

employment injury; and (2) whether OWCP properly denied her request for a review of the written record.

On appeal appellant generally asserts that the medical evidence establishes her claim.

FACTUAL HISTORY

On March 18, 2015 appellant, then a 42-year-old letter carrier, filed a traumatic injury claim (Form CA-1), alleging that on March 17, 2015 she strained her right shoulder when she tripped on a rock while delivering mail. She did not stop work, but began modified duty. On April 21, 2015 OWCP accepted right shoulder sprain/strain.

Appellant began treatment with Dr. Pushpa Krisnasami, Board-certified in family medicine, who diagnosed right shoulder sprain/strain and provided physical restrictions. Dr. Krisnasami continued to submit reports reiterating her diagnosis and noting that appellant continued modified duty with restrictions of no overhead work, limited use of the right hand, and limited lifting, pushing, and pulling up to 25 pounds.

On September 11, 2015 appellant filed a claim for compensation (Form CA-7) for the period July 30 to September 24, 2015. The employing establishment noted that she stopped work on July 30, 2015 and that surgery was scheduled for September 15, 2015.

By letter dated September 16, 2015, OWCP informed appellant of the evidence needed to support her disability claim. This was to include a comprehensive narrative medical report, with objective findings, explaining how appellant's condition worsened such that she was no longer able to perform the duties of her position when she stopped work on July 30, 2015.

In undated correspondence, the employing establishment controverted the claim alleging that there were inconsistencies in the manner the injury occurred.

The medical evidence relevant to the period of claimed disability includes a June 4, 2015 consultation report in which Dr. John W. Jaureguito, a Board-certified orthopedic surgeon, noted appellant's complaint of right shoulder pain, worse with reaching and overhead activities, and difficulty lifting. Following physical examination, Dr. Jaureguito diagnosed right shoulder post-traumatic impingement syndrome, rule-out rotator cuff tear. He recommended a magnetic resonance imaging (MRI) scan of the right shoulder and advised that appellant remain on light duty.

A July 2, 2015 MRI scan of the right shoulder demonstrated a moderate-to-large tear of the supraspinatus tendon with infraspinatus and subscapularis tendinosis and mild atrophy of the infraspinatus muscle, a degenerative fraying/tear of the superior and superior/posterior labrum, and a Type II acromion with mild acromial clavicular degenerative joint disease.

On July 24, 2015 Dr. Edward O'Hara, a general practitioner and associate of Dr. Krisnasami, noted appellant's complaint of continued right shoulder pain with restricted shoulder range of motion, and that she was working modified duty. He diagnosed rotator cuff syndrome and advised that she continue follow-up with orthopedics and follow their restrictions. On July 28, 2015 Dr. Krisnasami reiterated her diagnosis of right shoulder sprain/strain, noted

physical examination findings of tenderness on examination and restricted range of motion, and advised that appellant could continue modified duty.

Appellant was seen on July 30, 2015 by Dr. Andre N. Gay, an orthopedic surgeon and associate of Dr. Jaureguito. Dr. Gay noted a history that appellant had severe right shoulder pain since she fell at work on March 17, 2015 which was exacerbated by lifting and overhead activity, and was working light duty. Physical examination demonstrated painful, restricted right shoulder range of motion. Dr. Gay reviewed the MRI scan and diagnosed extensive rotator cuff tear that had failed conservative measures. He recommended surgery, advised that she could not use her right arm, and placed her on total disability until the rotator cuff repair. The surgery was authorized by OWCP on August 12, 2015.

In reports dated August 13 and September 10, 2015, Dr. Jaureguito noted appellant's complaint of severe shoulder pain, slightly diminished since she had stopped work. He described physical examination findings and noted his review of the MRI scan. Dr. Gay diagnosed right shoulder full-thickness rotator cuff tear, recommended surgery, and advised that, given the severity of her symptoms, she should remain off work.

Dr. Krisnasami performed a preoperative examination on September 14, 2015. She noted appellant's complaint of severe right shoulder pain and cleared her for surgery.

On September 15, 2015 Dr. Jaureguito performed right shoulder arthroscopic rotator cuff repair with labral debridement, posterior capsular release, synovectomy, and subacromial decompression. OWCP placed appellant on total disability compensation, effective that day.

By decision dated October 14, 2015, OWCP denied appellant's claim for disability compensation for the period July 30 through September 14, 2015 because the medical evidence submitted did not establish that she could not perform her modified duties until her right shoulder surgery.

On an OWCP appeal rights form dated November 11, 2015 and postmarked November 16, 2015, appellant requested a review of the written record before OWCP's Branch of Hearings and Review.

By decision dated December 16, 2015, the Branch of Hearings and Review denied appellant's request for a review of the written record, noting that it was untimely filed. OWCP considered the request and determined that the case could equally be addressed by requesting reconsideration with OWCP and submitting new evidence.

LEGAL PRECEDENT -- ISSUE 1

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.³ Whether a particular injury causes an employee to be

³ See *Fereidoon Kharabi*, 52 ECAB 291 (2001).

disabled for employment and the duration of that disability are medical issues.⁴ The issue of whether a particular injury causes disability for work must be resolved by competent medical evidence.⁵ 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.⁶

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 the employee to self-certify her disability and entitlement to compensation. For each period of disability claimed, the employee has the burden of proof to establish that she was disabled for work as a result of the accepted employment injury.⁷

ANALYSIS -- ISSUE 1

The Board finds that appellant did not meet her burden of proof to establish that she was totally disabled for the period July 30 through September 14, 2015, caused by a March 17, 2015 employment injury, accepted for right shoulder sprain/strain.

Following the March 17, 2015 employment injury, appellant began modified duty. She stopped work and claimed wage-loss compensation beginning July 30, 2015. On September 15, 2015 appellant had right shoulder surgery. OWCP paid total disability compensation effective that same date.

Medical opinion evidence submitted by appellant to support a claim for compensation should reflect a correct history and should offer a medically sound explanation by the physician of how the modified duties she was performing, when she stopped work and claimed total disability compensation beginning July 30, 2015, physiologically caused or aggravated the accepted right shoulder condition.⁸ Appellant submitted no such evidence in this case.

Appellant was initially treated by Dr. Krisnasami following the March 17, 2015 employment injury.

On June 4, 2015 appellant was seen in consultation by Dr. Jaureguito who recommended a right shoulder MRI scan and advised that appellant remained on light duty.

In reports until July 28, 2015, Dr. Krisnasami advised that appellant could perform modified duty with limited use of the right arm.

⁴ *Id.*

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

⁶ C.S., Docket No. 08-2218 (issued August 7, 2009).

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

⁸ See *J.S.*, Docket No 15-1618 (issued March 7, 2016).

Dr. Gay, an associate of Dr. Jaureguito, saw appellant on July 30, 2015, following the July 2, 2015 MRI scan. He noted painful, restricted right shoulder motion. Dr. Gay reviewed the MRI scan, diagnosed extensive rotator cuff tear that had failed conservative measures, and recommended surgery. He advised that appellant could not use her right arm and placed her on total disability until the rotator cuff injury could be repaired. Dr. Gay, however, did not exhibit specific knowledge of the modified duties appellant performed after the March 17, 2015 employment injury, which involved limited use of the right arm.

In his August 13 and September 10, 2015 reports, Dr. Jaureguito advised that, due to the severity of appellant's symptoms, she should remain off work until the surgery. However, he too failed to discuss any of her modified-duty requirements and did not describe specific symptoms that kept appellant from her limited-duty position until his surgery on September 15, 2015.

In order to meet her burden of proof, the medical evidence of record must reflect a correct history and the physician should offer a medically sound explanation of how the specific duties appellant performed in her modified position caused or aggravated the claimed condition such that she became totally disabled. The opinion must be supported by medical rationale explaining how the period of total disability is causally related to the diagnosed condition and the specific employment factors or employment injury.⁹ Medical form reports and narrative statements merely asserting causal relationship are insufficient to meet appellant's burden of proof.¹⁰ The medical evidence must also include rationale explaining how the physician reached his or her medical opinion.¹¹ Based on their lack of a rationalized explanation, the Board concludes that neither Dr. Gay nor Dr. Jaureguito provided an opinion of sufficient rationale to establish that appellant was totally disabled from her modified duties beginning July 30 through September 14, 2015.

While Dr. O'Hara, Dr. Krisnasami's associate, advised on July 24, 2015 that appellant should follow the restrictions provided by orthopedics, he offered no additional explanation. Moreover, his report is dated prior to the period of claimed disability making it of limited relevance.

As noted above, appellant's burden requires that she furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and who supports that conclusion with sound medical reasoning.¹² Where no such rationale is present, the medical evidence is of diminished probative value.¹³ As appellant did not submit sufficient medical evidence to establish that she was disabled for the period July 30 through September 14, 2015

⁹ See *J.J.*, Docket No. 09-27 (issued February 10, 2009).

¹⁰ *Sedi L. Graham*, 57 ECAB 494 (2006).

¹¹ *Beverly A. Spencer*, 55 ECAB 501 (2004).

¹² *S.S.*, 59 ECAB 315 (2008).

¹³ *Mary A. Ceglia*, 55 ECAB 626 (2004).

causally related to the accepted March 17, 2015 right shoulder injury, she did not meet her burden of proof.¹⁴

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.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of FECA provides that a claimant dissatisfied with a decision of OWCP shall be afforded an opportunity for an oral hearing or, in lieu thereof, a review of the written record.¹⁵ A request for either an oral hearing or a review of the written record must be submitted, in writing, within 30 days of the date of the decision for which a hearing is sought. If the request is not made within 30 days or if it is made after a reconsideration request, a claimant is not entitled to a hearing or a review of the written record as a matter of right.¹⁶ The Board has held that OWCP, in its broad discretionary authority in the administration of FECA has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that OWCP must exercise this discretionary authority in deciding whether to grant a hearing.¹⁷

ANALYSIS -- ISSUE 2

As noted above, a request for a review of the written record must be made within 30 days after the date of issuance of OWCP's final decision.¹⁸ In this case, appellant requested a review of the written record before OWCP's Branch of Hearings and Review on a form dated November 11, 2015 and postmarked November 16, 2015. Thirty days following the October 14, 2015 decision was Friday, November 13, 2015. Appellant's request was therefore untimely filed.

OWCP also has the discretionary power to grant a request for a hearing or review of the written record when a claimant is not entitled to such as a matter of right. In its December 16, 2015 decision, OWCP properly exercised its discretion by noting that it had considered the matter in relation to the issue involved and had denied appellant's request as the issue could be addressed through a reconsideration application. The Board has held that, as the only limitation on OWCP's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.¹⁹ In the present case, the evidence of

¹⁴ *Id.*

¹⁵ 5 U.S.C. § 8124(b)(1).

¹⁶ *Claudio Vazquez*, 52 ECAB 496 (2001).

¹⁷ *Marilyn F. Wilson*, 52 ECAB 347 (2001).

¹⁸ *Supra* note 16.

¹⁹ *See Mary Poller*, 55 ECAB 483 (2004).

record does not indicate that OWCP committed any act in connection with its December 16, 2015 denial of appellant's request for a review of the written record that could be found to be an abuse of discretion.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she was totally disabled for the period July 30 through September 14, 2015, and that OWCP properly denied her request for a review of the written record.

ORDER

IT IS HEREBY ORDERED THAT the December 16 and October 14, 2015 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 2, 2016
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board