United States Department of Labor
Employees' Compensation Appeals Board

M.M., Appellant	)	
and	)	**Docket No. 14-581**
	)	**Issued: September 8, 2014**
U.S. POSTAL SERVICE, AIRPORT STATION, Mobile, AL, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 15, 2014 appellant filed a timely appeal from an August 14, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her claim for disability compensation. 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.

ISSUE

The issue is whether appellant established that she was totally disabled from October 24, 2012 to January 24, 2013 and January 26 to June 30, 2013 due to her December 30, 2002 employment injuries.

On appeal, appellant contends that she submitted evidence in support of her disability claim as requested by OWCP. She further contends that her accommodated bid job has not been available since August 2010.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board with respect to the denial of appellant's schedule award claim. In an order dated May 20, 2010, the Board remanded the case to OWCP on the grounds that a May 13, 2009 OWCP decision denying her schedule award claim did not conform to the requirements of 20 C.F.R. § 10.126.[2] The Board found that OWCP did not provide adequate factual findings and fully explain the basis for its conclusion that appellant was not entitled to a schedule award for her right and left upper extremities. In a June 15, 2011 decision, the Board found an unresolved conflict in medical opinion as to the extent of her bilateral upper extremity impairment and set aside an August 11, 2010 OWCP decision denying her schedule award claim.[3] The Board remanded the case for further development of the medical evidence. The relevant facts are set forth below.[4]

On June 30, 2013 appellant filed a compensation claim (Form CA-7) for leave without pay from October 4, 2012 through June 30, 2013. A time analysis form (Form CA-7a) dated July 1, 2013 indicated that she was unable to work during the claimed period because the employing establishment could not accommodate her restrictions.

In a March 19, 2012 medical report, Dr. W.A. Crotwell, III, an attending Board-certified orthopedic surgeon, advised that appellant had bilateral lateral epicondylitis for which she underwent two surgeries. He released her to return to work with restrictions on that date.

In a July 2, 2013 letter, the employing establishment controverted the claim. It contended that the medical evidence submitted by appellant failed to establish that her restrictions were related to the accepted employment injuries. The employing establishment stated that she could request nonwork-related light-duty work or return to her accommodated bid job which was still available. It noted that appellant had not tried to return to her accommodated bid job. The employing establishment's May 6, 2010 job offer indicated that she accepted a modified rural carrier position.

By letter dated July 10, 2013, OWCP advised appellant that the evidence submitted was insufficient to establish that she was disabled from October 4, 2012 through June 30, 2013. It requested that she submit medical and factual evidence. OWCP stated that if appellant was claiming compensation due to no work being available as indicated in her Form CA-7a, then she should submit a written statement from her employer indicating that it could not accommodate her medical restrictions during the period claimed or that it withdrew the May 6, 2010 job offer.

[2] Docket No. 09-1847 (issued May 20, 2010).

[3] Docket No. 10-2252 (issued August 11, 2011).

[4] OWCP accepted that on December 30, 2002 appellant, then a 39-year-old rural carrier, sustained a contusion of the left elbow and bilateral lateral epicondylitis when she slammed her left elbow and forearm into a door while loading a tray of flats. It authorized a Boyd-McLeod procedure performed on the left elbow on December 23, 2003 and on the right elbow on July 5, 2005.

It noted that she already received wage-loss compensation for disability from June 3 to October 22, 2012 and on October 23, 2012 and January 25, 2013.[5]

On July 15, 2013 appellant advised OWCP that the employing establishment was not providing her with employment. On that date, OWCP responded that "there are too many discrepancies in [appellant's] claim" and advised her that it "would contact the employing establishment to verify whether [appellant's] May 2010 [job offer] was withdrawn, whether they can accommodate her current [work tolerance levels], *etc*." It also advised appellant that "compensation will not be paid until all issues are clarified."

In an undated letter, appellant contended that her left elbow condition had worsened due to overuse and repetitive motion as her work hours in her light-duty job significantly increased. She contended that her light-duty job did not exist after August 2010 and she was never told to return to work. Appellant stated that Dr. Crotwell changed her weight restrictions on October 23, 2012. The employing establishment informed her that it did not receive her new restrictions.

In an undated report, Dr. Crotwell explained how appellant's original diagnosis of contusion to the elbow was related to her tennis elbow condition for which authorization for surgery was previously denied. In a May 24, 2012 report, he listed her light-duty work restrictions.

An incomplete occupational disease claim form filed under the instant claim number and signed by the employing establishment on August 13, 2012 indicated that appellant stopped work in December 2011 and had not returned to work.

By decision dated August 14, 2013, OWCP denied appellant's claim for compensation from October 4, 2012 to June 30, 2013. Appellant failed to submit the requested evidence. OWCP found that the evidence of record to date was insufficient to establish that she was totally disabled during the claimed period due to her accepted injuries. It noted that her claim overlapped a period of disability, June 3 to October 22, 2012 and October 23, 2012 and January 25, 2013, for which she had been previously paid wage-loss compensation. OWCP also noted the employing establishment's July 2, 2013 letter, which indicated that appellant had not returned to her accommodated bid job which was still available.[6]

LEGAL PRECEDENT

With respect to a claimed period of disability, an employee has the burden of establishing that any disability or specific condition for which compensation is claimed is causally related to

[5] The record indicates that appellant was paid compensation for eight hours on January 25, 2013 for a physician's visit.

[6] The Board notes that, following issuance of OWCP's August 14, 2013 decision and on appeal, appellant submitted new evidence. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision and therefore this additional evidence cannot be considered on appeal. 20 C.F.R. § 501.2(c)(1); *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).

the employment injury.[7] 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.[8]

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.[9] The medical evidence required to establish a period of employment-related disability is rationalized medical evidence.[10] Rationalized medical evidence is medical evidence based on a complete factual and medical background of the claimant, of reasonable medical certainty, with an opinion supported by medical rationale.[11] The Board, however, 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.[12] To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.[13]

ANALYSIS

The Board finds that appellant did not meet her burden of proof to establish that she was entitled to wage-loss compensation October 24, 2012 through January 24, 2013 and January 26 through June 30, 2013 due to the accepted December 30, 2002 employment-related bilateral elbow conditions.

Appellant submitted reports from Dr. Crotwell. In a March 19, 2012 report, Dr. Crotwell found that she had bilateral lateral epicondylitis for which she underwent two surgeries. He released appellant to return to work with restrictions on that date. In a May 24, 2012 report, Dr. Crotwell listed her light-duty work restrictions. These reports are insufficient to establish a claim for disability, as they predate the claimed periods of disability and do not provide an opinion addressing whether appellant had any disability or restrictions causally related to the accepted employment injuries. The Board has held that a physician's opinion, which does not address causal relationship, is of diminished probative value.[14] Dr. Crotwell's other report is undated and it does not address whether appellant sustained any employment-related disability

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

[8] 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).

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

[10] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

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

[12] *Sandra D. Pruitt*, 57 ECAB 126 (2005).

[13] *See William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, *supra* note 9.

[14] *See A.D.*, 58 ECAB 149 (2006) (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).

during the claimed period.[15] For the stated reasons, the Board finds that his reports are insufficient to establish her burden of proof. As there is no rationalized medical evidence contemporaneous with the periods of claimed disability, appellant failed to establish entitlement to wage-loss compensation for the periods.

On appeal, appellant contended that she submitted evidence in support of her disability claim as requested by OWCP. However, as found, the medical evidence submitted by her does not provide a rationalized medical opinion addressing whether she sustained any disability during the claimed periods due to the accepted December 30, 2002 employment injuries.

The Board, however, finds this case is not in posture for decision regarding whether appellant would be entitled to wage-loss compensation due to the employing establishment's withdrawal of her modified position. Appellant contended that her modified position had not been available since August 2010 and she was never asked to return to work. She stated that Dr. Crotwell had changed her weight restrictions as of October 23, 2012 and that she was advised by the employing establishment that it had not received her new restrictions. A July 1, 2013 CA-7a form for the relevant periods indicated that appellant was unable to work because the employing establishment could not accommodate her restrictions. Generally, a withdrawal of limited-duty work constitutes a recurrence of disability under OWCP regulations.[16]

OWCP requested, among other things, in its July 10, 2013 developmental letter that appellant submit a written statement from the employing establishment indicating that it could not accommodate her medical restrictions during the claimed period or that it withdrew its May 6, 2010 modified job offer. After being advised by her on July 15, 2013 that the employing establishment was not providing her with work, it responded that "there are too many discrepancies in her claim" and advised her that it "would contact the employing establishment to verify whether her May 2010 [job offer] was withdrawn, whether they can accommodate her current [work tolerance levels], etc." OWCP further advised appellant that "compensation will not be paid until all issues are clarified." While the employing establishment stated in a July 2, 2013 letter that her accommodated bid job as a modified rural carrier was still available and that she never tried to return to work in the position, the record contains no evidence that OWCP contacted the employing establishment to verify the availability of her modified position or its ability to accommodate her new restrictions. It is well established that proceedings under FECA[17] are not adversarial in nature. While appellant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.[18] It has an obligation to see that justice is done.[19] Since OWCP undertook development of the factual evidence in this case, it should have obtained information from the employing establishment as to whether modified-duty work was available on the dates appellant did not work and whether it

[15] *Id.*

[16] 20 C.F.R. § 10.5(x).

[17] *See supra* note 1.

[18] *See Phillip L. Barnes*, 55 ECAB 426 (2004).

[19] *R.E.*, 59 ECAB 323 (2008); *Donald R. Gervasi*, 57 ECAB 281 (2005).

could accommodate her new restrictions.[20] The case will therefore be remanded to OWCP for appropriate development of the evidence, to determine whether modified-duty work was available within her restrictions at the employing establishment during the time periods she did not work.[21] Following this and such further development as OWCP deems necessary, it shall issue a *de novo* decision on appellant's claim for disability compensation.

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 did not establish that she was entitled to disability compensation for the periods October 24, 2012 to January 24, 2013 and January 26 to June 30, 2013 due to her December 30, 2002 employment injuries and that the case is not in posture for decision regarding whether she would be entitled to compensation for lost wages due to the employing establishment's inability to accommodate her medical restrictions during the claimed periods or its withdrawal of its May 6, 2010 modified job offer.

[20] *Peter C. Belking*, 56 ECAB 580 (2005) (once OWCP has begun an investigation of a claim it must pursue the evidence as far as reasonably possible. OWCP has an obligation to see that justice is done).

[21] *See generally*, *D.P.*, Docket No. 13-1721 (issued February 21, 2014); *R.W.*, Docket No. 13-656 (issued July 16, 2013); *N.L.*, Docket No. 13-835 (issued July 9, 2013); *M.S.*, Docket No. 12-1449 (issued January 4, 2013) (where the Board found that appellant failed to establish entitlement to wage-loss compensation for claimed periods of disability but, remanded the cases to OWCP to determine whether appellant was entitled to wage-loss compensation for attending medical appointments).

ORDER

IT IS HEREBY ORDERED THAT the August 14, 2013 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part and the case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: September 8, 2014
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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