

ISSUE

The issue is whether appellant has met her burden of proof to establish intermittent disability from December 7 to 14, 2012 and December 17 to 28, 2014, and total disability from December 30, 2012 to May 4, 2013 due to her accepted employment injury.

FACTUAL HISTORY

On July 15, 2014 appellant, then a 41-year-old consumer safety inspector, filed an occupational disease claim (Form CA-2) alleging that she sustained pain in her right shoulder and wrist causally related to factors of her federal employment.³ She stopped work on December 7, 2013. OWCP initially accepted the claim for right carpal tunnel syndrome and later accepted impingement syndrome of the right shoulder.

January 15, 2013 electromyogram (EMG) and nerve conduction velocity (NCV) studies revealed right mild neuropathy of the wrist consistent with carpal tunnel syndrome.

In a report dated January 28, 2013, Dr. Harry H. Ferran, Jr. a Board-certified orthopedic surgeon, evaluated appellant for pain in the right shoulder. He diagnosed right carpal tunnel syndrome, a superior glenoid labrum tear, and impingement syndrome of the right shoulder. Dr. Ferran advised that an EMG/NCV study revealed right carpal tunnel syndrome. In a disability certificate dated January 18, 2013, he opined that appellant should be excused from work for four months after surgery.

Dr. Ferran, on March 6, 2013, performed a right shoulder subacromial decompression, superior and anterior labral repair, and carpal tunnel release.

In a progress report dated August 15, 2013, Dr. Ferran related, “[Appellant] has provided a job description which includes full range of motion for rapid repetitive twisting and working with arms above shoulder level. At this point, it is doubtful she will be able to return to this type of work. [Appellant] again is interested in pursuing disability as she has implied in the past.”

On November 7, 2013 Dr. Emmacarrie Brown, who specializes in family medicine, advised that she had evaluated appellant in late 2012 for problems with her right hand and shoulder. She found that objective tests supported both Dr. Ferran’s and her own diagnoses. Dr. Brown attributed appellant’s right shoulder condition and right carpal tunnel syndrome to repetitive motion at work. She related, “As previously indicated, [appellant] would not have been capable of performing her job duties as described since the first time I saw her for this condition in December 2012 and continuing to the present day.”

An undated functional capacity evaluation, received by OWCP on October 27, 2014, indicated that appellant could perform light work.

Appellant, on September 3, 2014, filed claims for compensation (Form CA-7) for intermittent periods of disability from December 7, 2012 to May 4, 2013.

³ The record also contains the first page of an occupational disease claim dated October 23, 2013.

By letter dated October 27, 2014, OWCP requested that appellant submit reasoned medical evidence supporting disability for the claimed periods.

On October 28, 2014 appellant submitted additional medical evidence. In a disability certificate dated December 4, 2012, Dr. Brown indicated that appellant should be excused from work on that date as she was seen for a medical condition. A medical provider indicated on December 10, 2012 that appellant had a diagnostic procedure on that date. Dr. Brown, in a disability certificate dated December 13, 2012, advised that she treated appellant on that date and that appellant could not work from December 13 to 27, 2012.

In a report dated July 17, 2013, Dr. Brown opined that appellant had significantly limited range of motion of her shoulder and could not return to her usual employment as a result of the physical findings. She related, "The affected shoulder is [appellant's] dominate extremity and her job description goes beyond her physical limitations. She is not able to lift, carry, or push/pull 44 pounds with her injury. [Appellant] is not able to raise her right upper extremity above her shoulder." On September 25, 2013 Dr. Brown found that appellant could not return to work.

By decision dated October 15, 2015, OWCP denied appellant's claim for wage-loss compensation for intermittent periods from December 7 to 28, 2012, and for total disability from December 30, 2012 to May 4, 2013. It found that the medical evidence of record was insufficient to establish disability as it did not address the scope of her condition and its relationship to her employment injury.

On October 30, 2015 counsel requested that OWCP expand acceptance of the claim to include impingement syndrome of the right shoulder. OWCP advised on November 12, 2015 that it had accepted right shoulder impingement syndrome as work related.

Appellant, on October 22, 2015, requested a telephone hearing.

At the telephone hearing, held on June 13, 2016, counsel advised that Dr. Brown's November 7, 2013 report established that appellant was unable to work. Appellant described in detail her work duties. She related that she initially sought medical treatment on December 4, 2012 from Dr. Brown, who told her that she should remain off work if there was no light-duty available. Appellant stopped work on December 7, 2012 and did not return. She obtained disability retirement on July 1, 2013.

By decision dated July 26, 2016, OWCP's hearing representative affirmed the October 15, 2015 decision. She found that appellant failed to submit medical evidence sufficient to establish that she stopped work in December 2012 as a result of her accepted work injury.

On appeal counsel argues that Dr. Ferran, in his August 15, 2013 report, found that appellant was disabled from work and that Dr. Brown, on November 7, 2013, determined that appellant was unable to work from the end of 2012. He further asserts that OWCP authorized appellant's surgery which occurred during the period for which she claimed lost wages.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.⁴ 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.⁵ Whether a particular injury causes an employee to become disabled for work, and the duration of that disability, are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.⁶

Under FECA the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁷ Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.⁸ An employee who has a physical impairment causally related to her federal employment, but who nonetheless has the capacity to earn the wages that she was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.⁹ When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in her employment, she is entitled to compensation for any loss of wages.

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.¹⁰

ANALYSIS

OWCP accepted that appellant sustained right carpal tunnel syndrome and right shoulder impingement syndrome due to factors of her federal employment. On March 6, 2013 appellant underwent a right carpal tunnel release and a subacromial decompression and superior, and anterior labral repair of the right shoulder. She filed claims for intermittent wage-loss compensation from December 7 to 28, 2012, and for total disability from December 30, 2012 to May 4, 2013.

⁴ See *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *Nathaniel Milton*, 37 ECAB 712 (1986).

⁵ See *id.* *Amelia S. Jefferson*.

⁶ See *Edward H. Horton*, 41 ECAB 301 (1989).

⁷ *S.M.*, 58 ECAB 166 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); 20 C.F.R. § 10.5(f).

⁸ *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

⁹ *Merle J. Marceau*, 53 ECAB 197 (2001).

¹⁰ See *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

Appellant has the burden of proof to submit medical evidence establishing a causal relationship between her claimed disability and the accepted conditions.¹¹ The Board finds that she failed to submit sufficient medical evidence to establish employment-related disability for the periods claimed or that she missed time from work receiving medical treatment for her accepted injury.

In her November 7, 2013 report, Dr. Brown related that she began treating appellant for a right hand and shoulder condition in late 2012. She found that the right shoulder condition and right carpal tunnel syndrome resulted from repetitive motion at work. Dr. Brown opined that appellant was disabled from her employment from December 2012 to the present. She did not, however, provide any rationale for her opinion. The need for medical rationale is particularly important as there is no reasoned contemporaneous medical evidence supporting disability beginning December 2012.¹² Dr. Brown, on December 4, 2012, found that appellant should be excused from work on that date as she was seen for a medical condition. On December 13, 2012 she found that appellant was unable to work from December 13 to 28, 2012. On July 17, 2013 Dr. Brown opined that appellant was unable to perform her regular employment due to her limited shoulder motion and inability to lift, carry, or push 44 pounds. She indicated on September 25, 2013 that appellant could not return to work. In these reports, however, Dr. Brown did not address causation or provide examination findings supporting disability. Medical evidence which offers no opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹³ Additionally, findings on examination are generally needed to support a physician's opinion that an employee is disabled from work.¹⁴ Consequently, Dr. Brown reports are of diminished probative value.

On January 28, 2013 Dr. Ferran discussed appellant's complaints of right shoulder pain. He diagnosed right carpal tunnel syndrome by electrodiagnostic testing, a superior glenoid labrum tear, and impingement syndrome of the right shoulder. In a disability certificate dated January 18, 2013, Dr. Ferran indicated that appellant would have to miss four months of work following surgery. He did not, however, address causation and thus his opinion is insufficient to meet appellant's burden of proof.¹⁵ Dr. Ferran, in an August 15, 2013 report, reviewed appellant's job description and noted that it required repetitive twisting and reaching above the shoulders. He advised that it was unlikely she could perform this employment and noted that she was "interested in pursuing disability...." Dr. Ferran, however, did not attribute appellant's probable disability from work to her accepted employment injury. Further, his opinion regarding whether she could perform her work duties is speculative in nature and devoid of medical rationale; consequently, it is of diminished probative value.¹⁶

¹¹ See *K.M.*, Docket No. 16-1223 (issued November 21, 2016).

¹² See generally *J.T.*, Docket No. 14-0638 (issued August 18, 2014).

¹³ See *L.N.*, Docket No. 13-0404 (issued July 1, 2013); *Willie M. Miller*, 53 ECAB 697 (2002).

¹⁴ See *Laurie S. Swanson*, 53 ECAB 517 (2002).

¹⁵ See *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *A.D.*, 58 ECAB 149 (2006).

¹⁶ See *S.S.*, 59 ECAB 315 (2008); *Cecelia M. Corley*, 56 ECAB 662 (2005).

On December 10, 2012 a medical provider indicated that appellant underwent an imaging procedure on that date. She also underwent electrodiagnostic testing on January 15, 2013. Appellant did not submit evidence from a physician attributing the results of her diagnostic testing to her accepted work injury. Consequently, she has not established that she is entitled to wage-loss compensation on these dates either due to disability or for time lost undergoing medical treatment.

On appeal counsel contends that the August 15, 2013 report from Dr. Ferran and November 7, 2013 report from Dr. Brown establish that she was disabled beginning late 2012. As discussed, however, the record does not contain a rationalized opinion from a physician finding her disabled for the claimed periods.

Counsel further contends that OWCP authorized appellant's surgery which occurred during the period for which she claimed lost wages. The Board notes that the record does not reflect that OWCP authorized or accepted the surgery as causally related to the accepted work injury and Dr. Ferran has not provided a reasoned medical explanation sufficient to show that the surgery was necessitated by the accepted condition.¹⁷ Dr. Ferran, however, did not provide a rationalized opinion sufficient to show that any disability resulting from the surgery was necessitated by the accepted condition.

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 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has failed to meet her burden of proof to establish intermittent wage-loss compensation from December 7 to 28, 2014, and total disability from December 30, 2012 to May 4, 2013 due to disability resulting from her accepted employment injury.

¹⁷ See *K.M.*, *supra* note 11.

ORDER

IT IS HEREBY ORDERED THAT the July 26, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 4, 2017
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