

the time of the injury. She accepted a full-time limited-duty position as a modified mail handler on October 6, 2009, with lifting, pulling and pushing limited to 10 pounds, and simple grasping limited to two hours a day as prescribed by Dr. Mark Feeman, an attending osteopathic physician Board-certified in psychiatry. Work was not available within appellant's restrictions from January 2 through July 28, 2010. She received compensation for temporary total disability for this period. Appellant worked approximately two hours a day in August 2010. On September 29, 2010 the employing establishment placed her on administrative leave as there was no work available within her restrictions.

Appellant was paid administrative leave from September 27, 2010 to April 1, 2011 under the National Reassessment Process. As of April 2, 2011, the employing establishment placed her in a leave without pay status as there was no work available within Dr. Feeman's restrictions. Appellant began receiving wage-loss compensation benefits on the supplemental rolls effective April 2, 2011.

In a June 21, 2011 report, Dr. Feeman instituted permanent work restrictions limiting pushing and pulling up to 10 pounds for more than 15 minutes at a time, up to 2 hours a day. He limited sitting and standing to four hours a day, reaching above the shoulder to two hours a day, and twisting, bending, and stooping to one hour a day. On February 6, 2012 Dr. Feeman diagnosed multilevel cervical stenosis, a history of cervical sprain/strain, lumbar facet arthropathy without stenosis, and left rotator cuff syndrome.³ On March 4, 2013 he restricted lifting to 15 pounds, with no repetitive bending or stooping.

On March 8, 2013 the employing establishment offered appellant a full-time, limited-duty position as a modified mail handler, within Dr. Feeman's March 4, 2013 restrictions. Dr. Feeman reviewed the position description on April 8, 2013 and decreased appellant's lifting tolerance to five pounds.

To clarify appellant's work capacity, OWCP obtained a second opinion on May 23, 2013 from Dr. Sarveswar Naidu, a Board-certified orthopedic surgeon. Dr. Naidu reviewed the medical record and a statement of accepted facts (SOAF). She noted that appellant was under treatment for diabetes and hypertension. On examination Dr. Naidu observed restricted cervical and left shoulder ranges of motion and a deficient biceps reflex on the left. She diagnosed severe cervical degenerative disc disease, and acromioclavicular sprain and bursitis of the right shoulder, nonoccupational lumbar spondylosis, and an upper dorsal strain. Dr. Naidu opined that appellant could perform modified full-time work, with pushing, pulling, and lifting limited to 10 pounds for up to four hours a day, driving for up to two hours, and all other activities limited to four hours total.

On August 12, 2013 OWCP found a conflict of medical opinion between Dr. Feeman, for appellant, and Dr. Naidu, for the government, regarding the nature and extent of the injury-related condition. To resolve the conflict, it selected Dr. Thomas Cadier, a Board-certified orthopedic surgeon. Dr. Cadier provided an October 4, 2013 report after reviewing the record and the SOAF. On examination he found restricted motion of the cervical spine and both shoulders, weakness in the upper extremities out of proportion to objective findings, and no

³ Appellant participated in a vocational rehabilitation effort from March 2012 through January 2013, which did not result in her reemployment.

atrophy in either arm. Dr. Cadier commented that imaging studies showed age-related degeneration of the cervical and lumbar spine, and tendinopathy of the left shoulder without a rotator cuff tear. He diagnosed “[c]ervical pain, left shoulder pain, left upper thoracic pain with some findings of symptom magnification.” Dr. Cadier opined that the accepted shoulder sprain and any occupational aggravation of cervical degenerative disc disease had resolved. He found appellant able to perform full-time work, with lifting, pushing, and pulling limited to 25 pounds, sitting restricted to two hours a day, twisting no more than three hours a day, and bending and stooping limited to five hours a day. Dr. Cadier noted that these restrictions were due to appellant’s age and body habitus, and not any occupational injury.

In a September 18, 2013 report, Dr. Feeman opined that appellant could perform full-time light-duty work, with lifting limited to 15 pounds, and no repetitive lifting, bending, or working at shoulder level. He explained that appellant was taking prescribed narcotics, which “can be sedating and affect the memory.”

On September 30, 2013 appellant refused a sales solution team member modified job offer at a different duty station of the employing establishment. The job required answering telephone calls, performing computer data entry, and clerical duties. The employing establishment renewed the offer on November 15, 2013.

By notice dated January 28, 2014, OWCP advised appellant that the offered modified position was suitable work, and also advised her of its regulatory provision for terminating compensation for refusing a temporary light-duty assignment. It afforded her 30 days to submit additional evidence or argument.

In response, appellant submitted a June 23, 2010 disability determination from the Department of Veterans Affairs (VA) increasing her rating for degenerative disc disease from 10 to 20 percent, and a June 28, 2010 VA award letter adding service-connected hypertension with an evaluation of 0 percent. She provided claims for veterans’ benefits due to depression and left lower extremity conditions. Appellant also submitted January 21 and March 3, 2014 reports from Dr. Feeman finding her condition unchanged.

By decision dated March 28, 2014, OWCP reduced appellant’s compensation to \$50.75 every four weeks effective April 6, 2014, based on her ability to earn wages in the temporary light-duty assignment. It found that she did not present good cause for refusing the job, which was within the restrictions provided by Dr. Feeman.

In an April 2, 2014 letter, appellant requested an oral hearing, which was held on October 14, 2014. At the hearing, counsel asserted that OWCP failed to follow its return to work procedures as it did not issue a 15-day letter.

On March 24, 2014 appellant accepted the employing establishment’s March 24, 2014 offer of a sales solution team member. She returned to work on April 28, 2014, with wages of \$1,051.08 a week. Appellant remained under treatment with Dr. Feeman. Dr. Feeman provided periodic reports through November 4, 2014 finding her condition unchanged.

On February 25, 2015 OWCP calculated that appellant’s pay rate on April 2, 2011, the date disability recurred, was \$1,065.99 a week. Appellant’s current weekly pay rate for her job

and step when injured was \$1,174.50, and her current actual weekly earnings were \$1,051.08. This resulted in a new compensation rate of \$323.00 per month.

By decision dated November 24, 2014, an OWCP hearing representative affirmed the March 28, 2014 decision, finding that appellant was not entitled to benefits for temporary total disability during the period she refused an offer of suitable work under 20 C.F.R. § 10.500(a). She further found that OWCP was not required to issue a 15-day letter as the offered position was temporary.

By decision dated February 25, 2015, OWCP determined that appellant's actual earnings as a sales solution team member fairly and reasonably represented her wage-earning capacity.

In a March 5, 2015 letter, counsel requested an oral hearing, later modified to a request for a review of the written record. Appellant submitted additional chart notes from Dr. Feeman dated from April 13 to December 14, 2015, finding her condition stable.

By decision dated December 28, 2015, an OWCP hearing representative affirmed the February 25, 2015 wage-earning capacity determination. She found that appellant had successfully performed the sales solution team member position for more than 60 days, and that there was insufficient medical evidence indicating that she could no longer perform the job.

On January 29, 2016 appellant filed a claim for a recurrence of disability (Form CA-2a) commencing November 12, 2015. She contended that on November 12, 2015, a supervisor granted a previously submitted leave request for the upcoming Thanksgiving holiday, then ordered her to leave the office. Appellant remained off work and did not return.

In a January 25, 2016 report, Dr. Feeman related appellant's account of being offered a new position as a maintenance clerk, working from midnight to 9:00 a.m. He noted that her prescription medication caused nighttime drowsiness. Appellant's condition remained unchanged.

In a February 25, 2016 letter, the employing establishment indicated that there was work available within appellant's work restrictions at her original date-of-injury station, effective November 7, 2015, working from 12:01 a.m. to 8:50 a.m. as a modified mail processing clerk. The modified mail processing clerk position required intermittent standing and sitting, reaching above shoulder level for two hours a day, and lifting, pulling, and pushing up to five pounds. Appellant refused to report for duty and thereafter applied for disability retirement benefits. She did not return to work.

The employing establishment submitted a March 1, 2016 letter, explaining that appellant was officially reassigned on November 6, 2015. Appellant was on leave at that time. When she reported for work in her modified mail handler position on November 12, 2015, her supervisor notified her of the reassignment and instructed her to report for duty at the new location.

In a March 1, 2016 letter, OWCP advised appellant of the additional evidence needed to establish her claim for wage loss, including an explanation of why she failed to accept an offered light-duty position within her medical restrictions. It afforded her 30 days to submit such evidence.

In response, appellant submitted her April 7, 2016 letter, asserting that she had not accepted the modified offered position as she could not drive at night due to poor vision and the effects of narcotic medication. She submitted March 7, 2016 chart notes from Dr. Feeman, noting that she could not “see at night to drive.”

By decision dated April 15, 2016, OWCP denied appellant’s claim, finding the medical evidence of record insufficient to meet her burden of proof to establish total disability for the claimed period.

LEGAL PRECEDENT

A wage-earning capacity decision is a determination that a specific amount of earnings, either actual earnings or earnings from a selected position, represents a claimant’s ability to earn wages. Compensation payments are based on the wage-earning capacity determination.⁴

Once the wage-earning capacity of an injured employee is determined, a modification of such determination is not warranted unless there is a material change in the nature and extent of the injury-related condition, the employee has been retrained or otherwise vocationally rehabilitated, or the original determination was, in fact, erroneous.⁵ When a wage-earning capacity determination has been issued and a claimant submits evidence with respect to disability for work, OWCP must evaluate the evidence to determine whether a modification of the LWEC is warranted.⁶

OWCP’s procedure manual provides that if a loss of wage-earning capacity determination has been issued, “[m]odification of such a determination is only warranted where the party seeking the modification establishes either that there is a material change in the nature and extent of the injury-related condition, the employee has been retrained or otherwise vocationally rehabilitated, or the original determination was erroneous.” OWCP, however, is not precluded from adjudicating a limited period of employment-related disability when a formal wage-earning capacity determination has been issued.⁷

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. 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.⁸ Furthermore, whether a particular injury causes an employee to be disabled for employment and the duration of that disability are

⁴ See *Sharon C. Clement*, 55 ECAB 552 (2004).

⁵ *Sue A. Sedgwick*, 45 ECAB 211 (1993).

⁶ See *Katherine T. Kreger*, 55 ECAB 633 (2004).

⁷ *J.B.*, Docket No. 15-1817 (issued April 1, 2016); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

⁸ See 20 C.F.R. § 10.5(f); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

medical issues which must be proved by a preponderance of the reliable, probative, and substantial medical evidence.⁹

ANALYSIS

OWCP accepted that appellant sustained left rotator cuff syndrome; a left shoulder, upper arm, and acromioclavicular sprain; and a thoracic sprain. Appellant returned to work in a modified employment position. By decision dated February 25, 2015, OWCP found that her actual earnings as a modified mail handler properly represented her wage-earning capacity.

On January 29, 2016 appellant claimed a recurrence of disability commencing November 12, 2015. The employing establishment confirmed that it had withdrawn the modified position on which the wage-earning capacity was based effective November 6, 2015. On April 15, 2016 OWCP issued a decision denying appellant's recurrence claim for the period December 21, 2015 to February 19, 2016. It determined that the issue of a closed period of total disability could be adjudicated without addressing modification of the standing wage-earning capacity determination as the evidence of record established that the medical restrictions did not prevent her from performing the limited-duty position previously offered to her and the remaining medical evidence did not establish an inability to perform the position she had previously accepted. The Board has held that OWCP is not precluded from accepting a limited period of employment-related disability, without a formal modification of the wage-earning capacity determination.¹⁰

The Board finds that the medical evidence of record is insufficient to establish total disability for the claimed period. As noted, the accepted conditions in the claim are left rotator cuff syndrome; a left shoulder, upper arm, and acromioclavicular sprain; and a thoracic sprain. Appellant has not met her burden of proof to establish that these accepted conditions caused the claimed period of total disability.

The issue of disability for work can only be resolved by competent medical evidence. 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 employment factors and supports that conclusion with sound medical reasoning.¹¹ A physician's opinion on causal relationship between a claimant's disability and an employment injury is not dispositive simply because it is rendered by a physician. To be of probative value, the physician must provide rationale for the opinion reached. Where no such rationale is present, the medical opinion is of diminished probative value.¹²

In support of her claim, appellant submitted a chart note from Dr. Feeman dated March 7, 2016, but this note does not offer any support for the period of claimed disability as it provides

⁹ *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹⁰ *See supra* note 6; *Sharon C. Clement*, *supra* note 4.

¹¹ *See Sandra D. Pruitt*, *supra* note 7.

¹² *Thaddeus J. Spevack*, 53 ECAB 474 (2002).

no basis on which appellant would be precluded from performing her modified employment position. All other medical evidence she submitted in support of her claim does not contain work restrictions or otherwise support that she was unable to perform the modified employment position offered to her on November 2, 2015. Therefore, the Board finds that appellant has not submitted any medical evidence which provides a probative opinion based upon supportive rationale to support her claim for a period of total disability. Appellant has therefore not met her burden of proof to establish her claim.

On appeal appellant contends that OWCP erred in developing her claim and failed to consider the medical evidence. As noted above, she has not submitted sufficient medical evidence to establish her claim for a period of total disability.

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 10.6067. She may also request modification of the wage-earning capacity determination supported by new evidence or argument, at any time before OWCP.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish her claim for total disability compensation for the period December 21, 2015 to February 19, 2016.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 15, 2016 is affirmed.

Issued: September 11, 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