

**United States Department of Labor
Employees' Compensation Appeals Board**

<hr/>)	
C.H., Appellant)	
)	
and)	Docket No. 16-0292
)	Issued: September 6, 2016
DEPARTMENT OF THE TREASURY,)	
INTERNAL REVENUE SERVICE,)	
Greensboro, NC, Employer)	
<hr/>)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 2, 2015 appellant filed a timely appeal of a November 9, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether appellant has met her burden of proof to establish disability for the period July 30, 2011 through October 8, 2013 due to her accepted employment injuries.

FACTUAL HISTORY

On January 31, 1997 appellant, then a 38-year-old management assistant, injured her left shoulder when she leaned back in a chair and the chair fell over backwards onto the floor. She

¹ 5 U.S.C. § 8101 *et seq.*

turned as she fell striking her left shoulder and arm on the floor. Appellant stopped work on January 31, 1997. OWCP accepted her claim for contusion and sprain of the left shoulder.

Appellant had requested advanced sick leave on December 16, 1996 and had filed for disability retirement on January 14, 1997. She based her claim for disability retirement on and provided evidence of fibromyalgia, chronic fatigue syndrome, a left ankle injury, a hiatal hernia, and irritable bowel syndrome. Appellant also provided evidence of lupus erythematosus.

Appellant received disability retirement benefits effective March 31, 1997. She claimed compensation (Form CA-7) beginning April 14, 1997.

On May 22, 1997 Dr. Scott Kelley, a Board-certified orthopedic surgeon, noted that appellant had prior left shoulder surgery with a nonunion of her coracoid process with a loose screw. He opined that the January 31, 1997 fall redislocated her left shoulder tearing her original repair. Dr. Kelley indicated that appellant required left shoulder reconstruction and stabilization. He found that she was totally disabled due to her condition. OWCP's medical adviser disagreed with this assessment on June 17, 1997.

By decision dated June 11, 1997, OWCP denied appellant's request for left shoulder surgery as there was no evidence establishing causal relationship between her accepted left shoulder injury and her requested surgery to remove pins from that shoulder.

In a decision dated July 22, 1997, OWCP denied appellant's claim for the additional condition of dislocated left shoulder, authorization of left shoulder surgery, and her claim for resulting wage-loss compensation. Appellant requested an oral hearing before an OWCP hearing representative on August 18, 1997. She underwent left shoulder surgery on August 29, 1997. OWCP's hearing representative found the case not in posture for a hearing and issued a decision on November 17, 1997 and remanded the case for referral to a second opinion physician.

In a February 18, 1998 report, Dr. Walton W. Curl, a Board-certified orthopedic surgeon and second opinion physician, diagnosed recurrent dislocation left shoulder secondary to a fall on January 31, 1997 with surgery on August 30, 1997. He provided work restrictions of no overhead work, no lifting over 15 pounds overhead, no lifting over 20 pounds with her left arm, no repetitive use of her left arm, and no pulling. Dr. Curl opined that appellant could work eight hours a day. He noted that she was totally disabled from mid-March 1997 through mid-December 1997.

On May 1, 1998 OWCP accepted recurrent left shoulder dislocation and the surgical left shoulder repair. It determined that appellant was entitled to wage-loss compensation due to total disability for the period April 14 through December 15, 1997 at the pay rate of \$584.81 per week. Appellant elected to receive FECA wage-loss compensation benefits, effective April 14, 1997.

By decision dated November 9, 1998, OWCP granted appellant a schedule award for 46 percent left arm impairment. The period of the award was from December 16, 1997 through

September 15, 2000. Appellant requested a lump-sum payment of her schedule award expiring on September 15, 2000, which resulted in a payment of \$46,570.12.²

On February 15, 2000 appellant informed OWCP that she had not received the full 45 days of continuation of pay (COP). OWCP requested information regarding her COP from the employing establishment on February 16, 2000. On August 2, 2000 it denied appellant's claim for additional periods of COP.

Appellant underwent additional left shoulder arthroscopy with debridement of the superior and anterior labrum and shrinkage of the capsule with a Mitek thermal probe on July 18, 2000. On November 5, 2002 she underwent additional left shoulder surgery including open capsular shift and excision of a loose body.

On December 1, 2013 OWCP approved appellant's request for left shoulder fusion surgery. Appellant underwent a left shoulder arthrodesis on January 7, 2004 as well as surgical removal of two painful screws on July 21, 2004. On March 23, 2005 she underwent surgical removal of hardware and open distal clavicle resection.

On March 19, 2006 appellant alleged that in November 2005, while performing daily physical therapy, she felt a sharp pain in her arm, hit herself in the face with a three-pound weight, and then fainted. She sought treatment at an emergency room and learned that she had broken the dorsal bone in her left arm under the plate used for the fusion.

Appellant completed a Form EN1032 on May 12, 2006 and indicated that she was receiving disability retirement benefits.

In a letter dated August 28, 2006, appellant alleged that she had developed a consequential right shoulder condition as a result of overuse, due to her left shoulder disability.

Appellant completed a letter on December 3, 2007 alleging that she injured both her left shoulder and wrist on January 31, 1997. She described her weight lifting incident in November 2005 which resulted in a broken humerus and left hand sprain. On December 14, 2007 OWCP accepted appellant's claim for the additional conditions of consequential left shoulder proximal humerus fracture and chronic distal radial ulnar joint instability, left wrist.

In a report dated October 13, 2008, Dr. Gary G. Poehling, a Board-certified orthopedic surgeon, reviewed appellant's history of injury. He diagnosed pain in the left wrist joint. Dr. Poehling concluded that appellant had 70 percent impairment of her left arm. He found that

² Appellant continued to pursue her schedule award claim. On June 19, 2000 OWCP denied her request for a disfigurement schedule award. In a February 17, 2006 decision, it granted appellant a schedule award for an additional 10 percent left arm impairment. The award ran from November 7, 2005 to June 13, 2006. On July 12, 2006 a hearing representative affirmed the February 17, 2006 decision. On January 17, 2007 OWCP denied appellant's claim for an additional schedule award. On January 30, 2008 it declined to reopen her schedule award. On February 18, 2009 OWCP declined to reopen appellant's claim as her request for reconsideration was untimely and failed to establish clear evidence of error. Appellant appealed the February 18, 2009 OWCP decision to the Board. In a May 13, 2010 decision, the Board found that she was entitled to request an additional schedule award based on new medical evidence and remanded the case for OWCP to consider her permanent impairment. *C.H.*, Docket No. 09-1832 (issued May 13, 2010). On August 27, 2010 OWCP granted appellant a schedule award for an additional one percent impairment of her left arm. The award ran from July 22 to August 12, 2010.

she was not able to use her left arm and that attempts at working were futile. Dr. Poehling noted that appellant could not eat with her left hand, could not get her hand to her face, and could not brush her hair with her left hand. He determined that she would not be able to compete in the workplace.

In a report dated July 24, 2009, Dr. Poehling diagnosed tear of the scapholunate ligament and partial tear of the scapholunate ligament and tear of the triangular fibrocartilage peripheral. He recommended surgery. On November 10, 2009 Dr. Poehling performed an arthroscopy of the wrist with repair of the peripheral triangular fibrocartilage including debridement of the central triangular fibrocartilage tear and partial ulnar triquetral ligament tear.

The record indicates that in October 2010 appellant was working part time as a contractor for accounting.

In a report dated June 6, 2011, Dr. Poehling diagnosed pain in left wrist joint, chronic pain syndrome, triangular fibrocartilage complex tear left wrist, and ulnar neuropathy. At this time appellant was working as a part-time bookkeeper. The record indicates that she continued working part time as a bookkeeper through April 16, 2012.

On May 17, 2013 appellant requested to change the election of her benefits. She stated that she was unable to engage in any work due to her injury. Appellant noted that she worked part time from June 2008 through June 2011 for 16 hours a week as a contract bookkeeper. She alleged that she had to quit this position due to severe chronic pain in her left shoulder and wrist. Appellant requested FECA benefits rather than disability retirement benefits.

Dr. Michael T. Freehill, a Board-certified orthopedic surgeon, completed a note on May 17, 2013 and described appellant's history of injury. He found that appellant was currently disabled due to her left shoulder and noted that she did not believe that she could return to work. Dr. Freehill indicated that she believed that she was becoming more depressed due to her shoulder limitations. He also described appellant's low back pain, which she attributed to physical therapy as well as a sore cervical spine and trapezial-type pain bilaterally. Dr. Freehill noted that appellant's trapezial pain could be secondary to her left shoulder fusion with the resulting abnormal joint. He also hypothesized that her pain could be cervical in etiology perhaps secondary to her shoulder fusion.

In a letter dated August 21, 2013, OWCP requested that Dr. Freehill provide an opinion regarding appellant's capacity to work.

Dr. Poehling partially completed a work capacity evaluation (OWCP-5) on September 9, 2013 and opined that appellant was not capable of performing work as she had a fused shoulder. He provided restrictions on standing, reaching, twisting, bending, stooping, repetitive movements of the wrists, pushing, pulling, lifting, and climbing. Dr. Poehling did not indicate the extent of these restrictions.

Appellant provided a claim for compensation (Form CA-7) dated September 10, 2013 requesting wage-loss compensation from February 1, 1997 through September 10, 2013. She indicated that she worked as a bookkeeper from June 1, 2008 through June 30, 2011. Appellant filed a second Form CA-7 on October 8, 2013 and requested wage-loss compensation from February 1, 1997 through "current." She again acknowledged her work as a bookkeeper.

In a letters dated October 24 and December 4, 2013, OWCP requested that appellant provide medical evidence establishing disability for work during the entire period claimed. It afforded her 30 days to reply.

In a note dated January 6, 2014, Dr. Poehling opined that appellant had sustained a scapular muscle strain as a result of her left shoulder fusion. He prescribed physical therapy to control her symptoms. Dr. Poehling further opined that appellant was totally disabled for any work.

In a decision dated January 31, 2014, OWCP denied appellant's claim for disability beginning February 1, 1997.

On June 9 and July 21 2014 Dr. Poehling recommended that appellant undergo additional left wrist surgery to repair a triangular fibrocartilage complex tear diagnosed *via* her March 7, 2014 magnetic resonance imaging (MRI) scan. OWCP requested that she provide additional evidence in support of her claim for a recurrence of a medical condition in a letter dated August 12, 2014. It authorized this surgery on September 22, 2014. Dr. Poehling performed a left wrist arthroscopy with debridement of the triangular fibrocartilage complex and the ulnotriquetral ligament on September 26, 2014.

Appellant, through counsel, requested reconsideration of the January 31, 2014 decision through a letter dated January 22, 2015. Counsel noted that appellant worked as a bookkeeper through July 29, 2011. He modified her request for wage-loss compensation to the period from July 30, 2011 to the present. In support of the request, appellant submitted a January 16, 2015 report from Dr. Poehling in which he opined that she resigned as a bookkeeper in 2011 due to chronic pain, fatigue, and lack of ability to concentrate. Dr. Poehling described her multiple left shoulder surgeries, significant left shoulder atrophy, and overuse of her right arm. He opined that appellant's left arm was functionally useless and that her right arm was painful and weak. Dr. Poehling further noted that she was unable to sleep without medication which affected concentration and attention. He listed appellant's nonemployment-related conditions including fibromyalgia, anxiety, depression, chronic fatigue syndrome, and sciatica. Dr. Poehling concluded, "In my professional opinion, as a result of a combination of all these medical problems she is totally disabled."

Dr. James Beekman, a Board-certified rheumatologist, completed a report on January 9, 2015, and noted that appellant was diagnosed with fibromyalgia prior to her 1997 employment injury. He opined that this condition was aggravated by her shoulder injury as she was unable to exercise to alleviate her symptoms due to her accepted shoulder condition. Dr. Beekman concluded that appellant was unable to work due to her fibromyalgia and her shoulder pain. He found that she was totally disabled since 2011.

Appellant submitted a statement describing her employment from 2008 through 2011 working 16 hours a week as a bookkeeper. She asserted that in 2011 she had to resign due to pain in her wrist, shoulder, back, and neck. Appellant described her limitations in activities of daily living, noting that she could only use her right hand. She alleged that she did not sleep well and woke several times a night when she rolled on her left arm due to resulting pain. Appellant asserted that pain and fatigue made it difficult for her to concentrate. She attributed her diagnosed conditions of fibromyalgia, anxiety, depression, and chronic fatigue syndrome as well as her right shoulder injury to her original injury.

By decision dated June 5, 2015, OWCP denied modification of the January 31, 2014 decision finding that appellant had not submitted rationalized medical evidence to establish that she was totally disabled from 2011 due to her accepted injuries.

Appellant requested reconsideration by letter dated July 23, 2015, and received by OWCP on August 5, 2015. She noted dismissing her counsel and explained that she disagreed with his request to expand her accepted conditions. Appellant noted that, while she believed that her fibromyalgia, anxiety, and depression were aggravated by her accepted conditions, these were preexisting conditions and not initially work related. She asserted that her initial request for disability retirement was based on her diagnosis of fibromyalgia. Appellant then described her employment incident and medical treatment. She returned to part-time work in 2008 and resigned in 2011. Appellant contended, "I wish to emphasize that the sole reason for resigning from this position was due to pain in my left shoulder area, including the neck and wrist pain. All of which resulted from my work-related injuries." She analyzed Dr. Freehill's May 17, 2013 note. Appellant requested wage-loss compensation from July 30, 2011 to the present. She alleged that all of her disabling problems from July 30, 2011 were directly as a result of her work injury as since 2007 she had maintained the same medicine and dosage for fibromyalgia.

Appellant continued to submit physical therapy notes. She also resubmitted a note dated May 17, 2013 from Dr. Freehill in which he opined that she was currently disabled due to her left shoulder.

Dr. Beekman completed a note on July 1, 2015 and reported that prior to the left shoulder fusion, appellant had reported symptomatic relief of fibromyalgia with exercise. He noted that following the fusion, her shoulder muscles atrophied and her fibromyalgia pain became worse in her upper body due to her inability to exercise. These changes affected her sleep and added to her depression. Dr. Beekman concluded that appellant became totally disabled in 2011 due to pain in her shoulder, wrist, and the return of fibromyalgia pain. He opined, "[Appellant's] has been totally disabled since that time secondary to her injuries and aggravated fibromyalgia."

By decision dated November 9, 2015, OWCP denied modification of its prior decision finding that appellant had not submitted rationalized medical evidence establishing that her work stoppage was due to her accepted employment injuries.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.³ 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.⁴

³ *G.T.*, 59 ECAB 447 (2008); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ 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).

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.⁵ Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work. When a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that she hurts too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.⁶ The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.⁷

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.⁸ Rationalized medical evidence is medical evidence which includes a physician's detailed medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁹ Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹⁰

ANALYSIS

The Board finds that appellant has not submitted sufficient medical opinion evidence to establish that she was totally disabled from July 30, 2011 through October 8, 2013 due to her accepted employment injuries.

OWCP accepted appellant's January 31, 1997 employment injury for a series of upper extremity conditions. These conditions included contusion and sprain of the left shoulder, recurrent left shoulder dislocation, left shoulder fusion, repeated left shoulder surgeries including open distal clavicle resection and consequential left shoulder proximal humerus fracture. Appellant also sustained consequential chronic distal radial ulnar joint instability, left wrist, as well as left wrist arthroscopy with debridement of the triangular fibrocartilage complex and the ulnotriquetral ligament.

⁵ See *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁶ *Id.*

⁷ *Id.*

⁸ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁹ *Leslie C. Moore*, 52 ECAB 132 (2000).

¹⁰ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

The Board finds that there is no contemporaneous medical evidence addressing appellant's claim of total disability beginning in June 2011. Dr. Freehill examined her on May 17, 2013 and found that she was then disabled due to her shoulder. He further noted that appellant did not believe that she could return to work and that she believed that she was becoming more depressed due to her shoulder limitations. As noted above, when a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that she hurts too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.¹¹ Dr. Freehill did not explain the basis for his determination of total disability and instead relied on appellant's opinion that she could not work due to her accepted employment injuries.

Beginning in October 13, 2008, Dr. Poehling, found that appellant was unable to use her left upper extremity and that attempts at working were futile. He determined that she would not be able to compete in the workplace. This report predates appellant's claimed period of disability in June 2011. Furthermore, at the time Dr. Poehling reached his 2008 conclusions regarding her disability for work, she was in fact working part time as a bookkeeper.

On September 9, 2013 Dr. Poehling opined that appellant was incapable of performing work as she had a fused shoulder. In a note dated January 6, 2014, he concluded that she was totally disabled from any work. On January 16, 2015 Dr. Poehling reported that appellant resigned as a bookkeeper in 2011 due to chronic pain, fatigue, and lack of ability to concentrate. He again opined, as he had in 2008, that her left arm was functionally useless and that her right arm was painful and weak. Dr. Poehling listed appellant's nonemployment-related conditions including fibromyalgia, anxiety, depression, chronic fatigue syndrome, and sciatica. He concluded, "In my professional opinion, as a result of a combination of all these medical problems she is totally disabled."

The Board finds that Dr. Poehling's reports are not sufficiently detailed and well-reasoned to meet appellant's burden of proof. Dr. Poehling did not provide specific findings supporting that her employment-related conditions resulted in her total disability from work. Specific findings and medical reasoning are especially necessary as he had previously concluding that appellant was totally disabled in 2008 while she was in fact working.¹²

On January 9, 2015 Dr. Beekman diagnosed preexisting fibromyalgia and opined that this condition was aggravated by appellant's accepted shoulder injuries as she was unable to exercise to alleviate her fibromyalgia symptoms. He concluded that she was unable to work due to her fibromyalgia and her shoulder pain. Dr. Beekman found that appellant was totally disabled since 2011. This report does not contain the necessary specific findings and medical reasoning to support that her current disability from work is due to her accepted upper extremity conditions.

¹¹ *Id.*

¹² The Board notes that OWCP authorized a left wrist arthroscopy performed by Dr. Poehling on September 22, 2014. If medical treatment is performed as a result of an employment injury, any related disability is compensable. See *Melody Friery*, 48 ECAB 525 (1997). OWCP has not specifically addressed this aspect of the claim for disability compensation such that it is not presently before the Board. See 20 C.F.R. § 501.2(c). This decision does not preclude appellant from seeking appropriate wage-loss compensation due to this surgery if the medical evidence supports that it resulted in a period of disability.

Appellant applied for and received disability retirement benefits based in part on her preexisting condition of fibromyalgia. Dr. Beekman has not explained her varying disability from work between 2008 and 2011. This report does not establish that appellant was totally disabled since 2011 due to her accepted employment 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 not submitted the necessary medical opinion evidence to establish that she was totally disabled from July 30, 2011 through October 8, 2013 due to her accepted employment injuries.

ORDER

IT IS HEREBY ORDERED THAT November 9, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 6, 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