

Pursuant to the Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the employee met his burden of proof to establish total disability for work commencing October 1, 2010 due to accepted degenerative cervical disc disease and a cervical spine sprain under OWCP File No. xxxxxx336; and (2) whether he met his burden of proof to establish bilateral carpal tunnel syndrome, bilateral ulnar neuritis at Guyon's canal, and right cubital tunnel syndrome causally related to factors of his federal employment under OWCP File No. xxxxxx457.

FACTUAL HISTORY

OWCP accepted that on or before January 22, 2008 the employee, then a 66-year-old orthopedic surgeon on a five-year, fee-based appointment, sustained a cervical spine sprain and cervical degenerative disc disease in the performance of duty, caused by repetitive writing, typing, and the stresses of performing physical examinations. The employee stopped work on September 30, 2010, the day his fee-basis appointment ended. He was not offered a new appointment.⁴ The employee did not return to work. OWCP assigned the claim File No. xxxxxx336.

The employee provided records regarding preexisting cervical spine injuries. He sustained a right paracervical muscle strain in a June 3, 2000 motor vehicle collision. On July 27, 2001 the employee fell asleep while driving and was involved in a roll-over accident. Dr. Thomas Webster, Board-certified in emergency medicine, diagnosed an acute neck strain with preexisting degeneration of the C4 disc, chronic cervical spondylosis, and bilateral neural foraminal stenosis at C6-7.

Dr. Joel Heiser, an attending Board-certified orthopedic surgeon, provided a January 22, 2008 report diagnosing preexisting cervical degenerative disc disease. He related the employee's complaints of neck pain when he used a computer or telephone at work. Dr. Heiser permanently limited the employee to using a computer for no more than 10 minutes an hour, and "continue using the current dictating system." He renewed these restrictions on December 15, 2009.⁵

In an August 31, 2010 report, Dr. Heiser noted that the employee was involved in a July 18, 2010 motor vehicle accident, increasing his neck pain and headaches. He diagnosed multilevel cervical spine degenerative disc disease, "aggravated by recent MVA [motor vehicle accident], July 18, 2010." Dr. Heiser recommended continued restrictions. On December 20, 2010 he explained that despite three cervical spine injuries in motor vehicle accidents, the employee attributed his neck symptoms to computer use and repeated neck flexion at work.

³ 5 U.S.C. § 8101 *et seq.*

⁴ In a September 23, 2010 letter, the employing establishment advised the employee that his fee-basis appointment expired on September 30, 2010. His services would not be continued as his appointment would expire.

⁵ A July 30, 2010 magnetic resonance imaging (MRI) scan showed multilevel cervical degenerative disc disease without focal disc herniations.

Dr. Heiser diagnosed “[a]ggravation of DDD [degenerative disc disease] of the C[ervical]-spine from work at the [employing establishment] in the past few years.”

Dr. Neville Alleyne, an attending Board-certified orthopedic surgeon, provided a January 27, 2011 report relating the employee’s contention that his intermittent neck pain, due to motor vehicle accidents in 2000 and 2001, increased when the employing establishment switched to a computer-based report system in 2008. The employee was in a rear-end collision on July 18, 2010, causing an exacerbation of neck pain. On examination Dr. Alleyne found limited cervical motion, a positive Tinel’s sign at the right elbow, and point tenderness over the mid-to-lower cervical spine. He diagnosed preexisting degenerative disc disease without evidence of radiculopathy or myelopathy, mild exacerbation of neck pain due to June 2000, March and July 2001, and July 18, 2010 motor vehicle accidents, and a “significant exacerbation in neck pain by medical examination for [employing establishment] patients over the last five years.” Dr. Alleyne opined that performing examinations, documenting range of motion “for hands, and doing a lot of repetitive bending,” carrying charts, reading charts, and reading x-rays, “resulted in extreme exacerbations in his neck pain, headaches and pain radiating into his shoulders.” He found appellant permanently disabled from these activities.

In a May 23, 2011 progress note, Dr. Alleyne commented that, although the employee had retired, he continued to experience neck pain with any prolonged flexion. On October 6, 2011 Dr. Alleyne newly reported that the employee sustained an unspecified occupational injury on January 22, 2008. He reasoned that the employee’s work tasks were the primary cause of his continuing condition as his symptoms decreased after the car accidents, but he “continued to experience daily symptomatology with cervical flexion and extension while reviewing charts and working on the computer keyboard.”

On September 12, 2011 the employee filed a claim for ongoing total disability compensation (Form CA-7) commencing October 1, 2010.

By decision dated January 12, 2012, OWCP denied the claim for disability compensation on and after October 1, 2010, based on a lack of medical evidence supporting causal relationship. The employee disagreed and, in a January 31, 2012 letter, through counsel, requested an oral hearing before a representative of OWCP’s Branch of Hearings and Review.

At the hearing, conducted telephonically on March 26, 2012, the employee noted that he retired from medical practice in 1988, but accepted an appointment with the employing establishment in 2005. He used January 22, 2008 as the date of injury as this was the date that Dr. Heiser first provided work restrictions for computer use. The employee provided additional medical evidence.⁶

In an August 27, 2010 report, Dr. Stephen P. Nichols, an attending Board-certified orthopedic surgeon, related the employee’s account of a July 18, 2010 motor vehicle accident, with “excruciating neck pain” at impact. The employee explained that, since the accident, it was “much more difficult for him” to write reports at work. The employee also described June 2000, March and July 2001 car accidents, with neck pain after the second incident. On examination

⁶ Following the hearing, counsel submitted a March 20, 2012 brief asserting that the employee was entitled to compensation based on the reports of his attending physicians. He also provided minor corrections to the hearing transcript on April 12, 2012.

Dr. Nichols noted a normal cervical lordosis, midline tenderness to palpation from the occiput to C7, and limited cervical motion. He diagnosed cervical sprain/strain syndrome with concurrent degenerative disc disease.

The employee provided a request for reasonable accommodation (Americans with Disabilities Act Checklist) which he signed on August 31, 2010. In an attached statement, the employee explained that he had degenerative cervical disc disease. He requested to continue to use the dictation system rather than change to voice recognition software, which created errors necessitating long periods of computer use to correct. This form was not signed or acknowledged by the employing establishment.

In a February 28, 2012 report, Dr. Jacob E. Tauber, an attending Board-certified orthopedic surgeon, noted appellant's June 2000, March 2001, and July 2010 motor vehicle accidents, and related the employee's account of dictating reports and conducting evaluations at work. On examination Dr. Tauber observed restricted cervical motion, and a positive right elbow Tinel's sign. He diagnosed a permanent aggravation of multilevel cervical degenerative disc disease with facet arthropathy. Dr. Tauber noted that cervical flexion while performing data entry or examinations at work aggravated the degenerated cervical discs and facets. He opined that the increase in the employee's workload during the final year of his employment exceeded his "capacities from an anatomic standpoint," causing a permanent aggravation.

By decision dated June 11, 2012 under File No. xxxxxx336, an OWCP hearing representative set aside OWCP's January 12, 2012 decision and remanded the case for referral to a second opinion specialist. OWCP found that Dr. Tauber's opinion was of sufficient probative value to require further development.

On September 7, 2012 OWCP obtained a second opinion from Dr. David Easley, a Board-certified orthopedic surgeon. Dr. Easley reviewed the medical record and a statement of accepted facts. He noted the history of June 2000, March 2001, and July 2010 motor vehicle accidents, and a January 22, 2008 "cervical sprain with aggravation of cervical degenerative disc disease due to his work-related activities as a physician, specifically, conducting physical examinations, taking notes, dictating, and using a computer." On examination Dr. Easley noted severely restricted cervical motion, and a positive Tinel's sign at the medial elbow bilaterally. He diagnosed cervical degenerative disc disease and severe bilateral ulnar neuritis at Guyon's canal. Dr. Easley opined that as the employee was asymptomatic prior to January 22, 2008, his work duties "aggravated the underlying cervical degenerative disc disease." He found that the aggravation was permanent, "predicated upon the fact that his symptoms of cervical pain, if any, were minimal prior to the commencement of this type of work." Dr. Easley opined that the employee was totally and permanently disabled.

Dr. Alleyne provided an August 29, 2012 update, diagnosing "advanced cervical spondylosis without radiculopathy or myelopathy." He opined that appellant "had a preexisting condition aggravated by his employment, which has now resulted in him having chronic disabling cervical pain." On April 3, 2013 Dr. Alleyne opined that work factors permanently aggravated the employee's cervical spine condition because his symptoms increased during his federal employment. He found appellant totally and permanently disabled for work beginning October 1, 2010 due to an increase of symptoms.

Dr. Tauber noted on February 25, 2013 that electrodiagnostic tests were needed to determine whether the employee's upper extremity symptoms were due to his cervical spine condition or to peripheral nerve entrapment.⁷ On June 18, 2013 he diagnosed cervical disc disease, cervical radiculopathy, bilateral carpal tunnel syndrome, bilateral Guyon's canal entrapment, right cubital tunnel syndrome, right medial epicondylitis, and left lateral epicondylitis. Dr. Tauber opined that the employee had a "classic double crush syndrome," with peripheral and cervical spine nerve entrapments.

On July 8, 2013 the employee filed a claim for ongoing wage-loss compensation (Form CA-7) commencing October 1, 2010 under File No. xxxxxx336. As the form did not contain wage information, on July 15, 2013 OWCP requested additional information from the employing establishment regarding his wages and benefits.⁸

On August 7, 2013 the employee filed an occupational disease claim (Form CA-2) alleging that he sustained bilateral carpal tunnel syndrome, right cubital tunnel syndrome, and bilateral ulnar neuritis at Guyon's canal in the performance of duty on or before September 7, 2010. OWCP assigned the claim File No. xxxxxx457. The employee asserted that the reports of Dr. Tauber and Dr. Easley, submitted under File No. xxxxxx336, were sufficient to establish causal relationship. The employing establishment controverted the claim, noting that he did not report "any type of work-related injury or illness" before the end of his appointment on September 30, 2010.

In a September 12, 2013 letter, OWCP advised the employee of the additional evidence needed to establish his wage-loss claim under File No. xxxxxx336. It noted that the medical record did not explain how he became disabled for work on October 1, 2010, although he performed full duty to the end of his appointment on September 30, 2010.

In an October 4, 2013 letter, OWCP advised the employee of the type of additional evidence needed to establish his claim for upper extremity conditions. It requested a rationalized report from his attending physician, and the employee's statement on the etiology of the claimed conditions.

The employee provided a statement noting that he worked from two to four days a week during his appointment, with dictation at home taking an additional two days a week. He first noticed right elbow problems in 2009, but did not receive a diagnosis until he saw Dr. Easley in 2012. The employee submitted additional reports from Dr. Tauber, finding his condition unchanged. On October 21, 2013 Dr. Tauber opined that repetitive work duties caused and permanently aggravated the employee's bilateral carpal tunnel syndrome, bilateral ulnar neuritis at Guyon's canal, and right cubital tunnel syndrome.

⁷ June 12, 2013 ultrasound studies showed left elbow arthritic changes and edema with microruptures of the right common flexor tendon. June 3, 2013 nerve conduction velocity and electromyography studies demonstrated moderate bilateral carpal tunnel syndrome, bilateral moderate ulnar nerve compression at Guyon's canal, and right moderate ulnar compression at or near the medial epicondyle.

⁸ The employee provided documents indicating that he received approximately \$19,800.00 in unemployment insurance benefits from October 17, 2010 to September 17, 2011, after his five-year appointment ended on September 30, 2010. The employee continued to file wage-loss compensation claims for the period November 4, 2013 to July 1, 2014.

By decision dated November 19, 2013, OWCP denied the claim for bilateral upper extremity conditions under File No. xxxxxx457. It accepted that the employee wrote notes, dictated reports, used a computer, and performed examinations as alleged. OWCP found, however, that the employee's physicians did not sufficiently explain how and why the accepted work factors would cause the claimed conditions.

By decision dated November 22, 2013 under File No. xxxxxx336, OWCP denied appellant's claim for compensation commencing October 1, 2010, finding that the medical record did not establish a spontaneous worsening of the accepted conditions on or about that date. It found that the employee stopped work on October 1, 2010 because his appointment ended on September 30, 2010, not because of an objective worsening of the accepted cervical sprain and degenerative cervical disc disease.

In December 2, 2013 letters, counsel requested an oral hearing regarding the November 19 and 22, 2013 decisions.⁹

At the hearing, held September 10, 2014, the employee explained that he retired from medical practice in 1988, but then worked at the employing establishment from September 2005 to September 2010. He contended that he did not have cervical spine symptoms prior to working at the employing establishment and he first developed upper extremity symptoms in 2008. The employee stated that he had an implied agreement with his supervisor permitting him to use the dictation service in return for being assigned more difficult cases. He alleged that the employing establishment ignored his August 2010 request for reasonable accommodations.

Following the hearing, counsel provided comments to the hearing transcript. He also submitted a May 25, 2010 appraisal from Dr. Hong B. Huynh, the employee's supervisor, noting that Dr. Heiser permanently restricted the employee to using the computer no more than 10 minutes an hour. Dr. Huynh explained that the unit staff was required to transition from dictating reports to using computer templates, significantly increasing the physician's computer usage. The employee also submitted a copy of the physical examination protocol he performed at work, detailing the measurements needed to assess each joint, and sample chart notes with identifying information blocked out.

In a December 17, 2013 report, Dr. Tauber opined that repetitive writing, handling paper, computer keyboarding, and "copying" caused the employee's peripheral nerve entrapments. He concluded that the employee's ongoing cervical spine symptoms were "unquestionably" work related. He contended that the employee should not be penalized for being misdiagnosed with cervical radiculopathy, whereas electrodiagnostic studies later established peripheral nerve entrapment. On February 19, 2014 Dr. Tauber reiterated that the employee had objective electrical studies confirming bilateral carpal tunnel syndrome, right cubital tunnel syndrome, and bilateral ulnar neuritis at Guyon's canal. He attributed these conditions to repetitive arm motions while keyboarding, preparing reports, making notes, and examining patients. Dr. Tauber noted on August 19, 2014 that the employee remained unchanged.

⁹ Counsel submitted a July 21, 2014 brief, asserting that the medical evidence was sufficient to establish that the employee was totally disabled for work on and after October 1, 2010 due to the accepted cervical conditions. He also contended that the August 31, 2010 request for accommodation established that the employing establishment was aware that the upper extremity conditions claimed under File No. xxxxxx457 were also work related.

By decision dated December 4, 2014 under File No. xxxxxx336, an OWCP hearing representative affirmed OWCP's November 22, 2013 decision, finding that the medical and factual evidence did not demonstrate that the employee was disabled for work on and after October 1, 2010 due to factors of his federal employment. The hearing representative noted that, although the employee asserted at the hearing that he did not have neck symptoms prior to beginning work in September 2005, the medical record established that he did. Additionally, the employee worked full duty with no limitations for more than two years prior to stopping work at the end of his appointment.

By decision dated December 4, 2014 under File No. xxxxxx457, an OWCP hearing representative affirmed OWCP's November 9, 2013 decision, finding that the medical and factual evidence was insufficient to establish that work factors caused or aggravated any upper extremity condition. The hearing representative found that there was no contemporaneous medical evidence for the period September 2005 to September 2010 documenting any upper extremity condition.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of FECA¹⁰ 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 FECA means "incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury."¹¹ This meaning, for brevity, is expressed as disability for work.¹² For each period of disability claimed, the employee has the burden of proving that he was disabled for work as a result of the accepted employment injury.¹³ 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.¹⁴

ANALYSIS -- ISSUE 1

The Board finds that this case is not in posture for decision and must be remanded for further development.

OWCP accepted that the employee sustained a cervical spine sprain and cervical degenerative disc disease in the performance of duty on or before January 22, 2008. His five-year appointment ended on September 30, 2010, at which time he stopped work and did not

¹⁰ 5 U.S.C. § 8102(a).

¹¹ 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).

¹² *See* Roberta L. Kaaumoana, 54 ECAB 150 (2002).

¹³ *See* William A. Archer, 55 ECAB 674 (2004).

¹⁴ *See* Fereidoon Kharabi, 52 ECAB 291, 292 (2001).

return. On September 12, 2011 the employee filed a claim for total disability compensation beginning October 1, 2010.

The employee submitted medical evidence in support of his claim. Dr. Heiser limited computer use to 10 minutes an hour as of January 22, 2008. He opined that a July 18, 2010 motor vehicle accident aggravated the employee's degenerative disc disease. However, Dr. Heiser did not indicate that the employee's accepted cervical conditions worsened as of October 1, 2010, or that he was totally disabled for work as of that date. His opinion is therefore of diminished value in establishing the claimed period of disability.

Dr. Nichols noted on August 27, 2010 that the employee related that after experiencing "excruciating neck pain" in the July 18, 2010 motor vehicle accident, it was "much more difficult for him" to write reports at work. Although he did not specifically address the employee's condition as of September 30, 2010, he clearly opined that the employee's symptoms as of late August 2010 were attributable to the July 18, 2010 motor vehicle accident and not to work factors. Dr. Nichols' opinion thus tends to negate the employee's assertion of causal relationship.

Dr. Alleyne opined on January 27, 2011 that the employee's cervical spine pain was aggravated by 2000, 2001, and 2010 motor vehicle accidents and by examining patients at the employing establishment. He reported that the employee stopped work on October 1, 2010 as his symptoms had been increasing. However, Dr. Alleyne did not find an objective change in the accepted conditions as of October 1, 2010. Also, although he noted that neck flexion continued to cause cervical spine pain two years after the employee stopped work, he did not attribute the employee's continuing symptoms to work factors.¹⁵

Dr. Tauber first examined the employee on February 28, 2012. He opined that cervical flexion at work permanently aggravated cervical degenerative disc disease, but did not specifically address whether the employee was disabled for work as of October 1, 2010. Dr. Tauber's opinion is of little relevance in establishing the claimed period of disability as he provided no opinion on that specific issue.¹⁶

The employee also submitted factual evidence which he asserted established partial disability for work prior to September 30, 2010. In a May 25, 2010 appraisal, Dr. Huynh, the employee's supervisor, noted that Dr. Heiser limited the employee's computer use to 10 minutes an hour, but that unit staff would soon be required to type their reports rather than dictate them. However, Dr. Huynh did not indicate that the employee was on limited or modified duty. On August 31, 2010 one month before his appointment ended on September 30, 2010, the employee signed a Request for Reasonable Accommodation. However, the employing establishment did not sign or acknowledge the request. There is no evidence that the employing establishment received or considered it.

OWCP undertook further development of the claim to determine whether appellant had established the conditions of bilateral carpal tunnel surgery, bilateral ulnar neuritis at Guyon's

¹⁵ See *W.S.*, Docket No. 15-0602 (issued August 11, 2016); *Willie M. Miller*, 53 ECAB 697, 701 (2002).

¹⁶ *Id.*

canal, and right cubital tunnel syndrome in the performance of duty and whether he was totally disabled commencing October 1, 2010.

Appellant was referred to Dr. Easley, for a second opinion, to determine the relationship between the injury and the claimed employment factors. Dr. Easley opined on September 7, 2012 that, because the employee's cervical degenerative disc disease was asymptomatic prior to January 22, 2008, his work duties must have aggravated the condition. He found the employee permanently disabled for work on that basis. While the Board has held that a temporal relationship alone is insufficient to establish causal relationship,¹⁷ the Board further finds that Dr. Easley's second opinion report is based upon an accurate medical history, his review of the statement of accepted facts, and provides an unequivocal opinion supportive of the employee's claim. While he failed to provide a sufficiently well-reasoned medical opinion in support of causation of additional medical conditions and commencement of total disability, he nonetheless provided opinions sufficient to require further development of the issues.¹⁸

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done. Once it undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.¹⁹

When OWCP selects a physician for an opinion on the employee's employment-related injury, it has an obligation to secure, if necessary, clarification of the physician's report and to have a proper evaluation made.²⁰ Because it referred the employee to a second opinion physician, it has the responsibility to obtain a report that will resolve the issue of whether he developed further medical conditions or was totally disabled from work.²¹ After receiving Dr. Easley's September 7, 2012 report, OWCP was required to seek clarification on those aspects of his medical opinion report that lacked sufficient rationale. As it did not do so, OWCP did not properly discharge its responsibilities in developing the record.²² Without such information, an informed decision cannot be reached on the relevant issue.

The Board finds that OWCP failed to fully develop the employee's claim once it determined that a second opinion examination was required in the case. Therefore, the two December 4, 2014 merit decisions will be set aside and remanded for further development of the medical evidence and a reasoned opinion from Dr. Easley as to the issues of medical conditions causally related to the stipulated work duties and the period of total disability, if any, causally

¹⁷ *Louis R. Blair, Jr.*, 54 ECAB 348 (2003).

¹⁸ *See E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁹ *William J. Cantrell*, 34 ECAB 1223 (1983).

²⁰ *Alva L. Brothers, Jr.*, 32 ECAB 812 (1981).

²¹ *See Ramon K. Farrin, Jr.*, 39 ECAB 736 (1988).

²² *Richard F. Williams*, 55 ECAB 343 (2004).

related all accepted conditions in the claim.²³ Following any necessary further development, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for a decision.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated December 4, 2014 are set aside and remanded for further development.

Issued: September 27, 2016
Washington, DC

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

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

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

²³ Due to the Board's finding as to the lack of proper claim development, both issues one and two are remanded for further development by OWCP.