

FACTUAL HISTORY

On June 17, 2015 appellant, then a 56-year-old custodian, filed a traumatic injury claim (Form CA-1) alleging that she injured her left shoulder, left knee, right lower back, and left finger on June 14, 2015 when a workstation that she was moving became unstable and fell on her. OWCP assigned the claim File No. xxxxxx634.

On June 14, 2015 appellant sought medical treatment from Dr. Lisa Meinke, an emergency physician, who diagnosed back strain and leg abrasion. Dr. Karen E. Joyce, a Board-certified internist, opined that appellant was partially disabled on July 27, 2015. Dr. Lewis Eirinberg, a family practitioner, examined appellant on July 30, 2015 and noted her history of injury. He diagnosed left knee pain and right-sided low back pain without sciatica. Dr. Eirinberg reviewed appellant's left knee x-rays and found early degenerative arthritis in the patellofemoral compartment.

Appellant returned to full-time, modified duty on July 31, 2015.

On August 20, 2015 appellant filed a second traumatic injury claim (Form CA-1), alleging that she injured her left ankle by stepping in a hole on that date. OWCP assigned the claim File No. xxxxxx836. Appellant sought medical treatment on August 20, 2015 from Dr. Adrian Dreessen, a physician Board-certified in emergency medicine. Dr. Dreessen diagnosed left ankle sprain from working in a yard.

On October 5, 2015 OWCP accepted appellant's June 14, 2015 traumatic injury under File No. xxxxxx634 for left knee contusion, lower back strain, and left knee abrasion.

On October 8, 2015 Dr. Eirinberg found that appellant had decreased range of motion, swelling, and effusion in her left knee. An October 23, 2015 left knee magnetic resonance imaging (MRI) scan demonstrated a multiloculated ganglion cyst arising from the proximal tibiofibular joint, tear of the posterior horn of the lateral meniscus, and patellar chondromalacia.

In a letter dated October 16, 2015, OWCP noted that, as appellant's August 20, 2015 injury initially appeared to be a minor injury, a limited amount of medical expenses were administratively approved, but it reopened the claim for consideration as her medical expenses exceeded \$1,500.00. It requested that she provide additional factual and medical evidence in support of her August 20, 2015 traumatic injury claim.

Appellant filed a recurrence claim (Form CA-2a) on October 28, 2015 and alleged that her current medical conditions were the result of a June 14, 2015 employment injury when a workstation fell on her. She reported constant pain in her knee with an ongoing feeling that her knee would collapse. Appellant noted that her two left leg injuries had aggravated her right foot and ankle conditions which had required surgery in 2009.

Dr. Erica L. Evans, a podiatrist, examined appellant on October 21, and 29, 2015 due to her left ankle injury from stepping in a hole at work. She diagnosed talar dome lesion and ankle instability with chronic ligament tears. Dr. Evans reviewed an October 22, 2015 MRI scan report which demonstrated grade 2 osteochondral injury involving the lateral talar dome and chronic ligament tears.

On October 29, 2015 Dr. Matthew F. Dilisio, an orthopedic surgeon, examined appellant due to a June 14, 2015 employment injury and left knee condition. He noted that appellant was lifting a heavy object at work and it came down on her left knee. Appellant also reported twisting her left knee. Dr. Dilisio diagnosed left knee arthritis exacerbated by the work injury. He also noted appellant's meniscal tear, but attributed appellant's pain to her arthritis. Dr. Dilisio performed a steroid injection.

Dr. Evans indicated that appellant was partially disabled on November 17, 2015 due to her left ankle conditions.

On November 17, 2015 OWCP accepted appellant's August 20, 2015 traumatic injury claim under File No. xxxxxx836 for a left ankle sprain.

OWCP File No. xxxxxx836 was administratively combined with OWCP File No. xxxxxx634, with the former serving as the master file number.

Appellant accepted a part-time modified-duty assignment on December 9, 2015. On December 17, 2015 she accepted a full-time sedentary position.

OWCP authorized left foot and ankle surgery on December 16, 2015. On December 16, 2015 it expanded appellant's claim under File No. xxxxxx836 to include the additional condition of left talar dome osteochondral lesions.

In a note dated December 10, 2015, Dr. Dilisio found appellant exhibited mild left knee effusion and mild tenderness at the patella, patellar and quadriceps tendons, and posterior knee. He diagnosed patellofemoral arthritis, medial chondromalacia, and medial osteophyte, as well as a lateral meniscus tear. Dr. Dilisio reported that appellant was hypersensitive along her knee.

Dr. Evans examined appellant on December 16, 2015 due to her ankle conditions and recommended surgery. She noted that appellant had returned to light-duty work and was experiencing pain and instability in her left ankle. Dr. Evans also reported that appellant was placing increased demands on her right foot, which had been surgically corrected, causing increased right foot and ankle pain. She recommended sedentary duties.

On January 15, 2016 Dr. Evans performed an authorized left ankle arthroscopy to correct a microfracture of an osteochondral defect. She also stabilized the ankle and removed the low lying portion of the left peroneus brevis muscle.

Appellant filed a claim for compensation (Form CA-7) on January 19, 2016 for leave without pay taken from December 10, 2015 through January 8, 2016. The employing establishment indicated that appellant worked four hours a day from December 10 through 15, 2015. Appellant worked eight hours a day from December 17, 2015 through January 6, 2016. She did not work on January 7 or 8, 2016. Appellant telephoned OWCP and noted that she worked full-time light-duty beginning on December 16, 2015, but claimed 16 hours of leave without pay for medical tests in preparation for her surgery on January 7 and 8, 2016. OWCP authorized compensation from December 9 through 11, 2015. The record contains medical records supporting that appellant underwent presurgical testing on January 8, 2016.

On January 26, 2016 OWCP requested additional information from appellant regarding her January 19, 2016 claim for compensation. It noted that it had approved four hours of wage-loss compensation on January 7, 2016 and eight hours of wage-loss compensation on January 8, 2016, but requested additional medical evidence to support the additional four hours claimed for leave without pay taken on January 7, 2016. OWCP afforded appellant 30 days for a response.

On January 13, 2016 Dr. Adam Pleas, and Ear, Nose, and Throat specialist, indicated that appellant had a medical appointment on January 11, 2016. He examined appellant for laryngopharyngeal reflux.

Appellant filed a claim for compensation (Form CA-7) on February 1, 2016 and requested leave without pay compensation from January 11 through 22, 2016. She used approximately four hours of leave without pay on January 11 and 13, 2016. Appellant used eight hours of leave without pay from January 14 through 22, 2016.

In a letter dated February 8, 2016, OWCP authorized compensation for leave without pay taken from January 15 through 22, 2016. It requested additional evidence in support of appellant's claim for compensation for the period January 11 through 14, 2016. OWCP afforded her 30 days to reply.

By decision dated March 2, 2016, OWCP denied appellant's January 19, 2016 claim for compensation for an additional four hours of leave without pay taken on January 7, 2016. It noted that she failed to submit any evidence to establish that her medical appointment on January 7, 2016 took more than four hours or that she received eight hours of medical treatment on January 8, 2016.

By decision dated March 22, 2016, OWCP denied appellant's February 1, 2016 claim for compensation for the period January 11 through 14, 2016. It noted that she failed to submit evidence that she sought treatment for her accepted medical conditions on January 11 through 14, 2016. OWCP noted that Dr. Pleas did not examine appellant due to her accepted conditions.

Appellant returned to light-duty work on March 21, 2016.

Dr. Eirinberg examined appellant on April 4, 2016 due to a left shoulder condition. He noted that she began to experience symptoms on January 15, 2016. Dr. Eirinberg found decreased range of motion, tenderness, pain, and decreased strength. He diagnosed left shoulder pain.

In a letter dated April 19, 2016, appellant alleged that she had sustained a consequential injury to her left shoulder due to her June 14, 2015 employment injury. She also attributed her condition to using crutches following her accepted left ankle and foot surgery.

On April 29, 2016 OWCP informed appellant that her claim required additional medical opinion evidence regarding the causal relationship between her diagnosed left shoulder injury and her employment. It also noted that pain was not considered a diagnosed condition. OWCP requested additional medical evidence and afforded 30 days for a response.

On April 8, 2016 Dr. Eirinberg again diagnosed left shoulder pain. He noted that appellant originally injured her shoulder in June 2015 and that she had significantly increased left shoulder pain since using crutches because of her left ankle surgery. Dr. Eirinberg requested approval for a left shoulder MRI scan. The requested left shoulder MRI scan was performed on May 5, 2016 and demonstrated a large mildly complex shoulder joint effusion with synovitis, moderate acromioclavicular and mild glenohumeral degenerative disease, biceps tendinosis, and large superior labrum anterior to posterior (SLAP) tear.

On May 19, 2016 Dr. Eric Samuelson, an orthopedic surgeon, examined appellant and diagnosed SLAP tear of the left shoulder and biceps tendinopathy. He noted that she visited the emergency room on May 5, 2016 due to this condition. Dr. Samuelson reviewed appellant's MRI scan and provided a cortisone injection. On May 25, 2016 he completed a form report and diagnosed SLAP tear of the left shoulder. Dr. Samuelson indicated by checking a box marked "yes" that appellant's condition was caused or aggravated by an employment activity.

In a June 10, 2016 decision, OWCP denied appellant's consequential injury claim for left shoulder injury due to her accepted left ankle sprain and left talar dome osteochondral lesions.

LEGAL PRECEDENT -- ISSUE 1

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 a loss of wage-earning capacity.⁴

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 from work. When a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that she hurt 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

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).

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

⁶ *Id.*

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

With respect to claimed disability for medical treatment, section 8103 of FECA provides for medical expenses, along with transportation and other expenses incidental to securing medical care, for injuries.¹¹ Appellant would be entitled to compensation for any time missed from work due to medical examination or treatment for an employment-related condition.¹² However, OWCP's obligation to pay for expenses incidental to obtaining medical care, such as loss of wages, extends only to expenses incurred for treatment of the effects of any employment-related condition. Appellant has the burden of proof, which includes the necessity to submit supporting rationalized medical evidence.¹³ As a rule, no more than four hours of compensation or continuation of pay should be allowed for routine medical appointments. Longer periods of time may be allowed when required by the nature of the medical procedure and/or the need to travel a substantial distance to obtain the medical care.¹⁴

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).

¹¹ 5 U.S.C. § 8103(a).

¹² See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Wages Lost for Medical Examination or Treatment*, Chapter 2.901.19a (February 2013). See also *Vincent E. Washington*, 40 ECAB 1242 (1989).

¹³ *Dorothy J. Bell*, 47 ECAB 624 (1996); *Zane H. Cassell*, 32 ECAB 1537 (1981); *G.B.*, Docket No. 16-0515 (issued September 14, 2016).

¹⁴ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Administrative Matters*, Chapter 3.900.8 (November 1998).

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish an additional four hours of total disability on January 7, 2016 or total disability for the period January 11 through 14, 2016.

Appellant filed a claim for compensation on January 19, 2016 for the period December 10, 2015 through January 8, 2016. OWCP authorized compensation benefits for this period for all but four hours on January 7, 2016. It noted that there was no medical evidence supporting treatment for eight hours on this date. Appellant contends that OWCP failed to approve eight hours of compensation for January 7, 2016 for a medical appointment. The Board finds that there is no supporting evidence that appellant had a medical appointment on that date lasting eight hours or any explanation as to why the appointment with accompanying travel would last eight hours. Due to the lack of supporting factual and medical evidence, the Board finds that appellant has not established total disability for eight hours on January 7, 2016 due to a medical appointment.

Appellant filed an additional claim for compensation on February 1, 2016 and requested leave without pay compensation from January 11 through 22, 2016. She used approximately four hours of leave without pay on January 11 and 13, 2016. Appellant used eight hours of leave without pay from January 14 through 22, 2016. OWCP authorized compensation for eight hours beginning on January 15, 2016, the date of appellant's authorized surgery. It requested additional evidence in support of her claim for compensation for the period January 11 through 14, 2016. In response, appellant submitted a January 13, 2016 note from Dr. Pleas indicating that she had a medical appointment on January 11, 2016. At that time Dr. Pleas examined appellant for laryngopharyngeal reflux. There is no other medical evidence of record supporting appellant's employment-related total disability from January 11 through 14, 2016.

With respect to the disability compensation claimed for the period January 11 through 14, 2016, there is no evidence of record that appellant underwent medical treatment for her accepted conditions, and no opinion from a physician establishing that appellant was disabled as a result of her accepted employment injuries on those dates. The only evidence consists of Dr. Pleas' reports which do not address any of appellant's accepted conditions and do not opine that her diagnosed condition is employment related. 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.¹⁵

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.

¹⁵ *William A. Archer*, 55 ECAB 674 (2004); *L.L.*, Docket No. 15-1489 (issued December 18, 2015).

LEGAL PRECEDENT -- ISSUE 2

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.¹⁶ With respect to consequential injuries, it is an accepted principle of workers' compensation law that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own intentional conduct.¹⁷ The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.¹⁸

A claimant bears the burden of proof to establish a claim for a consequential injury.¹⁹ As part of this burden, he or she must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship. Rationalized medical evidence is evidence which relates to a work incident or factors of employment to a claimant's condition, with stated reasons of a physician. The opinion must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship of the diagnosed condition and the special employment factors or employment injury.²⁰

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met her burden of proof to establish that she developed a consequential left shoulder injury as a result of her accepted employment injuries.

Appellant was evaluated by two physicians for her left shoulder condition, Drs. Eirinberg and Samuelson. In her initial June 14, 2015 claim form, appellant alleged that her left shoulder was struck when the workstation fell on her. However, OWCP did not accept a left shoulder injury as resulting from this incident. Appellant did not seek treatment for a left shoulder condition until April 8, 2016, when Dr. Eirinberg diagnosed left shoulder pain. Dr. Eirinberg mentioned that appellant originally injured her shoulder in June 2015 and reported that she had significantly increased left shoulder pain since using crutches because of her left ankle surgery. This report is insufficient to meet appellant's burden of proof to establish a consequential left shoulder condition as Dr. Eirinberg did not provide a clear diagnosis of a left shoulder condition.

¹⁶ *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹⁷ *Albert F. Ranieri*, 55 ECAB 598 (2004).

¹⁸ See A. Larson, *The Law of Workers' Compensation* § 10.01 (November 2000).

¹⁹ *P.R.*, Docket No. 16-0146 (issued September 9, 2016); *R.H.*, Docket No. 15-1785 (issued January 29, 2016).

²⁰ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

The Board has held that the mere diagnosis of “pain” does not constitute the basis for payment of compensation.²¹

Appellant underwent a left shoulder MRI scan on May 5, 2016 which demonstrated a large mildly complex shoulder joint effusion with synovitis, moderate acromioclavicular and mild glenohumeral degenerative disease, biceps tendinosis and large SLAP tear. Dr. Samuelson examined appellant and reviewed this scan on May 19 and 25, 2016 and diagnosed SLAP tear of the left shoulder. He checked a box marked “yes” that appellant’s condition was caused or aggravated by an employment activity. Dr. Samuelson provided a diagnosed condition and an opinion that appellant’s condition was due to her employment. However, his report is insufficient to meet appellant’s burden of proof as Dr. Samuelson did not provide a complete history of injury, did not explain how and why appellant’s left shoulder SLAP tear was causally related to her employment, and did not clearly opine that appellant had sustained a consequential injury. Without a detailed history discussing appellant’s initial June 14, 2015 employment injury as well as her implicated use of crutches, this report cannot establish either an additional employment-related injury due to the June 14, 2015 employment injury or a consequential injury as a result of appellant’s left ankle injury sustained on August 20, 2015 and the resulting surgery.²²

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 failed to meet her burden of proof to establish additional periods of disability or to establish a consequential injury.

²¹ *Robert Broome*, 55 ECAB 339 (2004).

²² *Supra* note 20.

ORDER

IT IS HEREBY ORDERED THAT the June 10 and March 22 and 2, 2016 merit decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 1, 2017
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