

Dr. Kirti Jain, an attending Board-certified family practitioner, diagnosed left elbow tendinitis due to the June 27, 2012 fall. She held appellant off work from June 28 to July 10, 2012. Dr. Jain restricted appellant to carrying mail for three hours per day, with limited duty such as casing mail for the remainder of her tour. She renewed these restrictions through November 16, 2012.

In a November 16, 2012 report, Dr. Jain noted examining appellant on November 1, 2012 for ongoing left elbow tendinitis. In a December 6, 2012 report, she held appellant off work from November 29 to December 4, 2012. Dr. Jain released appellant to light duty as of December 7, 2012 under the previous work restrictions.

On December 10, 2012 appellant claimed compensation for intermittent dates from June 29, 2012 to January 9, 2013, as follows: September 1, 5, 6, 7, 8, 19, 21, 24, 25, 26 and 27; October 3, 4, 5, 9, 10, 12, 13, 15, 17, 18, 19, 23, 25, 26 and 31; November 8, 26 and 30; and December 1, 3, 4, 6, 7, 11, 14, 17, 18, 19, 20, 24, 26 and 29, 2012; and January 4, 5, 7, 9, 11, 15, 19 and 25, 2013. On the reverse of the claim forms and in a December 14, 2012 memorandum, the employing establishment noted that no work was available within her restrictions for the dates claimed but that she had provided no medical documentation.

In a January 3, 2013 report, Dr. Jain limited appellant to part-time light duty with lifting, pulling and pushing limited to five pounds. She noted that appellant “should be able to take time off when needed.”

In a March 15, 2013 letter, Dr. Jain opined that appellant’s condition had worsened. “With work affecting [appellant’s] condition she is allowed to take days off intermittently as needed due to pain in her left elbow and arm (June 28, 2012 to April 4, 2013).”

In an April 16, 2013 letter, Dr. Jain noted that appellant’s job duties required repetitive motion of both upper extremities, which did not allow the accepted tendon inflammation to heal. She stated that she did “not want [appellant] to use her left arm at all.”

In an April 23, 2013 letter, OWCP advised appellant of the additional evidence needed to establish her claim, including a statement from her attending physician explaining the objective findings related to the accepted injury, which supported the claimed period of disability. It afforded her 30 days to submit such evidence.

In an April 29, 2013 letter, Dr. Jain opined that appellant was totally disabled for light-duty work “due to not being able to use her left arm from severe pain and inflammation of the tendons in her arm” on the following dates: September 5 and 6, October 3, 10, 23 and 31, November 26 and 30 and December 1, 3, 4, 6, 17, 18, 19, 20, 24 and 29, 2012, and January 4, 5, 7, 9, 11, 15 and 25, 2013.²

By decision dated June 11, 2013, OWCP accepted appellant’s claim for intermittent periods of disability from September 1, 2012 to January 19, 2013 as the employing establishment

² On its face, Dr. Jain’s April 29, 2013 letter dated the January dates as occurring in 2012. However, the remainder of the letter demonstrates that the January dates were in 2013.

was unable to accommodate her medical restrictions on September 1, 7, 8, 19, 21, 24, 25, 26 and 27, October 4, 5, 9, 13, 15, 17, 18, 19, 25 and 26, November 8 and December 7, 11, 14, 26, 2012 and January 19, 2013. It denied appellant's claim for wage-loss compensation on the following dates on the grounds that the medical evidence did not support total disability for work: September 5 and 6; October 3, 10, 23 and 31; November 26 and 30; December 1, 3, 4, 6, 17, 18, 19, 20, 24 and 29, 2012; and January 4, 5, 7, 9, 11, 15 and 25, 2013.³ OWCP found that Dr. Jain did not provide sufficient medical rationale explaining why the accepted left elbow injury would disable appellant from light duty on those dates.

In a July 10, 2013 letter, appellant requested reconsideration. She contended that OWCP's delay in approving her claim effectively barred her from seeking treatment, causing her condition to worsen. Appellant submitted June 2013 reports from an attending Board-certified orthopedic surgeon that did not address the dates at issue. She also submitted physical therapy notes from May and June 2013.

By decision dated August 21, 2013, OWCP denied modification of the prior decision on the grounds that the evidence submitted was insufficient to establish disability for work on the dates claimed. It found that Dr. Jain did not adequately explain why the accepted left elbow injury would disable her for light-duty work on those dates.

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.⁴ 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.⁵ 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.⁶ 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.⁷ 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.⁸ The Board will not require OWCP to pay compensation for disability in the absence of medical

³ The specific hours of compensation denied are as follows: 4 hours on September 5, 2012, 8 hours on September 6, 3.42 hours on October 3, 8 hours on October 10, 4 hours on October 23, 8 hours on October 31, November 26 and 30; 4 hours on December 1; 8 hours on December 3 and 4; 4 hours on December 6; 8 hours on December 17, 18, 19, 20 and 24; 4 hours on December 29, 2012; and 8 hours on January 4, 5, 7, 9, 11, 15 and 25, 2013.

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *See Prince E. Wallace*, 52 ECAB 357 (2001).

⁶ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁷ *Gary J. Watling*, 52 ECAB 278 (2001).

⁸ *Manuel Garcia*, 37 ECAB 767 (1986).

evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.⁹

ANALYSIS

OWCP accepted that appellant sustained left elbow tendinitis and tenosynovitis when she fell on a sidewalk on June 27, 2012. Appellant claimed that she was totally disabled for intermittent dates from September 5, 2012 to January 25, 2013 due to the accepted left elbow 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.¹⁰

Dr. Jain, an attending Board-certified family practitioner, retroactively allowed appellant to take time off “as needed at any time from June 28, 2012 to April 4, 2013.” She held appellant off work from November 29 to December 4, 2012. On April 29, 2013 Dr. Jain found that appellant had been totally disabled for light-duty work due to inflammation of the tendons in her left arm and severe pain on September 5 and 6, October 3, 10, 23 and 31, November 26 and 30, December 1, 3, 4, 6, 17, 18, 19, 20, 24 and 29, 2012 and January 4, 5, 7, 9, 11, 15 and 25, 2013. She stated that the repetitive upper extremity motion required by appellant’s light-duty work did not allow the accepted tendon inflammation to heal. The Board notes that Dr. Jain did not specify which job tasks required left upper extremity motion in excess of appellant’s limitations of carrying mail for no more than three hours a day with light duty for the remainder of her tour. Also, Dr. Jain did not clearly explain how or why the accepted injury disabled appellant for work for certain of the dates claimed. This lack of medical rationale diminishes the probative value of Dr. Jain’s reports.¹¹

OWCP advised appellant by April 23, 2013 letter of the evidence needed to establish her claim, including a physician’s opinion as to why the accepted injuries would disable her for work for the claimed intermittent dates from September 5, 2012 to January 25, 2013. Appellant did not submit such evidence. Dr. Jain did not provide sufficient medical rationale supporting that the accepted left elbow injury totally disabled appellant for work for the claimed period. Therefore, OWCP’s August 21, 2013 decision denying appellant’s claim for total disability compensation for intermittent dates from September 5, 2012 to January 25, 2013 is proper under the law and facts of the case.

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.

⁹ *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹⁰ *Alfredo Rodriguez*, 47 ECAB 437 (1996).

¹¹ *Deborah L. Beatty*, 54 ECAB 340 (2003).

CONCLUSION

The Board finds that appellant has not established that she was totally disabled for work on September 5 and 6; October 3, 10, 23 and 31; November 26 and 30; December 1, 3, 4, 6, 17, 18, 19, 20 24 and 29, 2012; and January 4, 5, 7, 9, 11, 15 and 25, 2013 causally related to accepted left elbow tendinitis and tenosynovitis.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 21, 2013 is affirmed.

Issued: March 7, 2014
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