

FACTUAL HISTORY

On January 12, 2015 appellant, then a 51-year-old mine safety and health inspector, filed a traumatic injury claim (Form CA-1) alleging that on December 31, 2014 she sustained carpal tunnel syndrome as a result of typing and driving long distances. The claim form did not indicate whether she stopped work. By letter received by OWCP on February 5, 2015, appellant requested that her case be considered an occupational disease claim (Form CA-2) because her condition was caused by continued and repeated exposure to factors of her federal employment over a period of time. She believed that the employment duties of driving long distances for long periods of time, writing, keyboarding, climbing stairs, gripping hand rails, and accessing mines and equipment caused her condition. Appellant noted that she first recognized her symptoms in November 2014.

On January 20, 2015 appellant underwent right carpal tunnel release surgery. She stopped work. On March 31, 2015 she underwent left carpal tunnel release surgery.

OWCP accepted appellant's claim for bilateral carpal tunnel syndrome and bilateral trigger finger (acquired). It paid intermittent compensation for wage loss and leave buy back.

Appellant received medical treatment from Dr. Lance J. Klingler, a Board-certified orthopedic surgeon, who indicated in an August 25, 2015 report that appellant complained of left thumb numbness. Upon examination of her upper extremities, Dr. Klingler observed well-healed carpal tunnel wounds. He reported tenderness in the left thumb A1 pulley and mild tenderness in the right thumb A1 pulley. Dr. Klingler diagnosed carpal tunnel syndrome and trigger thumbs. He advised appellant to continue working with restrictions, including lifting up to five pounds and no climbing.

On September 8, 2015 appellant returned to full-time limited duty. OWCP continued to pay for medical benefits.

Dr. Klingler continued to treat appellant. In a November 6, 2015 work status form, he noted diagnoses of bilateral carpal tunnel syndrome and bilateral trigger thumbs. Dr. Klingler indicated that she was able to work with restrictions of no climbing. He also noted that appellant could drive occasionally. In a November 18, 2015 letter, Dr. Klingler explained that the only portion of her job that she could not perform was that of climbing. He reported that he had a follow-up examination with appellant in February 2016 and would reassess her need for any ongoing restriction. Dr. Klingler included a duty status report, which indicated that she was able to work with the restriction of no climbing and driving limited to two hours per day.

Appellant filed claims for disability compensation (Forms CA-7) for eight hours of wage loss on each of the following dates: December 1 and 16, 2015, and January 11, February 9, and March 16, 2016.² She indicated that she was unable to work due to "bilateral carpal tunnel syndrome pain, home therapy, and restrictive medications."

² Appellant also filed claims for wage-loss compensation for four hours of LWOP on December 15, 2015, January 15 and 19, February 2 and 3, and April 5, 2016 due to medical appointments. OWCP paid disability compensation for those claimed periods.

In support of her claims appellant submitted various letters dated December 1, 2015 to February 9, 2016, which described the medications she was taking to treat her carpal tunnel syndrome condition. She noted that she took Hydrocol/acetam, 5-325 milligram, and Nortriptylin, 10 milligram daily. Appellant remarked that the medications cautioned against driving and other tasks which required one to be alert. She explained that on December 1 and 16, 2015, and January 11, February 9, and March 16, 2016 she was “unable to attend work due to such symptoms and side effects, which would make driving and tasks hazardous as well as being in severe pain and unable to focus.”

By e-mails dated December 14 to 16, 2015 from Danial Mitchel, a safety and health program coordinator for the employing establishment corresponded with OWCP regarding the physical requirements of appellant’s position. He indicated that she would drive extensively for her position as a mine inspector. Mr. Mitchell noted that appellant had been driving to work daily, but she claimed that due to her prescribed medications she would not drive to work because of the side effects of drowsiness and dizziness. OWCP advised the employing establishment that if appellant was unable to drive to work because of medications, there were various alternative means of transportation to work. It explained that if, however, appellant was disabled from work because the employing establishment could not accommodate her driving restrictions, compensation would be payable.

In a December 18, 2015 e-mail, Barbara Foglia, an OWCP registered nurse, advised OWCP that appellant was on prescription pain medication. She noted that the medical records documented that appellant’s only work restriction was climbing.

On December 29, 2015 OWCP e-mailed the employing establishment inquiring if the employing establishment would provide alternative work on those days when appellant could not drive. It advised that the inability to drive to report to work due to medications would not be payable since there were alternate means to report to work. In an e-mail dated January 8, 2016, the employing establishment responded to OWCP that appellant had been assigned light, sedentary duty performing office work. It also explained that the employing establishment did not have a temporary modified job assignment for a mine inspector that did not include climbing.

By letters dated January 5 and 26, 2016, OWCP advised appellant that the evidence submitted was insufficient to establish her claims for disability compensation on the dates of December 1 and 16, 2015 due to her inability to drive because of pain medication. It requested that she submit additional evidence to establish that she was disabled from work on the claimed dates as a result of her accepted conditions.

OWCP referred appellant’s case, along with a statement of accepted facts (SOAF) and the medical record, to Dr. Frank A. Graf, a Board-certified orthopedic surgeon, for an examination and second opinion on whether she required ongoing medical treatment for her work-related injuries and whether she was disabled from performing the physical duties of her date-of-injury job.

The SOAF provided to Dr. Graf indicated that the physical requirements of a mine safety and health inspector included two hours of sitting, pulling/pushing, fine manipulation (includes keyboarding), and driving a vehicle, three hours of bending/stooping, climbing, kneeling, and

twisting, four hours of simple grasping, five hours of standing, and six hours of walking. The employing establishment also provided a description of appellant's duties as a mine safety and health inspector.

In a February 3, 2016 report, Dr. Graf noted that appellant had worked for the employing establishment for 11 years and accurately described her duties as a mine safety and health inspector. He reviewed her medical history and related that sometime in 2013 she began to experience gradual onset of increasing bilateral hand symptoms, including pain, numbness, and tingling. Dr. Graf related appellant's physical examination findings and diagnosed bilateral upper extremity cumulative trauma disorder with exposure to repetitive motion and vibration, bilateral carpal tunnel syndrome status post carpal tunnel neurolysis, and stenosis tenosynovitis A1 proximal pulleys of both thumbs and ring fingers. He reported that she continued to suffer "persistent and ongoing residuals of her work-related upper extremity cumulative trauma and vibration syndrome effecting [*sic*] both hands." Dr. Graf noted that appellant still needed ongoing medical treatment and opined that additional surgery for her bilateral trigger thumbs and fingers would likely be reasonable and necessary to treat her symptoms. He determined that she was unable to climb ladders or onto equipment or drive the distances required to meet her job description as a mine inspector. Dr. Graf noted that appellant was presently employed full time in an office setting.

Dr. Klingler continued to treat appellant. In various form and duty status reports (Forms CA-17) dated January 15 to February 2, 2016, he noted diagnoses of bilateral carpal tunnel syndrome and trigger thumbs. Dr. Klingler indicated that appellant could continue working with restrictions of no climbing and driving limited to two hours a day.

In various letters dated January 19 and February 3, 2016, appellant responded to OWCP's development letter. She explained that she was claiming disability compensation on the claimed dates due to "inability to drive, impaired alertness, and rapid mental and muscular coordination when taking medications as prescribed." Appellant noted that she was providing a note of explanation from her physician. She also mentioned that she was including the written "Management Plan for Inspector." Appellant related that the inspector position required driving as part of her job duties for any given day, without scheduled dates. She also noted that, with regard to alternative modes of transportation, there was no form of public transportation from her home to her place of work and there were no coworkers who lived near her to allow for carpooling. Appellant indicated that a taxi cab service was available and that she could utilize this form of transportation with written approval. She further explained that the inability to drive was not the only reason she was unable to work, but that, on those dates she claimed disability, she also experienced severe pain, dizziness, drowsiness, physical and mental impairments, and slow motor skills. Appellant provided the following: "a Summary of Key Requirements and Duties," which indicated that her position required driving; an internet printout, which described the side effects of her prescribed pain medication, and her latest performance evaluation.

Appellant continued to receive medical treatment. In a February 16, 2016 report, Joshua Dion, a nurse practitioner, noted appellant's complaints of wrist and arm pain. He provided physical examination findings and diagnosed trigger finger and carpal tunnel syndrome. Mr. Dion provided workers' compensation forms dated February 16 to March 15, 2016, which indicated that appellant could continue working per Dr. Klingler's work restrictions.

In a March 8, 2016 report, Dr. Dennis G. Rork, a Board-certified family practitioner, related appellant's complaints of continued pain and limited function of the hands. He indicated that she was unable to work since right carpal tunnel surgery in January 2015. Dr. Rork noted that appellant's job required driving, computer work, and pulling with hands. He asserted that she was unable to perform these job duties. Upon examination, Dr. Rork observed decreased range of motion, joint stiffness, and joint swelling. He diagnosed chronic pain syndrome, carpal tunnel syndrome. Dr. Rork opined that appellant remained disabled and was unable to perform the required tasks of her job due to physical limitations. He provided a workers' compensation disability form, which detailed her work restrictions.

In an e-mail dated March 17, 2016 to OWCP, the employing establishment advised OWCP that it would be unable to provide light work for appellant after April 16, 2016.

In a letter received on April 11, 2016, nurse practitioner Mr. Dion noted that appellant was under his care for a chronic health condition that required ongoing treatment and use of potent analgesics to control her symptoms. He advised that she not drive when taking her analgesic medication and to be attentive to the effects of decreased reaction time, clouded judgment, drowsiness, and tolerance and would need to follow these work restrictions.

By decision dated April 13, 2016, OWCP denied appellant's claim for disability compensation on the dates of December 1 and 16, 2015 and January 11, February 9, and March 16, 2016, finding that the medical evidence of record failed to establish that she was unable to work on the claimed dates as a result of her accepted conditions. It determined that disability compensation was not payable for "random" days when she decided not to report to work because she was unable to drive to work. OWCP found that the employing establishment accommodated appellant's restrictions and that driving was not required in her modified position.

LEGAL PRECEDENT

Under FECA the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.³ Furthermore, 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 probative, and substantial medical evidence.⁴

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁵ The opinion of the physician must be

³ See 20 C.F.R. § 10.5(f); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

⁴ *Fereidoon Kharabi*, 52 ECAB 291 (2001).

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

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 employee.⁶ Neither the mere 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 of incidents is sufficient to establish causal relationship.⁷

For each period of disability claimed, the employee must establish that she was disabled from work as a result of the accepted employment injury. 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.⁸

ANALYSIS

OWCP accepted that appellant sustained bilateral carpal tunnel syndrome and bilateral trigger finger as a result of her employment duties as a mine safety and health inspector. Appellant underwent bilateral carpal tunnel release surgery and stopped work. On September 8, 2015 she returned to full-time limited duty. In various wage-loss compensation claim forms, appellant requested eight hours of compensation each on December 1 and 16, 2015 and January 11, February 9, and March 16, 2016 due to her accepted conditions. She experienced side effects from her medication, including impaired alertness, a restriction against driving, severe pain, dizziness, and slow motor skills. By decision dated April 13, 2016, OWCP denied appellant's claims for intermittent disability on the above dates. The Board finds that appellant has failed to establish that she was disabled from work on December 1 and 16, 2015 and January 11, February 9, and March 16, 2016 due to her accepted conditions.

The Board notes initially that the evidence of record substantiates that appellant returned to modified work on September 8, 2015. Appellant's only medical restriction at that time was no climbing. The employing establishment has explained that because climbing would be required for mine inspection, appellant was given sedentary work duties.

During the periods of disability claimed, appellant received medical treatment from Dr. Klingler. In his November 18, 2015 letter, Dr. Klingler related that the only physical requirement of her job that she could not perform was climbing. He provided duty status reports dated November 18, 2015 to February 2, 2016, which indicated that appellant was able to work with restrictions of no climbing and driving limited to two hours. The Board notes that Dr. Klingler did not relate that she was totally disabled from work on any of her claimed dates of disability, but rather that she could work with specific restrictions. Dr. Klingler did not provide any opinion that appellant was unable to work her light-duty assignment on the specific dates claimed by her due to her employment-related conditions. Accordingly, his reports fail to

⁶ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

⁷ *Dennis M. Mascarenes*, 49 ECAB 215 (1997).

⁸ *Amelia S. Jefferson*, 57 ECAB 183 (2005).

establish any disability from work on December 1 and 16, 2015 and January 11, February 9, and March 16, 2016 due to her accepted conditions.

In his March 8, 2016 report, Dr. Rork related appellant's complaints of continued pain and limited function of the hands. He conducted an examination and diagnosed chronic pain syndrome, carpal tunnel syndrome. Dr. Rork discussed that the physical requirements of appellant's job required driving, computer work, and pulling with hands. He opined that appellant was unable to perform the required tasks of her job due to physical limitations and was disabled. Dr. Rork did not identify the specific dates that she was disabled from work and failed to explain how she was no longer able to work her light-duty position due to her accepted employment injury. 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.⁹ To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.¹⁰

In his February 3, 2016 report, Dr. Graf opined that appellant continued to suffer residuals of her work-related injuries and determined that she was unable to meet her job duties as a mine inspector. He noted that she had been placed in a sedentary position, but he did not opine that she was disabled from her modified position on any specific date.¹¹

Appellant was also treated by Mr. Dion, a nurse practitioner. Mr. Dion's report is of no probative value, however, because nurse practitioners are not considered physicians as defined under FECA.¹²

On appeal, appellant alleges that she submitted probative evidence, which supported her inability to work on the contested dates, including the driving limitation and the side effects of the medication she was taking. She noted that she was absent for five days due to chronic pain, medication side effects, and conducting home therapy and that the "root cause" of these absences were for chronic pain or treatment for bilateral carpal tunnel syndrome. As noted above, however, the medical evidence submitted failed to adequately establish disability on December 1 and 6, 2015 and January 11, February 9, and March 16, 2016 as a result of her accepted employment injury.

While appellant has also alleged that narcotic medications prescribed for her accepted condition caused symptoms, which interfered with her drive to work on the days in question, Dr. Klinger's restrictions indicated that she could drive up to two hours a day, and she has stated

⁹ *Sandra D. Pruitt*, 57 ECAB 126 (2005).

¹⁰ *J.S.*, Docket No. 16-1014 (issued October 27, 2014).

¹¹ *Id.*

¹² 5 U.S.C. § 8101(2); *E.H.*, Docket No. 08-1862 (issued July 8, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

that she had alternate forms of transportation available. OWCP therefore properly concluded that her alleged inability to work due to her alleged inability to drive was not compensable.¹³

Appellant may submit new evidence or argument as part of a formal 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. §§ 10.606 through 10.607.

CONCLUSION

The Board finds that appellant has not established intermittent periods of total disability on December 1 and 16, 2015 and January 11, February 9, and March 16, 2016 causally related to her upper extremity conditions.

ORDER

IT IS HEREBY ORDERED THAT the April 13, 2016 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 26, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹³ See *R.H.*, 58 ECAB 654 (2007).