

**United States Department of Labor
Employees' Compensation Appeals Board**

V.N., Appellant)

and)

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Fayetteville, NC, Employer**)

**Docket No. 13-1909
Issued: July 29, 2014**

Appearances:
Martin Kaplan, Esq., for the appellant
No appearance, for the Director

Oral Argument May 7, 2014

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 15, 2013 appellant, through counsel, filed a timely appeal from a May 24, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established entitlement to wage-loss compensation from May 13 to June 5, 2010.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

The case was before the Board on a prior appeal.² By decision dated August 16, 2012, the Board remanded the case to OWCP.³ The Board remanded the case to OWCP for further analysis and discussion of the relevant evidence. The history of the case as provided in the Board's prior decision is incorporated herein by reference.

By decision dated September 12, 2012, OWCP after reviewing the evidence, denied the claim for wage-loss compensation commencing May 13, 2010. It found the evidence of record insufficient to establish the claim for compensation.

Appellant requested a hearing before an OWCP hearing representative, which was held on February 11, 2013. She testified that, at the time she stopped working in May 2010, the employing establishment had made some accommodations for her injury, such as a wireless headset for the telephone or not having to use her hands to open a window.

Appellant submitted a report dated October 5, 2012 from Dr. Jennifer Patterson, a Board-certified orthopedic surgeon, providing results on examination and diagnosed carpal tunnel syndrome. Dr. Patterson indicated that appellant was interested in proceeding with a right carpal tunnel release. In a report dated November 14, 2012, Dr. Ricky Thomas, a Board-certified family practitioner, diagnosed carpal tunnel syndrome and indicated nonsurgical treatment would be pursued. In a note dated January 30, 2013, Dr. Thomas stated that appellant was released to work with no keyboarding duties.

By decision dated May 24, 2013, the hearing representative affirmed the September 11, 2012 decision. The hearing representative found the medical evidence insufficient to establish the claim for wage-loss compensation.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of establishing the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁵ The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.⁶

² Appellant, a patient services assistant, filed an occupational disease claim on January 3, 2006 alleging a bilateral wrist condition as a result of her employment duties. Her claim was accepted for bilateral carpal tunnel syndrome and later expanded to include keloid scar.

³ Docket No. 12-687 (issued August 16, 2012).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ 20 C.F.R. § 10.5(f); *see e.g.*, *Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury but no loss of wage-earning capacity).

Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.⁷ Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work. When a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that he or she hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.⁸ 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.⁹

To establish a causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.¹⁰ The opinion of the physician must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship.¹¹

ANALYSIS

In the present case, OWCP had accepted bilateral carpal tunnel syndrome and a keloid scar as a result of job duties as a patient services assistant and appellant had returned to work. The record contains a January 4, 2010 CA-110 (memorandum of telephone call) stating that appellant had returned to her date-of-injury position. At the February 11, 2013 hearing, appellant indicated that there were some accommodations made for her injury, such as a wireless headset for the telephone, or not having to open a window. It is appellant's burden of proof to submit the necessary medical evidence to establish that any disability commencing May 13, 2010 was causally related to her employment injury.

Appellant did not meet her burden of proof in this case. Dr. Dudley stated in a brief May 6, 2010 report that appellant should be off until July 5, 2010 "because of her secondary medical problems." He did not provide further explanation. In his May 13, 2010 report, Dr. Eichinger stated that appellant reported a return of pain and tingling and was "taking 2 months off from work." He does not provide a report with a complete background, or offer an opinion, supported by sound medical rationale, establishing an employment-related disability commencing May 13, 2010.

⁷ See *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

¹¹ *Leslie C. Moore*, 52 ECAB 132 (2000).

In a report dated July 12, 2010, Dr. Dudley stated that appellant was treated for major depressive disorder and adjustment disorder with depression and anxiety “due to change in physical health.” He stated that she had carpal tunnel syndrome and chronic pain when she performed work duties and pain was the cause of her depression. In a handwritten note dated July 12, 2010, Dr. Dudley indicated that appellant could return to work in three months. He does not provide a rationalized medical opinion on disability causally related to the accepted condition. In a brief report dated October 20, 2010, Dr. Dudley stated that appellant was unable to “work without event,” and that it appeared that her diagnosis of major depressive disorder was the direct result of her carpal tunnel syndrome. He did not provide further detail. OWCP has not accepted a consequential emotional condition in this case. The reports from Dr. Dudley do not establish an employment-related disability commencing May 13, 2010. Dr. Patterson and Dr. Thomas do not discuss the relevant issues.

On appeal, appellant argues that OWCP “erred in assuming that the job was suitable without making a formal determination.” The Board finds that there was no error in this respect. 5 U.S.C. § 8106(c)(2) provides that an employee who refuses an offer of suitable work is not entitled to compensation. In cases where a claimant is not working, receiving compensation, and the employing establishment makes a job offer, OWCP cannot apply 5 U.S.C. § 8106(c)(2) without first making a determination that the offered position is medically and vocationally suitable. OWCP has the burden of proof to establish that the position is suitable,¹² but the current case is not a case where it has terminated compensation pursuant to 5 U.S.C. § 8106(c)(2). Appellant was working and then claimed compensation for wage loss as of May 13, 2010. As noted above, it is her burden to submit evidence necessary to establish the claim. There is no requirement that OWCP make any kind of “suitable work” determination in this case, nor does appellant cite any case law in support of such a finding.¹³

For the reasons noted above, appellant did not meet her burden of proof to establish wage-loss compensation as of May 13, 2010. The record does not contain probative medical evidence establishing an employment-related disability commencing May 13, 2010. 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 entitlement to wage-loss compensation from May 13 to June 5, 2010.

¹² See *Y.A.*, 59 ECAB 701 (2008).

¹³ Appellant cited an OWCP regulation, 20 C.F.R. § 10.507. This regulation provides requirements as to an offer of suitable work by the employing establishment, and would be relevant to a determination under 5 U.S.C. § 8106(c)(2) that a proper offer of suitable work had been made.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 24, 2013 is affirmed.

Issued: July 29, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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