

On appeal, counsel contends that OWCP's decision was contrary to fact and law.

FACTUAL HISTORY

On June 21, 2013 OWCP accepted that appellant, then a 39-year-old account management clerk, sustained bilateral carpal tunnel syndrome, bilateral lesion of ulnar nerve, bilateral tenosynovitis of hand and wrist, and bilateral elbow enthesopathy due to factors of her federal employment; Subsidiary File No. xxxxxx717, the subject of the current appeal. The record reveals that she has two prior cases referencing a right shoulder injury under Master File No. xxxxxx425 (date of injury March 7, 2012)³ and Subsidiary File No. xxxxxx597 (date of injury July 27, 2010).⁴ Appellant has received total temporary disability benefits under File No. xxxxxx425 continuously since August 22, 2012 for her right shoulder condition.

Appellant filed a claim for compensation (Form CA-7) for the period April 4 through July 31, 2011 under the current OWCP subsidiary file and submitted time analysis forms in support of her claim. She also submitted several medical reports related to her shoulder condition.⁵

In a July 15, 2013 letter, OWCP requested additional medical evidence establishing appellant's disability for work during the period claimed and afforded her 30 days to respond to its inquires.

Appellant submitted a July 22, 2013 report from Dr. Chauhan who reviewed her medical history and found that she complained of pain in the shoulder, and numbness in her arm, and hand. Dr. Chauhan opined that she was suffering from carpal tunnel syndrome, and shoulder dysfunction as a direct result of her employment-related conditions and was disabled for the period claimed.

³ Under File No. xxxxxx425, OWCP accepted aggravation of disorder of bursae and tendons in right shoulder region, unspecified, and paid appropriate compensation.

⁴ Under File No. xxxxxx597, OWCP accepted right shoulder bursitis and tendinitis as a result of picking up a tub in the performance of duty.

⁵ In an April 7, 2011 report, Dr. Sergio Ilic, a Board-certified orthopedic surgeon, indicated that appellant sustained a right shoulder injury as a result of picking up a bucket of W-2s at work on July 27, 2010. He diagnosed osteitis of the acromioclavicular joint by magnetic resonance imaging scan with impingement syndrome secondary to a July 27, 2010 injury.

On July 6, 2011 Dr. Ajit Khaira, a Board-certified internist, indicated that appellant sustained a right shoulder injury at work while lifting a bucket full of W-2s. On November 16, 2011 he indicated that she was seen for work-related injuries to the right wrist, and right shoulder pain sustained on July 27, 2010. Dr. Khaira diagnosed a torn rotator cuff, and disorder of the bursae/tendon in the right shoulder region. He noted that appellant was released to work with restrictions effective August 11, 2011.

On November 13, 2012 Dr. Sanjay Chauhan, a Board-certified neurologist, diagnosed right shoulder pain with partial thickness rotator cuff tear, and impingement. He indicated that appellant sustained a right shoulder injury at work on July 27, 2010 when she picked up a bucket of W-2 forms and her shoulder popped. Dr. Chauhan opined that she was disabled for work for the period November 2 through December 13, 2012.

By decision dated August 13, 2013, OWCP denied appellant's claim for disability for the period April 4 through July 31, 2011 on the basis that the medical evidence submitted was not sufficient to support disability due to the employment injuries.⁶

On October 27, 2013 appellant, through counsel, requested reconsideration, and submitted reports dated August 21 through November 13, 2013 from Dr. Chuhan who diagnosed bilateral carpal tunnel syndrome, bilateral cubital tunnel syndrome, bilateral hand and wrist tenosynovitis, and enthesopathy of the elbow. Dr. Chuhan opined that she was able to work with restrictions.

By decision dated December 11, 2013, OWCP denied appellant's request for reconsideration of the merits finding that she had not submitted pertinent new and relevant evidence and had not shown that it erroneously applied or interpreted a point of law not previously considered by OWCP.

On March 12, 2014 appellant, through counsel, requested reconsideration and submitted reports dated January 23 through April 23, 2014 from Dr. Chauhan who reiterated his diagnoses and medical opinions. On March 31, 2014 Dr. Chauhan advised that she would be temporarily totally disabled for the period April 15 through 27, 2014 because she would be undergoing left carpal tunnel release, and left Guyon canal release surgeries. On April 23, 2014 he diagnosed right shoulder pain with partial thickness rotator cuff tear and impingement, status post right shoulder arthroscopic surgery on February 5, 2013, now with frozen shoulder, secondary insomnia due to pain, and right-sided upper extremity paresthesia. Dr. Chauhan opined that appellant was temporarily totally disabled "from April 23 through May 23, 2014 due to the occupational injury of March 7, 2012."

In a February 10, 2014 report, Dr. Randi Galli, a Board-certified hand surgeon, diagnosed bilateral carpal tunnel syndrome, bilateral ulnar neuropathy, and history of gunshot wound to the dorsal aspect of the left index finger.

On April 15, 2014 appellant underwent left carpal tunnel release surgery performed by Dr. Galli.

By decision dated June 2, 2014, OWCP denied modification of its August 13, 2013 decision.

LEGAL PRECEDENT

Section 8102(a) of FECA⁷ sets forth the basis upon which an employee is eligible for compensation benefits. That section provides: "The United States shall pay compensation as specified by this subchapter for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty...." In general the term "disability" under

⁶ In its August 13, 2013 cover letter, OWCP noted that the decision dated August 8, 2013 containing an incorrect file number had been corrected and any appeal filed would run from August 13, 2013 rather than August 8, 2013.

⁷ 5 U.S.C. § 8102(a).

FECA means “incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury.”⁸ This meaning, for brevity, is expressed as disability for work.⁹ For each period of disability claimed, the employee has the burden of proving that she was disabled for work as a result of the accepted employment injury.¹⁰ Whether a particular injury caused an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by the preponderance of the reliable, probative, and substantial medical evidence.¹¹

Disability is not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. 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 as that term is used under FECA and is not entitled to compensation for loss of wage-earning capacity. The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the particular period of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.¹²

ANALYSIS

The Board finds appellant has not established that she was disabled for the period April 4 through July 31, 2011 causally related to her employment injuries. While OWCP accepted that she sustained bilateral carpal tunnel syndrome, bilateral lesion of ulnar nerve, bilateral tenosynovitis of hand and wrist, and bilateral elbow enthesopathy, appellant bears the burden to establish through medical evidence that she was disabled during the claimed time periods and that her disability was causally related to her accepted injuries.¹³ The Board finds that appellant submitted no rationalized medical evidence explaining how the employment injuries materially worsened or aggravated her bilateral hand, wrist, and elbow conditions and caused her to be disabled for work specifically for the period April 4 through July 31, 2011.

In his reports, Dr. Chauhan diagnosed right shoulder pain with partial thickness rotator cuff tear, and impingement, secondary insomnia due to pain, right-sided upper extremity paresthesia, bilateral carpal tunnel syndrome, bilateral cubital tunnel syndrome, bilateral hand, and wrist tenosynovitis, and enthesopathy of the elbow. He opined that appellant was disabled for work for the period November 2 through December 13, 2012. On July 22, 2013 Dr. Chauhan reviewed her medical history and found that she complained of pain in the shoulder and numbness in her arm and hand. He opined that appellant was suffering from carpal tunnel

⁸ 20 C.F.R. § 10.5(f). See also *William H. Kong*, 53 ECAB 394 (2002); *Donald Johnson*, 44 ECAB 540, 548 (1993); *John W. Normand*, 39 ECAB 1378 (1988); *Gene Collins*, 35 ECAB 544 (1984).

⁹ See *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

¹⁰ See *William A. Archer*, 55 ECAB 674 (2004).

¹¹ See *Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

¹² *Id.*

¹³ See *supra* notes 9-10. See also *V.P.*, Docket No. 09-337 (issued August 4, 2009).

syndrome and shoulder dysfunction as a direct result of her employment-related conditions and was disabled for the period April 4 through July 31, 2011. On March 31, 2014 Dr. Chauhan advised that she would be temporarily totally disabled for the period April 15 through 27, 2014 because she would be undergoing left carpal tunnel release and left Guyon canal release surgeries. On April 23, 2014 he opined that appellant was temporarily totally disabled “from April 23 through May 23, 2014 due to the occupational injury of March 7, 2012.” The Board finds that Dr. Chauhan failed to provide a probative medical opinion on whether appellant was disabled from April 4 through July 31, 2011, due to her accepted conditions. Therefore, appellant has not met her burden of proof to establish that she was disabled for work due to the employment injuries for the period claimed.

In a February 10, 2014 report, Dr. Galli diagnosed bilateral carpal tunnel syndrome, bilateral ulnar neuropathy, and history of gunshot wound to the dorsal aspect of the left index finger. The reports from Dr. Ilic and Khaira discussed appellant’s July 27, 2010 shoulder injury, which OWCP previously accepted under File No. xxxxxx597. As Drs. Galli, Ilic, and Khaira failed to offer any probative medical opinion on whether appellant was disabled from April 4 through July 31, 2011 due to her accepted conditions, their reports are of diminished probative value.¹⁴ Further, OWCP has not accepted that appellant experienced an employment-related shoulder injury under this claim. Thus, the Board finds that the reports from Drs. Galli, Ilic, and Khaira are insufficient to establish appellant’s claim for total temporary disability benefits.

Appellant has not submitted any rationalized medical evidence establishing that she was disabled for the period April 4 through July 31, 2011 causally related to the accepted employment injuries. She has not met her burden of proof to establish that she is entitled to compensation for the claimed disability.

On appeal, counsel contends that OWCP’s decision was contrary to fact and law. Based on the findings and reasons stated above, the Board finds his arguments are not substantiated.

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 met her burden of proof to establish that she was disabled for the period April 4 through July 31, 2011 causally related to factors of her federal employment.

¹⁴ See *Sandra D. Pruitt*, 57 ECAB 126 (2005). See also *V.P.*, *supra* note 13.

ORDER

IT IS HEREBY ORDERED THAT the June 2, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 26, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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