United States Department of Labor
Employees' Compensation Appeals Board

S.H., Appellant	)	
and	)	**Docket No. 14-1574**
	)	**Issued: March 27, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Memphis, TN, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 3, 2014 appellant filed a timely appeal of a June 13, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 the case.

ISSUE

The issue is whether appellant met her burden of proof in establishing that she was entitled to wage-loss compensation for the period June 16, 2007 to July 31, 2008.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

This is the second appeal in the present case.[2] In a decision dated February 22, 2010, the Board found that OWCP met its burden of proof to terminate compensation benefits on June 24, 2008 for the accepted conditions of left shoulder sprain, right wrist sprain, left shoulder periscapular myofasciitis, and bilateral elbow ulnar irritation.[3] Appellant worked intermittently until June 16, 2007 and returned on July 31, 2008 and stopped completely on July 26, 2010. The facts and circumstances of the case up to that point are set forth in the Board's prior decision and incorporated herein by reference.

There was evidence in the prior appeal relevant to the current appeal before the Board. Appellant submitted reports from Dr. Haranath Policherla, a Board-certified neurologist, dated September 26 and October 22, 2007, who diagnosed cervical radiculopathy and moderate carpal tunnel syndrome. Dr. Policherla opined that these conditions were work related. He advised that appellant was totally disabled. On November 26, 2007 Dr. Policherla diagnosed cervical radiculopathy and moderate carpal tunnel syndrome and recommended wrist splints and physical therapy. In a May 23, 2008 report, he diagnosed cervical radiculopathy and noted that appellant continued to have neck pain radiating into her left shoulder with numbness and tingling in both wrists. Dr. Policherla noted a March 24, 2008 electromyography (EMG) revealed left C5-6 radiculopathy. Appellant submitted reports from him for the period May 23 to December 5, 2008 diagnosing cervical radiculopathy and moderate bilateral carpal tunnel syndrome as confirmed by EMG. Dr. Policherla noted that she could continue working with restrictions and wrist splints. In developing the claim, OWCP referred appellant to a referee physician, Dr. Kosinski, to resolve a medical conflict with regard to whether she had residuals of her work injury. In a report dated March 10, 2008, Dr. Kosinski diagnosed degenerative disease of the cervical spine. He noted no clinical evidence of radicular problems and that an EMG and magnetic resonance imaging (MRI) scan of the cervical spine were negative for any nerve root involvement. Dr. Kosinski recommended that appellant return to work but avoid keyboarding. In an April 10, 2008 report, he opined that her accepted conditions of left shoulder periscapular myofasciitis, acute right wrist sprain and bilateral ulnar nerve irritation and bilateral carpal tunnel syndrome had resolved and the cervical spine condition was not work related.

Subsequent to the prior appeal, OWCP referred appellant to Dr. Steven H. Schechter, a Board-certified neurologist, for a second opinion. In a report dated May 12, 2011, Dr. Schechter diagnosed cervical radiculopathy and probable nerve root inflammation and opined that this condition may have occurred as part of the double crush syndrome with involvement of cervical

[2] On January 3, 2006 appellant, a manual clerk, injured her right wrist and forearm while sorting mail. OWCP accepted the claim for right wrist sprain and later expanded it to include bilateral carpal tunnel syndrome. Appellant did not stop work but began light duty. She previously sustained a December 5, 2005 traumatic injury that was accepted for left shoulder sprain, File No. xxxxxx412. On July 12, 2006 appellant filed an occupational disease claim which was accepted for left shoulder myofasciitis and bilateral elbow ulnar irritation, File No. xxxxxx642. These claims were consolidated with the current claim.

[3] Docket No. 14-1574 (issued February 22, 2010). The Board found that the report of Dr. Michael E. Kosinski, a Board-certified orthopedist serving as an impartial medical specialist, represented the weight of the medial evidence. OWCP did not terminate benefits for the accepted condition of bilateral carpal tunnel syndrome.

nerve root and median nerve entrapment at the wrist. On July 1, 2011 OWCP accepted appellant's claim for cervical radiculopathy.

In March 2013, OWCP referred appellant for a second opinion to Dr. Jose U. DeSousa, a Board-certified neurologist. It provided Dr. DeSousa with appellant's medical records, a statement of accepted facts and a detailed description of her work duties. In a February 28, 2013 report, Dr. DeSousa indicated that he reviewed the records provided and examined appellant. He noted findings for motor examination of pain in the left shoulder, sensory touch to pin prick, joint position, and vibration in the upper and lower extremities was preserved, with no Tinel's sign. Dr. DeSousa noted symptoms of carpal tunnel syndrome and noted that an MRI scan of the cervical spine in October 2010 revealed mild broad-based central disc bulge without stenosis at C5-6. He diagnosed mild carpal tunnel syndrome especially on the right side and recommended obtaining an EMG. Dr. DeSousa found no evidence of cervical radiculopathy. On April 4, 2013 he performed electrodiagnostic testing which revealed no evidence of carpal tunnel syndrome. In a June 19, 2013 work capacity evaluation, Dr. DeSousa noted that appellant could not perform her regular job but could work full time in a job without repeated hand movements. He limited hand movements for more than four hours with five minute breaks every hour.[4]

Appellant provided reports from her treating physician, Dr. Donald Newman, a Board-certified orthopedist. In a December 20, 2011 report, Dr. Newman noted that she had symptoms of bilateral carpal tunnel syndrome, cervical degenerative disease, and cervical radiculopathy. Appellant reported a history of working as a manual mail processing clerk and performed repetitive hand movements including sorting 200 to 300 letters in a tray, three to four trays a hour. She had limited cervical spine range of motion, palpatory spasm of the trapezius muscles, bilateral Phalen's and Tinel's sign, weakness in grasp, diminished reflexes, and intact motor sensory, and reflex components. Dr. Newman diagnosed severe bilateral carpal tunnel syndrome, adhesive capsulitis, tendinitis of the wrists, elbows, and shoulders, and cervical radiculopathy. He opined that appellant reached maximum medical improvement and that restrictions were prophylactic for further prevention of neuropathy. In reports dated March 18, June 28, and July 31, 2013, Dr. Newman noted her symptoms of pain and stiffness that radiated to the left shoulder, and right hand weakness with loss of strength. He diagnosed bilateral carpal tunnel syndrome, burning, aching, and tingling sensation of the bilateral palms, forearms and right upper arm, and weakness in the bilateral hands. Following OWCP's request to comment on Dr. DeSousa's reports, Dr. Newman, on June 28, 2013, asserted that Dr. DeSousa's opinion was based on partial/incomplete nerve conductions, no physical examination, or investigation of other conditions. He referenced an EMG study dated March 24, 2008 which documented C5-6 radiculopathy. Dr. Newman advised that appellant was off work since July 26, 2010 and noted the carpal tunnel syndrome may have resolved. In a July 16, 2013 note, he noted no significant changes since October 2011. On October 16, 2013 Dr. Newman noted appellant's status and that her pain had increased since her last visit.

[4] On August 22, 2013 OWCP asked Dr. DeSousa to address whether appellant still had bilateral carpal tunnel syndrome and her ability to perform her work duties. In a work capacity report dated October 23, 2013, Dr. DeSousa noted that appellant could perform her regular job and had no restrictions.

In an October 17, 2013 letter, appellant asserted that she had residuals of bilateral carpal tunnel syndrome.[5] In an October 19, 2013 letter, she noted that Dr. Policherla took her off work on June 16, 2007 due to cervical radiculopathy and carpal tunnel syndrome. Appellant indicated that the employing establishment would not accept her medical documentation because it listed cervical radiculopathy which was not accepted at that time. She indicated that she did not file a Form CA-7 because cervical radiculopathy was not accepted. Appellant reported not being permitted to work until July 31, 2008 and noted cervical radiculopathy was accepted on July 1, 2011. She noted being on leave without pay from June 18, 2007 to July 31, 2008.

On October 21, 2013 appellant filed a Form CA-7, claim for compensation for total disability from June 16, 2007 to July 31, 2008. The employing establishment noted that she was claiming she was totally disabled and that there was no work available.

In a January 15, 2014 report, Dr. Newman noted no change in appellant's condition with cervical spine pain radiating with a burning sensation, right shoulder, and bilateral forearm aches. He advised that her bilateral hands and fingers were numb and tingled with decreased hand strength.

On February 20, 2014 OWCP requested that appellant submit additional information with regard to her claim for compensation. It asked that she submit medical evidence establishing total disability due to the accepted condition for the period claimed.

Appellant asserted in a March 14, 2014 letter that disability for the period claimed was established when her claim was expanded to include cervical radiculopathy. She stated that Dr. Policherla took her off work in June 2007. Appellant submitted OWCP's July 1, 2011 letter accepting cervical radiculopathy and a March 18, 2013 prescription note from Dr. Newman, previously of record. She submitted a May 18, 2007 report from Dr. Policherla who treated her for neck pain and carpal tunnel syndrome. Appellant reported lifting trays of mail and pulled a muscle in her left shoulder. Dr. Policherla noted findings of decreased cervical muscle spasms, positive Spurling's sign, intact motor examination, normal gait, and intact sensory examination. He diagnosed cervical radiculopathy and recommended splints for the carpal tunnel syndrome. On June 18, 2007 Dr. Policherla treated appellant for neck pain and carpal tunnel syndrome. He diagnosed cervical radiculopathy. A cervical spine MRI scan showed decreased cervical lordosis and scoliosis and an EMG revealed C5-6 radiculopathy. Dr. Policherla advised appellant to stop working and referred her to physical therapy. A January 10, 2008 prescription note from Dr. Policherla diagnosed cervical radiculopathy and carpal tunnel syndrome. Dr. Policherla noted that appellant could work six hours a day with restrictions. A February 1, 2008 letter from the employing establishment indicated that cervical radiculopathy was not accepted and that two medical certificates must be submitted for appellant to return to work. Appellant submitted a job offer for a mail processing clerk dated July 31, 2008, full time with restrictions.

In an April 10, 2014 report, Dr. Newman treated appellant for increased lateral cervical spine pain and shoulder pain, tight and achy sensations, bilateral forearm burning and aching sensation, and bilateral palm numbness. In a May 10, 2014 narrative report, he diagnosed

[5] This letter was in response to OWCP's October 4, 2013 proposal to terminate all compensation benefits based on Dr. DeSousa's reports. As of the filing of the instant appeal, OWCP has not finalized this proposal.

bilateral carpal tunnel syndrome and cervical radiculopathy. Dr. Newman noted appellant's injury was caused by repetitive use of both hands while processing mail. He noted that she had permanent impairment of the hands, arms, and neck. Dr. Newman advised that appellant could work with restrictions and her prognosis was guarded. In a May 12, 2014 work capacity evaluation, he noted her current restrictions.

In a decision dated June 14, 2014, OWCP denied appellant's claim for compensation for total disability for the period May 16, 2007[6] to July 31, 2008. It advised that the evidence of record fails to support disability during the period claimed.

LEGAL PRECEDENT

A claimant has the burden of proving by a preponderance of the evidence that he or she is disabled for work as a result of an accepted employment injury and submit medical evidence for each period of disability claimed.[7] Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues.[8] The issue of whether a particular injury causes disability for work must be resolved by competent medical evidence.[9] To meet this burden, a claimant must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting a causal relationship between the alleged disabling condition and the accepted injury.[10]

The Board 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. To do so, would essentially allow an employee to self-certify his or her disability and entitlement to compensation. For each period of disability claimed, the employee has the burden of establishing that she was disabled for work as a result of the accepted employment injury.[11]

ANALYSIS

OWCP accepted appellant's claim for left shoulder sprain, right wrist sprain, left shoulder periscapular myofasciitis, bilateral elbow ulnar irritation, bilateral carpal tunnel syndrome, and cervical radiculopathy.[12] Appellant worked intermittently on light duty until stopping on June 16, 2007. She returned to work on July 31, 2008 and stopped completely on July 26, 2010.

[6] OWCP's June 4, 2014 decision denied compensation for the period May 16, 2007 to July 31, 2008. This appears to be a typographical error as appellant's Form CA-7 requested wage-loss compensation for the period June 16, 2007 to July 31, 2008.

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

[8] *Id.*

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

[10] *C.S.*, Docket No. 08-2218 (issued August 7, 2009).

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

[12] On July 1, 2011 OWCP expanded appellant's claim to include cervical radiculopathy.

On February 22, 2010 the Board affirmed OWCP decisions dated June 26, 2008 and January 9, 2009 finding that OWCP met its burden of proof to terminate compensation benefits on June 24, 2008 for the accepted conditions of left shoulder sprain, right wrist sprain, left shoulder periscapular myofasciitis, and bilateral elbow ulnar irritation. The Board finds that the medical evidence is insufficient to establish that the period of total disability beginning June 16, 2007 to July 31, 2008 was caused or aggravated by the accepted conditions.

The most contemporaneous medical reports, those from Dr. Policherla, are insufficient to establish the claim. On May 18, 2007 Dr. Policherla noted a history of injury, noted diagnoses and treatment recommendations but did not specifically address the cause of any disability. In a June 18, 2007 report, he noted that a cervical MRI scan revealed decreased cervical lordosis and scoliosis and an EMG showed C5-6 radiculopathy. Dr. Policherla diagnosed cervical radiculopathy and advised that appellant was disabled from work. Other reports from him dated September 26 and October 22, 2007, diagnosed cervical radiculopathy and moderate carpal tunnel syndrome. Dr. Policherla opined these conditions were work related and found appellant totally disabled. On November 26, 2007 he listed diagnoses and treatment recommendation. While Dr. Policherla indicated that appellant was totally disabled from work, he did not specifically explain how any accepted condition caused or contributed to the period of disability beginning June 16, 2007. It is appellant's burden to submit rationalized medical evidence which supports a causal relationship between the period of disability and the accepted injury.[13] These reports are insufficient to meet her burden of proof.

Other reports from Dr. Policherla in 2008 continued to note appellant's diagnoses, treatment, and her work restrictions. However, these reports do not support appellant's claim for total disability for the period June 16, 2007 to July 31, 2008 rather, Dr. Policherla noted appellant could work subject to restrictions.[14] These reports are insufficient to establish appellant's claim as Dr. Policherla did not specifically address the cause of appellant's claimed disability beginning June 16, 2007.[15] Therefore, these reports are insufficient to meet her burden of proof.

Appellant also provided reports from Dr. Newman. In a December 20, 2011 report, Dr. Newman who noted a history of injury and her symptoms of bilateral carpal tunnel syndrome, cervical degenerative disease, and cervical radiculopathy. He provided diagnoses and work restrictions which he stated were prophylactic for further prevention of neuropathy. This report is of limited probative value and the physician did not specifically address the causal relationship between appellant's accepted conditions and the claimed period of disability. Likewise, other reports from Dr. Newman did not specifically address the cause of the claimed period of disability. He did not explain how any disability from June 16, 2007 to July 31, 2008 was employment related. Thus, these reports are insufficient to establish the claim.

[13] *Franklin D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

[14] The record indicates that appellant was provided light duty consistent with restrictions from physicians prior to her work stoppage in June 2007.

[15] *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).

Furthermore, Dr. Kosinski, a Board-certified orthopedist and referee physician, opined on March 10, 2008, during the period appellant was claiming wage-loss compensation, that her accepted conditions of left shoulder periscapular myofasciitis, acute right wrist sprain and bilateral ulnar nerve irritation had resolved that there was no evidence of cervical radiculopathy and recommended appellant return to work but avoid keyboarding. Although Dr. Schechter, a second opinion physician, supported in his May 12, 2011 report that appellant's cervical radiculopathy was work related, he did not address whether this, or any other accepted condition, contributed to disability during the period at issue. Dr. DeSousa, a second opinion physician, who issued reports dated February 28, April 4, and June 19, 2013, also did not address disability during the period at issue from June 16, 2007 to July 31, 2008.

On appeal, appellant asserts that she submitted sufficient medical evidence supporting disability for the period claimed. She indicated that her total disability wage compensation for June 16, 2007 to July 31, 2008 was denied because her cervical radiculopathy injury had not been accepted. Appellant asserts that when her claim was expanded to include cervical radiculopathy she became entitled to receive those benefits. As noted above, the Board 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. The Board notes that appellant failed to submit rationalized medical evidence which supports a causal relationship between the period of disability and the accepted injuries.

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 failed to establish that her disability for the period beginning June 16, 2007 to July 31, 2008 is causally related to the accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the June 13, 2014 decision of the Office of Workers' Compensation Program is affirmed.

Issued: March 27, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

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