

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

R.R., Appellant

and

**DEPARTMENT OF THE NAVY, CAMP
LEJEUNE, NC, Employer**

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**Docket No. 17-0176
Issued: July 21, 2017**

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 3, 2016 appellant filed a timely appeal from July 12, August 9, and October 13, 2016 merit decisions¹ of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUES

The issue is whether appellant has met his burden of proof to establish disability for the periods April 18 through 29, May 9 through June 17, and June 20 through August 12, 2016 due to his accepted employment injuries.

¹ The Board notes that appellant submitted additional evidence after OWCP rendered its October 13, 2016 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, the Board lacks jurisdiction to review this additional evidence on appeal. 20 C.F.R. § 501.2(c)(1).

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 18, 2013 appellant, then a 64-year-old boiler plant operator, filed a traumatic injury claim (Form CA-1) alleging that he injured his left knee when he slipped on snow and ice while reading gas meters on February 17, 2013 in the performance of duty. OWCP accepted his claim for tear of the medial meniscus of the left knee on May 22, 2013. Appellant underwent arthroscopic surgery on June 20, 2013 for tears of the medial and lateral menisci as well as grade 3-4 medial femoral chondromalacia. He returned to light-duty work on July 8, 2013. On August 26, 2013 OWCP accepted the additional condition of temporary aggravation of osteoarthritis in the left knee; on August 11, 2014 OWCP accepted the additional condition of sprain of the right hip and thigh, and a pulled hamstring; and on November 19, 2014 OWCP expanded the accepted condition to include complete right rotator cuff rupture.

Appellant underwent a right shoulder mini open arthroscopic repair of the right rotator cuff on February 3, 2015 and repeat right shoulder arthroscopy on November 17, 2015. He received intermittent wage-loss compensation and was most recently placed on the periodic rolls on January 27, 2016.

Appellant returned to full-time light-work as a secretary on February 22, 2016. On April 5, 2016 OWCP authorized compensation benefits for partial disability from February 22 through March 21, 2016. It requested additional evidence regarding 2.5 hours each on February 29 and March 24, 2016. On April 25, 2016 OWCP authorized compensation benefits for the additional periods.

In a note dated April 13, 2016, Dr. Raymond J. Bradley, a Board-certified orthopedic surgeon, indicated that appellant should remain out of work. Appellant underwent a left upper extremity magnetic resonance imaging (MRI) scan on April 21, 2016 which demonstrated tenosynovitis of the extensor tendons and abductor pollicis longus.

On April 22, 2016 Dr. Bradley noted that appellant's left upper extremity MRI scan showed significant tenosynovitis. He opined that appellant could not work for eight weeks due to this condition. Dr. Bradley also reported that appellant's ongoing dysfunction of the right shoulder would require further investigation.

In a separate note dated April 22, 2016, Dr. Bradley noted that appellant was struggling with his right shoulder physical therapy and having pain and difficulty with right shoulder range of motion. He also reported, "After [appellant's] recent surgery, I examined his left wrist and he clearly had an area of thrombophlebitis and vessel hardening over a discrete segment.... It was exquisitely tender, but clearly resulting from left upper extremity venipuncture from his [w]orkers' [c]ompensation procedure." Dr. Bradley noted the MRI scan findings of the left upper extremity.

On April 29, 2016 appellant filed a Form CA-7 requesting compensation for leave without pay from April 18 through 29, 2016. In a letter dated May 5, 2016, OWCP noted that he stopped work on April 18, 2016 and had not returned. It reviewed Dr. Bradley's notes dated April 13 and 22, 2016 and requested additional evidence to establish disability for the period

claimed. OWCP noted that light-duty work was available for appellant and afforded him 30 days to respond.³

On May 23, 2016 appellant filed claims for compensation from May 9 through 20, May 23 through June 3, and June 6 through 17, 2016.

In a note dated May 20, 2016, Dr. Bradley informed OWCP that appellant required additional right shoulder surgery for right shoulder superior capsular reconstruction. He opined that appellant was unable to use his right upper extremity at work. On June 24, 2016 Dr. Bradley indicated that appellant was totally disabled until after surgery. He also completed a narrative report on that date and opined that appellant had a cuff deficit right shoulder and a nonrepairable cuff tear. On physical examination Dr. Bradley found crepitus, tenderness, and laxity in the biceps tendon of appellant's right shoulder. He found that O'Brien's test was positive, Hawkins' test was positive, and that Neer's test was positive. Dr. Bradley noted that appellant had discomfort with any motion as he tried to actively elevate or abduct the right upper extremity and abnormal range of motion. He reported that appellant's tissue was so badly degraded and so retracted that it would not be repairable. Dr. Bradley recommended a reverse shoulder arthroplasty for appellant's irreparable and painful rotator cuff tear. He also described and discussed a superior capsular reconstruction of appellant's right shoulder, which he preferred to the reverse shoulder arthroplasty.

By decision dated July 12, 2016, OWCP denied appellant's claim for disability compensation for the period April 18 through 29, 2016. It found that Dr. Bradley's April 13 and 22, 2016 notes were insufficient to establish his claim because there was no opinion on the causal relationship between appellant's claimed period of disability and his accepted employment injuries.

Appellant filed a claim for compensation for the period June 20 through July 15, 2016 on July 16, 2016. On August 1, 2016 he requested compensation for the period July 18 through 29, 2016. Appellant submitted a note dated March 18, 2016 from Sean Carroll, a physician assistant.

By decision dated August 9, 2016, OWCP denied appellant's claim for disability compensation for the period May 9 through June 17, 2016. It found that he had not submitted medical opinion evidence establishing why he was unable to perform his light-duty position of secretary.

Appellant filed a claim for compensation on August 13, 2016 for the period August 1 through 12, 2016.

In a note dated August 8, 2016, Dr. Bradley reported appellant's continued pain in the right shoulder and that OWCP had approved additional surgery. On August 15, 2016 he performed an authorized right shoulder arthroscopy with extensive intra-articular debridement,

³ OWCP continued to pay appellant wage-loss compensation for partial disability.

right shoulder superior capsular reconstruction with arthro-flex allograft and mini-open rotator cuff repair.⁴

In a note dated August 22, 2016, Dr. Bradley reported that appellant underwent a right shoulder rotator cuff massive reconstruction and a superior capsular reconstruction with allograft. He indicated that appellant was totally disabled for two months and after that could return to sedentary duties.

By the decision dated October 13, 2016, OWCP denied appellant's claim for compensation for wage loss for the period June 20 through August 12, 2016.

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.⁵ 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.⁶

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.⁷ 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 he or 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.⁸ 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.⁹

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.¹⁰ Rationalized medical evidence is medical

⁴ OWCP began paying appellant wage-loss compensation for total disability beginning August 15, 2016. It placed him on the periodic rolls for total disability beginning September 18, 2016.

⁵ *G.T.*, 59 ECAB 447 (2008); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ 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).

⁷ *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

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.¹¹ 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.¹²

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish disability for the periods April 18 through 29, May 9 through June 17, and June 20 through August 12, 2016 due to his accepted employment injuries.

OWCP accepted appellant's February 17, 2013 traumatic injury for the conditions of tear of the medial meniscus of the left knee, temporary aggravation of osteoarthritis in the left knee, as well as the consequential injuries of sprain of the hip and thigh, pulled right hamstring, and complete rotator cuff rupture, on the right. Appellant underwent two left knee surgeries and three right shoulder surgeries.

Appellant returned to full-time light-work as a secretary on February 22, 2016 following his second right shoulder surgery. He stopped work on April 18, 2016. In support of his claim for total disability beginning on April 18, 2016, appellant submitted a note dated April 13, 2016 from Dr. Bradley opining that he was totally disabled. This note did not provide an opinion on the cause of his disability for work and is, therefore, insufficient to meet his burden of proof. The Board has held that medical evidence which does not support causal relationship between the accepted conditions and the disability claimed is of limited probative value.¹³

On April 22, 2016 Dr. Bradley noted that appellant had an area of thrombophlebitis and vessel hardening clearly resulting from left upper extremity venipuncture from his authorized surgery. He noted that the MRI scan findings of the left upper extremity and diagnosed left upper extremity tenosynovitis. Dr. Bradley opined that appellant could not work for eight weeks due to this condition. While this note supports appellant's disability for work due to a left upper extremity condition, Dr. Bradley did not explain how the diagnosed condition of left upper extremity tenosynovitis was related to appellant's accepted employment injuries. On February 17, 2016 he had diagnosed left wrist thrombosis after a venipuncture, but indicated that appellant could perform light-duty work. Without an opinion on the causal relationship between appellant's diagnosed condition of left upper tenosynovitis and his accepted employment injuries or surgeries, these notes are not sufficient to establish that any disability resulting from his left

¹¹ *Leslie C. Moore*, 52 ECAB 132 (2000).

¹² *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹³ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *A.D.*, 58 ECAB 149 (2006).

upper extremity condition of tenosynovitis was due to his employment.¹⁴ Therefore, Dr. Bradley's April 22, 2016 notes are not sufficiently detailed and well rationalized to establish a period of employment-related disability.

In a separate note dated April 22, 2016, Dr. Bradley noted that appellant was struggling with his right shoulder physical therapy and having pain and difficulty with his right shoulder range of motion. On May 20, 2016 he opined that appellant required additional right shoulder surgery for right shoulder superior capsular reconstruction. Dr. Bradley determined that appellant was unable to use his right upper extremity at work. On June 24, 2016 he indicated that appellant was totally disabled until after surgery. On examination Dr. Bradley found crepitus, tenderness, and laxity in the biceps tendon of appellant's right shoulder with positive tests for rotator cuff insufficiency and impingement. He supported appellant's total disability for work due to his accepted right shoulder conditions beginning on May 20, 2016 and again on June 24, 2016. However, these opinions are insufficiently detailed and well-reasoned to establish appellant's claim for total disability. A mere conclusion without the necessary rationale explaining why Dr. Bradley believed that appellant was unable to perform his light-duty job requirements beginning on May 20, 2016 is insufficient to meet appellant's burden of proof.¹⁵ He did not describe how appellant's right shoulder condition changed on or after May 20, 2016. Given these deficiencies, Dr. Bradley's reports do not establish appellant's total disability for work.¹⁶

Appellant also submitted a note dated March 18, 2016 from Mr. Carroll, a physician assistant. As this note was not signed by the physician it has no probative value in establishing appellant's claim.¹⁷ Healthcare providers such as nurses, acupuncturists, physicians assistants, and physical therapists are not considered physicians under FECA and their reports and opinions do not constitute competent medical evidence to establish a medical condition, disability or causal relationship.¹⁸ Mr. Carroll's note, therefore, cannot establish a claimed period of disability.

The Board finds that there is no rationalized medical opinion evidence supporting appellant's total disability for work for the periods April 18 through 29, May 9 through June 17, and June 20 through August 12, 2016 due to his accepted employment injuries and he, therefore, has not met his burden of proof in this regard.

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.

¹⁴ *Id.*

¹⁵ *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

¹⁶ *D.R.*, Docket No. 16-0528 (issued August 24, 2016).

¹⁷ *Merton J. Sills*, 39 ECAB 572 (1988).

¹⁸ 5 U.S.C. § 8101(2); *see also G.G.*, 58 ECAB 389 (2007); *Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jan A. White*, 34 ECAB 515 (1983).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish disability for the periods April 18 through 29, May 9 through June 17, and June 20 through August 12, 2016 due to his accepted employment injuries.

ORDER

IT IS HEREBY ORDERED THAT October 13, August 9, and July 12, 2016 merit decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 21, 2017
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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