

FACTUAL HISTORY

On August 31, 2012 appellant, then a 37-year-old mail handler, filed an occupational disease claim alleging that on September 11, 2010 he first became aware of his carpal tunnel syndrome and realized that his condition was caused by repetitive lifting at work. He stopped work on August 23, 2012.

In an October 23, 2012 decision, OWCP denied appellant's occupational disease claim. It accepted that he was exposed to the employment factors, but found that the medical evidence submitted was insufficient to establish that he sustained a medical condition causally related to the accepted work factors. Appellant requested a hearing on November 19, 2012.

In a July 31, 2013 decision, an OWCP hearing representative affirmed the October 23, 2012 decision, finding that the medical evidence was insufficient to establish a causal relationship between appellant's claimed injury and the accepted employment factors.

On September 3, 2013 appellant, through counsel, requested reconsideration.

In an August 12, 2013 medical report, Dr. Perry D. Inhofe, a Board-certified orthopedic surgeon, reviewed in detail appellant's work duties and his activities outside work, and found that his repetitive work duties caused his carpal tunnel syndrome. He stated that there was no evidence of a health condition or a vocational activity that caused or contributed to appellant's condition. Dr. Inhofe further stated that there was a preponderance of evidence concerning appellant's specific work at the employing establishment, all of which was performed within a length of time which more than met any "DRG" criteria for a repetitive use injury.

In a December 4, 2013 decision, OWCP set aside the July 31, 2013 decision, finding that appellant had submitted sufficient medical evidence to establish that he sustained bilateral carpal tunnel syndrome due to his accepted work factors based on Dr. Inhofe's August 12, 2013 report.

In a December 4, 2013 letter, OWCP advised appellant that his claim had been accepted for bilateral carpal tunnel syndrome.

On January 21, 2014 appellant filed a claim for compensation for leave without pay from September 9, 2012 through January 21, 2014. The employing establishment stated that his employment was terminated on March 30, 2013.

In a February 21, 2013 report, Dr. Christopher C. Hunter, a Board-certified family practitioner, stated that appellant was seen by him for nonsurgical issues. He indicated that any statement regarding direct and causal work relationships related to appellant's orthopedic diagnoses and procedures would need to be addressed by his treating surgeon.

In a January 21, 2014 test form report, Dr. David K. Wong, a Board-certified orthopedic surgeon, advised that an electromyogram and nerve conduction study (EMG/NCS) revealed wrist carpal tunnel syndrome. In narrative reports dated January 21 and February 24, 2014, he provided a history of the accepted employment injury, and appellant's medical treatment, family, and social background. Dr. Wong provided findings on physical and x-ray examination. He diagnosed bilateral carpal tunnel syndrome and bilateral first carpometacarpal (CMC) joint

osteoarthritis. Dr. Wong advised that the major cause of appellant's current symptoms and problems was his work injury. He further advised that appellant could return to full-duty work with no restrictions.

By letter dated January 31, 2014, OWCP advised appellant that the evidence submitted was insufficient to establish his claim for disability. It requested additional medical evidence. OWCP also requested that the employing establishment provide the reason for appellant's termination.

On February 4, 2014 the employing establishment stated that appellant was terminated due to job abandonment, as he had failed to respond to its requests to discuss his work options.

On February 14, 2014 appellant stated that the employing establishment had told him to go home.

In a February 14, 2014 report, Dr. Kathleen M. Sisler, a Board-certified physiatrist, provided examination findings and diagnosed very mild right carpal tunnel syndrome and moderate left carpal tunnel syndrome. There was no electrodiagnostic evidence of right cervical radiculopathy, right or left cubital tunnel syndrome or ulnar nerve entrapment at the wrist, or generalized peripheral neuropathy involving the upper extremities. Dr. Sisler compared her test results with another physician's prior test results and found apparent improvement on the right, but not on the left. The right median nerve findings were very mild while they were previously moderate. The left median nerve findings remained moderate.

Reports dated February 25 and 27, and March 6, 2014 from appellant's occupational therapists addressed the treatment of his wrists and fingers.

In a March 28, 2014 decision, OWCP denied appellant's claim for compensation from September 9, 2012 through January 21, 2014, finding that the medical evidence failed to establish total disability during the claimed period due to his accepted bilateral carpal tunnel syndrome.

By letter dated April 4, 2014, appellant, through counsel, requested a telephone hearing with an OWCP hearing representative.

In reports dated March 11 to June 18, 2014, appellant's occupational therapists addressed the treatment of his wrists.

Hospital records, including Dr. Wong's March 28, 2014 report, indicated that appellant underwent right carpal tunnel release on that date. In reports dated April 7, May 15, and June 19, 2014, Dr. Wong provided a history of the accepted employment injury, examination findings, and an impression of status post right carpal tunnel release and left carpal tunnel syndrome. He released appellant to return to light-duty work with restrictions. In a June 24, 2014 prescription, Dr. Wong diagnosed right carpal tunnel syndrome and ordered a gel shell brace for appellant to wear four to eight weeks.

On May 19, 2014 appellant requested that a subpoena be issued for a witness who had evidence that the employing establishment sent him home because no work was available. In an August 5, 2014 decision, OWCP denied his request to subpoena a witness.

In a November 3, 2014 decision, an OWCP hearing representative affirmed the March 28, 2014 decision. She found that the medical evidence was insufficient to establish that appellant was disabled from September 9, 2012 to January 21, 2014 due to his accepted employment injury.

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 the employment injury.² 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.³

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.⁴ The medical evidence required to establish a period of employment-related disability is rationalized medical evidence.⁵ 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.⁶ 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.⁷ To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.⁸

ANALYSIS

OWCP accepted that appellant sustained bilateral carpal tunnel syndrome while working as a mail handler. Appellant claimed compensation for disability from September 9, 2012 to January 21, 2014. OWCP denied his claimed compensation for disability as the evidence was insufficient to establish that the claimed disability was due to his accepted bilateral carpal tunnel

² *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ 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).

⁴ *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁵ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁶ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁷ *Sandra D. Pruitt*, 57 ECAB 126 (2005).

⁸ *See William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, *supra* note 4.

syndrome. The Board finds that appellant did not submit sufficient medical evidence to establish employment-related disability for the period claimed due to his accepted injury.

Dr. Inhofe reported on August 12, 2013 that appellant had bilateral carpal tunnel syndrome caused by his repetitive work duties. Dr. Wong's reports dated January 21 to June 24, 2014 also found that appellant had bilateral carpal tunnel syndrome and bilateral first CMC joint osteoarthritis caused by his work duties. Prior to the right carpal tunnel release he performed on March 28, 2014, he advised that appellant could return to full-duty work. Subsequent to this surgery, Dr. Wong found that appellant was status post right carpal tunnel release and still had left carpal tunnel syndrome. He prescribed a brace for his right wrist and released him to return to light-duty work with restrictions. Neither Dr. Inhofe nor Dr. Wong offered an opinion stating that appellant was totally disabled from September 9, 2012 to January 21, 2014 due to the accepted work injury.⁹ The Board notes that the condition of bilateral first CMC joint osteoarthritis has not been accepted by OWCP as work related and Dr. Wong did not sufficiently explain how this condition was caused or aggravated by the established employment factors.¹⁰ Appellant has the burden of proof to establish a causal relationship for any condition not accepted as employment related.¹¹ The Board finds that the reports of Dr. Inhofe and Dr. Wong do not establish appellant's disability claim for the period September 9, 2012 to January 21, 2014 and, thus, appellant has not met his burden of proof with these submissions.

The reports of Dr. Sisler and Dr. Hunter are also insufficient to establish a claim of disability. Neither physician provided an opinion on the causal relationship between the accepted employment injury and appellant's disability during the claimed period.¹²

The reports from appellant's occupational therapists have no probative medical value. An occupational therapist is not a physician as defined under FECA.¹³

On appeal counsel contended that OWCP's decision was contrary to law and fact. For reasons stated above, the Board finds that the weight of the medical evidence does not establish that appellant's total disability from September 9, 2012 through January 21, 2014 was causally related to his accepted employment injury of bilateral carpal tunnel syndrome.

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 See *K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

¹⁰ *G.A.*, Docket No. 09-2153 (issued June 10, 2010); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Alice J. Tysinger*, 51 ECAB 638 (2000).

¹¹ See *Jaja K. Asaramo*, *supra* note 10.

¹² See cases cited, *supra* note 10.

¹³ The term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8102(2); *R.S.*, Docket No. 11-1085 (issued January 3, 2012).

CONCLUSION

The Board finds that appellant has failed to meet his burden of proof to establish that he was totally disabled from September 9, 2012 to January 21, 2014 due to his accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the November 3, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 16, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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