

ISSUE

The issue is whether appellant has met her burden of proof to establish that she was disabled from work for the period November 4, 2014 to October 16, 2015 due to her accepted employment-related conditions.

FACTUAL HISTORY

On August 14, 2014 appellant, then a 58-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that, on that date, an elevator jerked, causing postal containers to hit her right shoulder. She stopped work on date. The employing establishment controverted the claim.

In a September 4, 2014 report, Dr. David Lent, a Board-certified orthopedic surgeon, advised that appellant injured her right shoulder again at work hitting into an elevator door. He advised that she was unable to perform her job duties as she had significant pain and did not have normal use of her right arm. Dr. Lent placed appellant off work pending her surgery.

In an October 1, 2014 decision, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish a work injury.

On October 7, 2014 appellant requested a telephonic hearing, which was held before an OWCP hearing representative on April 15, 2015. During the hearing, she described her duties as a mail handler, which included lifting and moving boxes in and out of trucks, loading and sorting mail, and moving heavy equipment in and out of elevators.

OWCP received a September 30, 2014 disability certificate from Dr. Lent who advised that appellant was unable to return to work. Dr. Lent noted that she would be reevaluated on October 28, 2014. In an October 28, 2014 report, he advised that appellant's shoulder symptoms were chronic and stable, not worsening, but not improving either. Dr. Lent found good range of motion despite weakness. He encouraged appellant to return to work, "but with less of a degree of physical activity. Her job may give her some problems doing that, but I encouraged her to try." Dr. Lent completed a duty status report (Form CA-17) recommending a return to work on October 30, 2014 with restrictions to include a 10-pound lifting restriction. In a November 4, 2014 attending physician's report (Form CA-20), he diagnosed a rotator cuff tear and checked the box marked "yes" in response to whether he believed it was caused or aggravated by the work activity. Dr. Lent indicated that appellant needed surgery to further function. He advised that appellant could return to light-duty work on October 30, 2014 with restrictions on lifting over 10 pounds, pushing, pulling over head, reaching, and lifting.

In a May 14, 2015 report, Dr. Lent diagnosed exacerbation of rotator cuff tear, rotator cuff tendinitis, shoulder impingement, bursitis, and biceps tear. He opined:

"In my opinion, within a reasonable degree of medical certainty, [appellant's] right shoulder worsened as a result of the new injury of August 14, 2014. The reason for this opinion is a bursa is a small sac filled with lubricating fluid, designed to reduce the friction between adjacent soft tissue or bony layers. The

subacromial bursa reduces friction between the bony prominence of the acromion (above the bursa) and the rotator cuff tendon (in particular the supraspinatus tendon which attaches to the upper aspect of the humeral head-below the burn). Due to injury the rotator cuff tendons or subacromial bursa may become damaged, swollen and inflamed. When this occurs the condition is known as shoulder impingement. Shoulder impingement is a condition characterized by pinching or compression of soft tissue, such as the rotator cuff tendons and the subacromial bursa. Shoulder impingement most commonly occurs in association with rotator cuff tendonitis or subacromial bursitis. [This] is consistent with the new [magnetic resonance imaging (MRI) scan] findings.”

Dr. Lent explained that symptoms increased during activities that compressed the rotator cuff tendons or subacromial bursa. He noted the activities included: pushing and pulling and placing weight through the arm. Dr. Lent advised that, when the work equipment hit appellant's shoulder while she was in the elevator, this placed weight through her right arm. He explained that impingement and rotator cuff injuries could weaken the biceps causing the resulting tear. Therefore, despite a prior rotator cuff injury, the additional injuries resulting from her August 14, 2014 employment injury caused the biceps tear.

By decision dated June 3, 2015, the hearing representative vacated the October 1, 2014 decision and remanded the claim for further medical development.

A March 24, 2015 MRI scan of the right shoulder read by Dr. David Stemerman, a Board-certified diagnostic radiologist, revealed findings consistent with a moderate-to-prominent partial tear of the mid supraspinatus tendon with tendinosis and infraspinatus tendon. Dr. Stemerman also found acromioclavicular (AC) joint hypertrophy impinging on the rotator cuff interval and subacromial bursitis.

On August 18, 2015 OWCP referred appellant for a second opinion, along with a statement of accepted facts (SOAF), a set of questions, and the medical record to Dr. Mark Kramer, a Board-certified orthopedic surgeon.³

In a report dated September 16, 2015, Dr. Kramer described appellant's history of injury and treatment and examined appellant. He advised that, at the time of the injury, she had an x-ray and was discharged with a sling. Dr. Kramer noted that the right arm was minimally swollen and black and blue and that appellant had been seeing her primary care physician, Dr. Lent, once a month. He advised that an MRI scan from July 1, 2014, which preceded the accident, revealed a full-thickness rotator cuff tear. However, a repeat MRI scan on March 24, 2015 did not reveal a full-thickness rotator cuff tear. Dr. Kramer concluded that the July 1, 2014 report was inaccurate. He advised that a physician's note from March 27, 2014 indicated that appellant was struck on the shoulder several months previously at work. Dr. Kramer surmised that, if that was the case, the current incident would be an exacerbation of a preexisting condition. He advised that, in any event, her condition had resolved and appellant could return to work without restrictions or further treatment. Dr. Kramer diagnosed a contusion of the right shoulder and opined that it was employment related. He completed a work restriction form for appellant

³ The information provided did not include details of appellant's duties as a mail handler.

advising that she had reached maximum medical improvement. Dr. Kramer indicated that she could perform her usual job. He noted a weight restriction of 50 pounds on pushing, pulling, lifting, squatting, kneeling, and climbing.

On October 1, 2015 OWCP accepted the claim for contusion of the right shoulder and sequela.

On October 21, 2015 appellant submitted Form CA-7 claims for wage-loss compensation for disability for the periods September 29 to October 17, 2014 and November 4, 2014 to October 16, 2015.

By letter dated November 2, 2015, OWCP informed appellant of the type of evidence needed to support her claims for compensation and requested that she submit such evidence within 30 days.

Appellant subsequently provided a July 8, 2015 progress note from Dr. Lent who advised that appellant was improving and therapy was helping her range of motion and strength. On July 30, 2015 Dr. Lent advised that appellant had bilateral shoulder pain. He noted that she was unable to perform her job due to significant pain in both of her shoulders, both of which required arthroscopy and possible rotator cuff. Dr. Lent noted findings and explained that he was unsure whether her problem was coming from her neck or hand. He recommended electromyography studies of the cervical and upper extremities and he did x-rays which just showed degenerative changes, but no significant foraminal stenosis or fracture or dislocation. Dr. Lent opined that, due to the “constellation of problems that the patient has, *i.e.*, bilateral shoulder pathology, cervical pathology, carpal tunnel, and lower back pain, which have all been chronic and unrelenting, I believe the patient is a candidate for social security disability.” He further advised that her “constellation of problems” were “preclusive from being able to work.” Dr. Lent indicated that she was off work for these conditions for quite some time and he did not see “in the near future her returning to her job due to these problems.”

OWCP also received diagnostic reports, including nerve conduction velocity studies and copies of previously submitted reports.

By decision dated January 5, 2016, OWCP denied appellant’s claim for wage-loss compensation for disability from November 4, 2014 to October 16, 2015.⁴

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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.⁶ The term

⁴ OWCP did not address appellant’s claim for wage-loss compensation for the period November 4, 2014 to October 16, 2015 in this decision.

⁵ *Supra* note 2.

⁶ *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

disability is defined under FECA as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, an impairment resulting in the loss of wage-earning capacity.⁷

Whether a particular injury causes an employee to be disabled from employment and the duration of that disability are medical issues which must be proven by a preponderance of the reliable, probative, and substantial medical evidence.⁸ 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 he or 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.⁹

ANALYSIS

OWCP accepted that appellant sustained a contusion on the right shoulder and sequela as a result of her August 14, 2014 traumatic injury. Appellant filed Form CA-7 claims for wage-loss compensation for the periods September 29 to October 17, 2014 and November 4, 2014 to October 16, 2015. By decision dated January 5, 2016, OWCP denied appellant's claim for compensation for disability from November 4, 2014 to October 16, 2015 as the medical evidence submitted was insufficient to establish total disability during the claimed period due to her accepted employment injury.

The Board finds that the weight of the medical opinion evidence regarding the claimed period of disability rests with the well-reasoned opinion of Dr. Kramer, a Board-certified orthopedic surgeon and OWCP referral physician.

In a report dated September 16, 2015, Dr. Kramer described appellant's history of injury and treatment and thoroughly examined appellant. He advised that, at the time of the injury, she had an x-ray and was discharged with a sling. Dr. Kramer noted that the right arm was minimally swollen and black and blue. He advised that an MRI scan from July 1, 2014, which preceded the accident, revealed a full-thickness rotator cuff tear. However, a repeat MRI scan on March 24, 2015 did not reveal a full-thickness rotator cuff tear. Dr. Kramer advised that a physician's note from March 27, 2014 indicated that appellant was struck on the shoulder several months previously at work. He concluded that, if that was the case, the current incident would be an exacerbation of a preexisting condition. Dr. Kramer advised that, in any event, appellant's condition had resolved and she could return to work without restrictions or further treatment. He completed a work restriction form for appellant advising that she had reached maximum medical improvement and that she could perform her usual job with restrictions of 50 pounds on pushing, pulling, lifting, squatting, kneeling, and climbing.

⁷ 20 C.F.R. § 10.5(f); *see, e.g., Cheryl L. Decavitch*, 50 ECAB 397 (1999) (finding that the claimant had an injury, but no loss of wage-earning capacity).

⁸ *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁹ *Id.*

Appellant submitted a September 30, 2014 disability certificate from Dr. Lent, who advised that appellant was unable to return to work. Dr. Lent, however, did not explain with sufficient rationale why appellant's conditions caused her to be disabled from work during the claimed period. The Board has long held that to support causal relationship, a physician's opinion must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the claimed disability and the accepted employment incident.¹⁰

In July 30, 2015 report, Dr. Lent opined that, due to the "constellation of problems that the patient has, *i.e.*, bilateral shoulder pathology, cervical pathology, carpal tunnel, and lower back pain, which have all been chronic and unrelenting, I believe the patient is a candidate for social security disability." Dr. Lent further advised that her "constellation of problems" were "preclusive from being able to work." He indicated that she had been off work for these conditions for quite some time and he did not see "in the near future her returning to her job due to these problems." Dr. Lent, however, did not explain with sufficient rationale why appellant's conditions caused her to be disabled from work during the claimed period. Without medical reasoning, Dr. Lent's reports are insufficient to establish total disability due to the accepted employment injury during the period claimed.¹¹

Other medical evidence submitted does not specifically relate appellant's claimed disability to her accepted conditions. In a May 14, 2015 report, Dr. Lent diagnosed exacerbation of rotator cuff tear, rotator cuff tendinitis, shoulder impingement, bursitis, and biceps tear. He opined that, within a reasonable degree of medical certainty, appellant's right shoulder worsened as a result of the August 14, 2014 employment injury. However, Dr. Lent did not comment on whether appellant was disabled from work due to the accepted condition. In a July 8, 2015 progress note, he advised that appellant was improving and therapy was helping her range of motion and strength. Dr. Lent did not comment regarding appellant's disability status. These reports from Dr. Lent do not support that appellant was disabled due to the accepted employment injury during the claimed period.¹² The record also contains diagnostic reports that do not comment on appellant's claimed disability.¹³

The issue of whether a claimant's disability is related to an accepted condition is a medical question which must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to the accepted employment incident and supports that conclusion with sound medical reasoning.¹⁴ As appellant has not submitted rationalized medical opinion evidence sufficient to establish that she was disabled from work for the period November 4, 2014 to October 16, 2015, she has failed to meet her burden of proof.

¹⁰ *A.D.*, 58 ECAB 149 (2006); *Gary L. Fowler*, 45 ECAB 365 (1994).

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

¹² *Supra* note 8.

¹³ *Id.*

¹⁴ *Sandra Pruitt*, 57 ECAB 126 (2005).

On appeal appellant's representative contends that Dr. Lent's reports are fully rationalized and should not be afforded less weight than the reports of second opinion physician Dr. Kramer. As explained above, the reports of Dr. Lent do not provide sufficient rationale explaining that appellant was disabled from work during the claimed period due to her 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(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 that she was disabled from work for the period November 4, 2014 to October 16, 2015 due to her accepted employment-related conditions.

ORDER

IT IS HEREBY ORDERED THAT the January 5, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 27, 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