



## **FACTUAL HISTORY**

This case has previously been before the Board. On February 28, 2009 appellant, then a 43-year-old retired rural carrier, filed an occupational disease claim alleging that she developed bilateral carpal tunnel syndrome, bilateral epicondylitis, degenerative arthritis of the trapezial metacarpal joints of the bilateral thumbs and a bone spur in her right shoulder as a result of employment activities. OWCP denied her claim finding that she failed to submit sufficient medical evidence. Appellant appealed from the May 27, 2009 merit decision and by decision dated May 12, 2010,<sup>2</sup> the Board found that she failed to submit probative rationalized medical evidence addressing how her claimed conditions were caused or aggravated by her employment and therefore failed to meet her burden of proof in establishing an occupational disease claim. The facts and circumstances of the case as set forth in the Board's prior decision are adopted herein by reference.

Counsel requested reconsideration on March 14, 2011 and submitted a deposition from Dr. Walter Choung, a Board-certified orthopedic surgeon, who first examined appellant on October 7, 2008 and diagnosed right shoulder impingement syndrome. Dr. Choung opined that her work duties contributed to her condition. He stated that appellant should avoid any kind of repetitious movement of the right shoulder, including lifting packages, letters or casing letters. By decision dated July 1, 2011, OWCP accepted her claim for right shoulder impingement syndrome.

On October 16, 2012 Dr. Choung stated that appellant should not perform repetitious work with her right upper extremity. On November 15, 2012 he stated that she was totally disabled.

Appellant filed a claim for compensation and requested wage-loss compensation from July 1, 2011 through January 11, 2013. The employing establishment provided information that she retired on February 7, 2007 as she was totally disabled for useful and efficient service in her position.

OWCP requested additional medical evidence supporting appellant's disability for work due to her accepted condition in a letter dated January 23, 2013. Dr. Choung completed a form report on February 5, 2013 and stated that appellant should continue her current limitations.

By decision dated February 28, 2013, OWCP denied appellant's claim for compensation for the period July 1, 2011 through January 11, 2013. It found that she had not submitted medical evidence supporting total disability during the period claimed due to her accepted right shoulder impingement syndrome.

On March 8, 2013 appellant requested an oral hearing before an OWCP hearing representative. In a note dated February 12, 2013, Dr. Choung provided work restrictions including no lifting over 10 pounds past the shoulder level and avoidance of repetitious use of the right arm above her shoulder level. He provided a report dated March 8, 2013, which stated that appellant had been unable to perform activities that require repetitious use of her right arm

---

<sup>2</sup> Docket No. 09-2066 (issued May 12, 2010).

for lifting more than small objects from October 7, 2008 through July 16, 2009 and from October 16, 2012 through February 12, 2013. On March 19, 2013 Dr. Choung stated that appellant should not lift over 15 pounds. He provided additional restrictions on May 9, 2013 including no repetitive use of the right arm and no working with the right arm above shoulder height.

Appellant testified at the oral hearing on June 25, 2013 and described her job duties including casing mail over her head. She stated that she filed for disability retirement due to her shoulder and arm conditions in 2006. Appellant stated that she was never offered a light-duty position by the employing establishment and that she could not currently perform her date-of-injury position.

By decision dated August 9, 2013, the hearing representative found that the medical evidence was insufficient to establish that appellant was totally disabled from July 1, 2011 through January 11, 2013. He noted that, since she retired in 2007, the employing establishment was not obliged to offer her light-duty work.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup> 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.<sup>7</sup> The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the

---

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *G.T.*, 59 ECAB 447 (2008); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> 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).

<sup>6</sup> *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>7</sup> *Id.*

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.<sup>8</sup>

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.<sup>9</sup> Rationalized medical evidence is medical evidence which includes a physician's detailed medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical reasoning explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>10</sup> Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>11</sup>

### ANALYSIS

Appellant filed a claim for wage-loss compensation from July 1, 2011 through January 11, 2013. She retired on February 7, 2007. Appellant submitted reports from Dr. Choung, who noted that he treated her from October 7, 2008 through July 16, 2009 and from October 16, 2012 through February 12, 2013. Dr. Choung did not examine her from July 16, 2009 through October 16, 2012. He was not treating appellant during the period claimed from July 1, 2011 through October 15, 2012 and did not provide an opinion regarding her ability for work during the period claimed. As Dr. Choung did not provide any opinion regarding her disability for work, his reports are not sufficient to establish that she was totally disabled. Appellant has not provided any other medical evidence addressing this time period and has not established disability from July 1, 2011 through October 15, 2012.

On October 16, 2012 Dr. Choung advised that she should not perform repetitious work with her right upper extremity. On November 15, 2012 he stated that she was totally disabled. In a report dated March 8, 2013, Dr. Choung opined that appellant had been unable to perform activities that require repetitious use of her right arm for lifting more than small objects from October 16, 2012 through February 12, 2013. This report does not support total disability and suggests that she was capable of light-duty work. Dr. Choung did not provide medical evidence that appellant was incapable of performing work. Therefore, this report is not sufficient to meet her burden of proof in establishing that she was entitled to compensation benefits for the period October 12, 2012 through January 11, 2013. Furthermore, Dr. Choung provided conflicting assessments of appellant's work restrictions in his November 15, 2012 and March 8, 2013 reports. Without clear medical evidence establishing whether or not she was totally disabled for a period, Dr. Choung's reports are not sufficient to meet appellant's burden of proof.

---

<sup>8</sup> *Id.*

<sup>9</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>10</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>11</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

Appellant alleged at the June 25, 2013 hearing that the employing establishment did not provide her with light or limited duty during the period claimed. On appeal, counsel argued that she was not responsible for establishing total disability as she has provided evidence of work restrictions. The Board finds that appellant has not submitted sufficient evidence that light-duty work was not available for her. Appellant's unsubstantiated allegation is not sufficient to establish her claim that she was totally disabled as light duty was not offered or available for her.<sup>12</sup>

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 submitted the necessary medical opinion evidence to establish her disability for work for the period July 1, 2011 through January 11, 2013.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the August 9, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 2, 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

---

<sup>12</sup> *S.D.*, Docket No. 13-1784 (issued July 28, 2014).