United States Department of Labor
Employees' Compensation Appeals Board

V.G., Appellant	)	
and	)	**Docket No. 17-1418**
	)	**Issued: April 4, 2018**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Dallas, TX, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 13, 2017 appellant filed a timely appeal from an April 5, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established total disability from work for the period April 17 through August 24, 2016, causally related to her February 24, 2016 employment injury.

FACTUAL HISTORY

On February 26, 2016 appellant, then a 49-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that, on February 24, 2016, she injured her left arm, fingers, and shoulder

[1] 5 U.S.C. § 8101 *et seq.*

in an altercation with a patient while at work. Appellant received treatment at the employing establishment's clinic on February 24, 2016. The provider diagnosed a left upper extremity strain and advised that she could work limited duty. In clinic notes dated February 26, 2016, a physician with the employing establishment found that appellant could not use her left arm and that she should stay off work until March 2, 2016.[2] OWCP accepted the claim for a strain of the muscles and tendons of the left rotator cuff and other specific joint derangement of the left elbow and left wrist.

On February 26, 2016 Dr. Raymond Gibbons, a Board-certified surgeon, described the February 24, 2016 work injury and provided findings on examination. He opined that appellant should remain off work "to prevent further injury" pending reevaluation on March 14, 2016. In a duty status report (Form CA-17) dated March 4, 2016, Dr. Gibbons found that appellant could not work until March 14, 2016. He diagnosed a left rotator cuff strain, a left ulnar nerve lesions, and joint derangement of the left elbow and left wrist.

On March 9, 2016 Dr. Cynthia D. Goodman, a physiatrist, performed a physical performance evaluation (PPE). The results indicated that appellant was unable to perform her usual employment. It also generally indicated that she was "[n]ot able to work at this time."

Dr. Goodman, in a March 14, 2016 progress report, diagnosed a rotator cuff strain, a lesion of the left ulnar nerve, and other joint derangements of the left elbow and wrist. She opined that appellant should stay off work March 14 to 28, 2016 "to prevent reinjury." Dr. Goodman indicated on a March 14, 2016 duty status report (Form CA-17) that she was unable to work March 14 to 28, 2016. In a report dated March 16, 2016, Dr. Gibbons discussed appellant's history of sustaining an injury when a confused patient grabbed and twisted her hand. She returned to modified work after seeking treatment at the employing establishment's clinic, but her arm became more "painful and swollen from the elbow to the wrist and hand." Dr. Gibbons advised that appellant could work limited duty until March 11, 2016. He diagnosed a strain of the left rotator cuff, a left ulnar nerve lesions, and joint derangement of the left elbow and left wrist.

The employing establishment notified appellant on March 29, 2016 that her continuation of pay would cease on April 10, 2016 and that she could file for compensation from OWCP or use sick or annual leave. It informed OWCP on April 13, 2016 that she "was taken off work on March 14, 2016" and not returned.

A magnetic resonance imaging (MRI) scan of the left wrist dated April 21, 2016 revealed tricompartmental effusions and mild extensor tenosynovitis with a grade one strain of the extensor carpi ulnaris tendon. An April 21, 2016 MRI scan of the left shoulder showed a grade one strain from an injury or mild tendinopathy of the supraspinatus, infraspinatus, and subscapularis tendons, glenohumeral joint effusions, and subacromial/subdeltoid bursitis. An MRI scan of the left elbow dated April 21, 2016 demonstrated a grade 1 strain of the flexor tendon "compatible with mild medial epicondylitis," joint effusion, and a grade one strain or mild tendinopathy of the triceps tendons and brachialis tendon.

[2] The name of the physician is not legible.

On April 25, 2016 Dr. Goodman reviewed appellant's history and diagnostic test results. She diagnosed joint derangement of the left elbow and left wrist, left ulnar nerve lesions, and left rotator cuff strain. Dr. Goodman found that appellant should not work from April 25 to May 9, 2016 to avoid a reinjury. In an April 25, 2016 duty status report (Form CA-17), she found that she was unable to work April 25 to May 9, 2016.

Appellant on April 26, 2016 filed a claim for compensation (Form CA-7) requesting wage-loss compensation beginning April 17, 2016.

In a May 9, 2016 progress report, Dr. Goodman discussed appellant's February 24, 2016 work injury and found that she should stay off work to "prevent reinjury." She completed a Form CA-17 on May 9, 2016 indicating that she was off work May 19 to 23, 2016.

By letter dated May 12, 2016, OWCP advised appellant that pain was a symptom, not a diagnosis and that a fear of reinjury was not a valid basis for payment of disability compensation. It requested that she submit a reasoned report from her attending physician addressing why she was unable to work and the causal relationship between any disability and the accepted work injury.

Dr. Goodman, in a report received by OWCP on June 14, 2016, provided the dates of her examination and discussed appellant's symptoms of burning and numbness of the left hand, pain and swelling of the left wrist, continuous pain in her left shoulder that increased with movement, and pain on extension of the left elbow. She described examination findings and reviewed the results of MRI scan studies of the left wrist, elbow, and shoulder. Dr. Goodman diagnosed a rotator cuff strain and joint derangements of the left elbow and wrist causally related to the February 24, 2016 work injury, noting that diagnostic testing and examination findings supported the diagnoses. She related that she had reviewed appellant's position description and opined that she was totally disabled from her usual employment beginning February 26, 2016. Dr. Goodman discussed appellant's findings of a grade 1 muscle strain of the left elbow and a grade 1 strain/tenosynovitis of the left wrist. She related:

> "Due to the demands of her job which requires use of the shoulders and arms (elbows [and] wrists) to assist patients with ambulation, changing positions, and lifting, [she] is not able to return to work in any capacity because continual reaggravation of a grade 1 strain of the left shoulder, left elbow/wrist could potentially progress to a grade II (which is a partial tear); therefore, [she] is still in an off[-]work status to prevent reaggravation which could delay healing and cause further damage and permanent disability."

On June 20, 2016 Dr. Richard S. Levy, a Board-certified orthopedic surgeon, obtained a history of appellant injuring her left arm "when a delirious patient pulled and twisted her arm and refused to let go." Appellant returned to light-duty work using only one arm, but was subsequently taken off work. Dr. Levy diagnosed a probable mild brachial plexus injury and rotator cuff strain of the left shoulder.

Dr. Gibbons, in June 23 and July 7 and 21, 2016 progress reports, diagnosed rotator cuff strain and left joint derangements. He found that appellant was disabled from her regular duties

due to the objective findings on examination. Dr. Gibbons related, "Due to the physical demands of [her] position, returning [her] to her assigned duties dramatically increases the risk of re-aggravation of the current injury." He opined that appellant was off work to prevent a delay in healing, permanent disability, or aggravation.

By decision dated July 29, 2016, OWCP denied appellant's claim for wage-loss compensation beginning April 17, 2016. It found that the medical evidence of record was insufficiently rationalized to support that she was disabled from work during the period claimed.

In an August 4, 2016 duty status report (Form CA-17), Dr. Gibbons found that appellant could perform modified employment. By letter dated August 8, 2016, the employing establishment advised that the medical evidence from Dr. Gibbons supported that she could work with restrictions and offered her modified employment. Appellant accepted the offer on August 9, 2016.

Dr. Goodman, in an August 10, 2016 explanation of disability letter to OWCP, related that she was aware of appellant's work duties. She advised that, based on the results of the PPE, she was unable to work as a nurse, and was thus totally disabled from work from April 17 to August 4, 2016.

On August 16, 2016 appellant requested reconsideration. In a July 11, 2016 progress report, received by OWCP on September 6, 2016, Dr. Levy diagnosed a probable mild brachial plexus injury and left shoulder rotator cuff strain. He noted that appellant had responded to the medication and that her condition "will resolve with time." On August 4, 2016 Dr. Gibbons diagnosed a rotator cuff strain and left joint derangements. He released appellant to work with restrictions. In a September 7, 2016 duty status report (Form CA-17), Dr. Goodman found that she could resume her usual employment.

By decision dated September 28, 2016, OWCP denied modification of its July 29, 2016 decision. It noted that appellant was performing light-duty work at the time she stopped work and found that the medical evidence submitted was insufficient to support that she was totally disabled from her light-duty employment beginning April 17, 2016.

On October 6, 2016 appellant requested reconsideration. In a statement dated October 3, 2016, she related that she worked for two days after her injury using only her right arm. A physician with the employing establishment reexamined her on February 26, 2016 and found that she should remain off work. Appellant changed treating physicians. She was initially placed on modified work, but the restrictions were changed beginning February 26, 2016 to find that she should be off work to prevent a reinjury.

Appellant submitted a June 29, 2016 report from Dr. Joshua Lemmon, a Board-certified plastic surgeon. Dr. Lemmon described the February 24, 2016 work injury and her subsequent complaints of pain and paresthesia in the left wrist. He advised that electrodiagnostic testing revealed mild carpal tunnel syndrome bilaterally. Dr. Lemmon diagnosed "left carpal tunnel syndrome following a traumatic injury at work" and recommended a left carpal tunnel release.

Dr. Gibbons, in a progress report dated September 22, 2016, and Dr. Goodman, in a September 30, 2016 progress report, evaluated appellant for continued left shoulder, left elbow and left wrist/hand complaints and recommended physical therapy.

OWCP, in a decision dated October 25, 2016, denied modification of its September 28, 2016 decision. It found that the medical evidence submitted was insufficiently reasoned to support her disability claim.

In a letter to OWCP dated January 3, 2017, Dr. Goodman reviewed OWCP's October 25, 2016 decision and noted that it had denied the claim as the record did not contain a rationalized opinion based on objective findings supporting disability from April 17 through August 6, 2016.[3] She discussed appellant's history of injury on February 24, 2016. Dr. Goodman noted that she returned to work with restrictions after her injury, but her arm worsened, and on February 26, 2016 the employing establishment's clinic took her off work. She diagnosed a left rotator cuff strain, a lesion of the left upper ulnar nerve, and other joint derangements of the left elbow and left wrist. Dr. Goodman advised that appellant was totally disabled from work beginning February 26, 2016 due to positive objective findings on examination and noted that a PPE on March 9, 2016 indicated that she was unable to work. She reviewed the results of diagnostic studies and opined that she was unable to perform the duties of a nurse due to the physical demands and indicated that the objective findings on examination of "reduced muscle strength, reduced range of motion, impaired function of the left shoulder, elbow ad wrist; hand as demonstrated by clinical testing" supported her disability determination. Dr. Goodman opined that returning to work would significantly increase the change of worsening her injury. She found that, based on her experience as a physician and her interpretation of diagnostic studies, appellant was totally disabled from work for the period February 26 through August 6, 2016 due to her work injury.

On January 6, 2017 appellant requested reconsideration.

By decision dated April 5, 2017, OWCP denied modification of its October 25, 2016 decision. It found that the evidence submitted was insufficient to establish total disability from work during the claimed period.

On appeal appellant contends that she submitted sufficient evidence to establish her claim.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.[5] For each period of disability claimed, the employee has the burden of establishing that he or she was disabled from work as a result of the accepted employment injury.[6] Whether a particular injury causes an employee to

[3] Dr. Gibbons and Dr. Goodman continued to submit progress reports describing appellant's current condition.

[4] *Supra* note 1.

[5] *See Amelia S. Jefferson*, 57 ECAB 183 (2005); *see also Nathaniel Milton*, 37 ECAB 712 (1986).

[6] *See Amelia S. Jefferson, id*.

become disabled from work, and the duration of that disability, are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.[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.[8] Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.[9] An employee who has a physical impairment causally related to his or her federal employment, but who nonetheless has the capacity to earn the wages that he or she was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.[10] When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for any loss of wages.

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.[11]

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility to see that justice is done.[12] The nonadversarial policy of proceedings under FECA is reflected in OWCP's regulations at section 10.121.[13]

ANALYSIS

OWCP accepted that on February 24, 2016 appellant sustained a strain of the muscles and tendons of the left rotator cuff and joint derangement of the left elbow and left wrist when a patient grabbed and twisted her left arm. She sought treatment at the employing establishment's clinic on February 24, 2016 and was released to work with restrictions. Appellant worked limited duty until February 26, 2016, when a physician with the employing establishment's clinic found that she was unable to work until March 2, 2016. The employing establishment paid her continuation of pay until April 10, 2016. Appellant filed claims requesting wage-loss compensation for disability from work for the period April 17 through August 24, 2016.

[7] *See Edward H. Horton*, 41 ECAB 301 (1989).

[8] *S.M.*, 58 ECAB 166 (2006*); Bobbie F. Cowart*, 55 ECAB 746 (2004); 20 C.F.R. § 10.5(f).

[9] *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

[10] *Merle J. Marceau*, 53 ECAB 197 (2001).

[11] *See William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

[12] *Jimmy A. Hammons*, 51 ECAB 219 (1999).

[13] 20 C.F.R. § 10.121.

OWCP found that appellant was working limited duty at the time she stopped work, and thus she had the burden of proof to establish that she was disabled from the limited-duty position. A physician with the employing establishment's clinic found on February 26, 2016 that she could not perform the modified duties until March 2, 2016. It appears that the employing establishment paid appellant continuation of pay until April 10, 2016, and there is no evidence of a subsequent job offer in the record until August 9, 2016, when she accepted a modified position and resumed work. The issue, consequently, is whether she has established that she was disabled from her position as a nurse from April 17 through August 24, 2016.

The Board finds that the case is not in posture for decision.

Dr. Gibbons, on February 26, 2016, noted a history of the February 24, 2016 work injury and opined that appellant was unable to work to prevent additional injury. In a March 4, 2016 duty status report (Form CA-17), he diagnosed a left rotator cuff strain, left ulnar nerve lesions, and joint derangement of the left elbow and wrist. Dr. Gibbons advised that appellant was disabled from work. In a March 16, 2016 report, he diagnosed a left rotator cuff strain, a left ulnar nerve lesion, and joint derangements of the left wrist and elbow and obtained a history of appellant injuring herself when a patient seized and twisted her hand. Dr. Gibbons indicated that she could work limited duty until March 11, 2016. In progress reports dated April and May 2016, Dr. Goodman opined that appellant was unable to work to prevent a reinjury, and in progress reports dated June and July 2016, Dr. Gibbons advised that she could not perform the duties of her position as a nurse and that returning to work would significantly increase the change of reinjury.

Dr. Goodman, on March 9, 2016, reviewed the results of a PPE and indicated that it demonstrated that appellant was unable to work. In reports dated March 14, 2016, she diagnosed a strain of the rotator cuff, a left ulnar nerve lesions, and joint derangements of the elbow and wrist on the left side. Dr. Goodman submitted progress reports through May 9, 2016 finding that appellant should not work in order to prevent a reinjury. In an undated report received on June 14, 2016, she diagnosed a rotator cuff strain and left elbow and wrist joint derangement due to the February 24, 2016 employment injury. Dr. Goodman reviewed appellant's position description and opined that she was disabled from work to prevent additional damage and disability. On August 10, 2016 she explained that based on the PPE, she was not able to work as a nurse and was therefore disabled from April 17 to August 4, 2016. On January 3, 2017 Dr. Goodman discussed appellant's February 24, 2016 employment injury, noting that she initially worked with restrictions, but that on February 26, 2016 the employing establishment's clinic determined that she could not work. She diagnosed joint derangements of the left elbow and left wrist, a left rotator cuff strain, and a left upper ulnar nerve lesion. Dr. Goodman found that appellant was totally disabled as of February 26, 2016 due to objective findings and a March 9, 2016 PPE. She concluded that she could not perform the duties of a nurse and advised that she was totally disabled from February 26 through August 6, 2016. Dr. Goodman further explained that a return to work would significantly increase the possibility of aggravating appellant's condition.

As discussed, proceedings under FECA are not adversarial in nature nor is OWCP a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, it shares responsibility in the development of the evidence to see that justice is

done.[14] The Board has reviewed the reports of Dr. Goodman and finds that the physician provided a clear diagnosis, causation finding, and opinion that appellant was unable to work as a nurse for the period in question. While, as noted, the fear of a future injury is not compensable under FECA,[15] Dr. Goodman further found that based on objective findings on examination, a review of the diagnostic studies, and the results of a PPE, appellant was totally disabled as a result of her work injury as she was unable to fully perform her duties as a nurse.

Dr. Goodman evidenced a thorough knowledge of appellant's work duties before finding that she was disabled, and also based her opinion on the objective evidence and the results of a PPE. Her opinion is supportive, unequivocal, bolstered by objective findings and based on a firm diagnosis and an accurate work history. Further, Dr. Gibbons' reports support Dr. Goodman's finding of total disability from April 17 through August 24, 2016. Dr. Goodman's opinion lacks sufficient rationale to support that the February 24, 2016 employment injury resulted in disability from employment during the period April 17 through August 24, 2016. Consequently, while the medical evidence from Dr. Goodman is insufficiently rationalized to meet her burden of proof to establish disability, it raises an undisputed inference of causal relationship sufficient to require further development by OWCP.[16] Accordingly, the Board will remand the case to OWCP to further develop the medical record to determine whether appellant was disabled from employment from April 17 through August 24, 2016 due to her accepted February 24, 2016 employment injury. Following this and such further development as OWCP deems necessary, it shall issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision.

[14] *See P.D.*, Docket No. 16-1171 (issued November 1, 2016); *Phillip L. Barnes*, 55 ECAB 426 (2004).

[15] *See Mary A. Geary*, 43 ECAB 300 (1991).

[16] *See C.T.*, Docket No. 16-1222 (issued March 9, 2017); *B.D.*, Docket No. 13-0403 (issued May 7, 2013).

ORDER

IT IS HEREBY ORDERED THAT the April 5, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: April 4, 2018
Washington, DC

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

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

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