58 ECAB 149 (2006); *Ellen L. Noble*, 55 ECAB 530 (2004) (the Board has long held that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

offer was unsuitable. The Board found that appellant had not refused an offer of suitable work as she was actually performing the duties of the offered position. As appellant was performing the duties, the Board found that OWCP erred in invoking section 8106(c) and reversed the termination of her benefits based upon OWCP's error in invoking this section. Furthermore, as discussed above OWCP is only required to pay wage-loss compensation when the medical evidence of record establishes that any disability from working is due to the accepted employment injury. As discussed above, appellant failed to meet her burden to establish that her inability to work was due to her accepted employment injuries and not the employing establishment's terminating her employment for failure to accept a directed position.

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 failed to establish that her disability from June 23, 2011 to November 10, 2012 was due to her accepted employment injuries.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 18, 2013 is affirmed.

Issued: January 23, 2014  
Washington, DC

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

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

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