

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

R.S., Appellant)	
)	
and)	Docket Nos. 17-1858
)	Issued: April 6, 2018
U.S. POSTAL SERVICE, POST OFFICE,)	
Camden, AL, Employer)	
)	

Appearances:
John D. Richardson, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 31, 2017 appellant, through counsel, filed a timely appeal from an April 11, 2017 merit decision 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 over the merits of this case.³

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

³ Accompanying appellant's request for appeal, counsel submitted new evidence. The Board may not consider evidence that was not before OWCP at the time it issued the April 11, 2017 decision. 20 C.F.R. § 501.2(c)(1). The Board therefore lacks jurisdiction to review this evidence for the first time on appeal.

ISSUE

The issue is whether appellant met her burden of proof to establish that she was totally disabled from work for the period October 15 to December 9, 2016 causally related to her accepted March 21, 2014 employment injury.

FACTUAL HISTORY

On March 26, 2014 appellant, then a 47-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on March 21, 2014 she lifted a box while at work and sustained a right arm injury. She stopped work on that day.

Appellant was first treated on March 21, 2014 at a hospital emergency room by Dr. Robert Ruth, a Board-certified family practitioner, who noted that appellant had lifted a box at work earlier that day. Dr. Ruth obtained x-rays of the cervical spine which demonstrated narrowing and hypertrophic changes from C4 through C6. He diagnosed a normal right shoulder and multilevel osteoarthritic and degenerative cervical disc disease.

OWCP accepted the claim for right acromioclavicular shoulder sprain.

On March 27, 2014 appellant accepted a modified-duty position. She remained on light duty.

In a March 31, 2014 report, Dr. Huey R. Kidd, an attending osteopathic physician Board-certified in family practice, provided medical reports dated from March 31 to May 14, 2014 in which he noted appellant's worsening right shoulder symptoms. He diagnosed right bicipital tendinitis and prescribed physical therapy.⁴

Appellant stopped work on or about August 11, 2014 and did not return. She filed claims for wage-loss compensation (Form CA-7) for intermittent periods of disability from August 12, 2014 to October 14, 2016. In response to each of appellant's claims, OWCP issued a development letter which notified her of the type of additional evidence needed to establish her claim, including a report from her attending physician explaining how and why the accepted right shoulder injury would totally disable her for work for the claimed periods. In response, appellant submitted medical reports from several treating physicians.

Dr. H. John Park, an attending Board-certified orthopedic surgeon, provided reports dated from June 10, 2014 through January 7, 2015 finding appellant totally disabled from work due to a right rotator cuff tear, right rotator cuff dysfunction, right shoulder impingement syndrome, a superior labrum from anterior to posterior (SLAP) lesion, and fibromyalgia.⁵ He attributed these diagnoses to the accepted March 21, 2014 employment injury.

⁴ Appellant participated in physical therapy treatments in May and June 2014.

⁵ In a December 22, 2014 report, Dr. James V. Richardson, a physician specializing in emergency medicine, diagnosed chronic right shoulder and neck pain.

In a January 27, 2016 report, Dr. Park provided a history of injury and treatment. He diagnosed a right shoulder biceps-labrum complex injury, reflex sympathetic dystrophy (RSD) of the right arm and shoulder, complex regional pain syndrome (CRPS), severe right adhesive capsulitis, and right rotator cuff dysfunction. Dr. Park opined that all of the diagnosed conditions were directly related to lifting a heavy box at work on March 21, 2014. He noted that appellant had an “essentially nonfunctioning right shoulder with severe chronic pain” and paresthesias in her right arm and neck.

Dr. R. Lee Murphy, an attending Board-certified orthopedic surgeon, provided a history of injury and treatment in a February 1, 2016 report. On examination, he found positive Hawkins’ and Neer’s signs, 4+/5 biceps strength, and a “ratcheting exam[ination].” Dr. Murphy diagnosed right shoulder and upper extremity pain syndrome, possibly CRPS. He noted that the original injury was “hard to sort out” as it occurred “quite a while ago.” Dr. Murphy recommended additional diagnostic studies. In a May 13, 2016 report, he noted an impression of suspected RSD of the right upper extremity.⁶

In an October 3, 2016 report, Dr. Bradley Katz, an attending Board-certified anesthesiologist, opined that there were inconsistencies between appellant’s presentation and findings on examination. He diagnosed right arm pain. On an October 31, 2016 examination, Dr. Katz noted no swelling or atrophy of the right arm. He diagnosed right shoulder pain.

By decisions dated from November 18, 2014 through October 27, 2016, OWCP denied appellant’s claims for intermittent wage-loss compensation from August 12, 2014 to October 14, 2016 as the medical evidence of record contained insufficient rationale to demonstrate that the accepted March 21, 2014 right shoulder injury disabled her from work for the claimed periods.⁷

On November 22, 2016 appellant claimed wage-loss compensation (Form CA-7) for total disability from October 15 to November 11, 2016. In a November 30, 2016 letter, OWCP notified appellant of the type of additional evidence needed to establish her claim, including a report from

⁶ On May 5, 2016 Dr. Larry W. Epperson, a Board-certified neurologist, obtained electromyography (EMG) and nerve conduction velocity (NCV) studies of the right upper extremity and right C5-8 paraspinal muscles within normal limits. He noted that appellant had swelling in the right arm and may have “a form of RSD.” A May 5, 2016 MRI scan of the cervical spine showed multi-level degenerative changes from C4 through C6. On June 17, 2016 appellant underwent a cervical epidural steroid injection.

⁷ OWCP issued decisions on the following dates denying appellant’s claims for wage-loss compensation as noted: November 18, 2014 for the period August 12 to October 17, 2014; February 5, 2015 for the period October 18 to December 26, 2014; April 30, 2015 for the period February 7 to March 6, 2015; July 13, 2015 for the period March 21 to April 3, 2015; August 6, 2015 for the periods May 2 to 15 and May 30 to June 12, 2015; October 23, 2015 for the period June 13 to July 10, 2015; November 12, 2015 for the period August 8 to September 4, 2015; December 29, 2015 for the period September 5 to 18, 2015; January 15, 2016 for the period September 19 to October 30, 2015; March 9, 2016 for the period October 31 to December 11, 2015; March 23, 2016 for the period December 12, 2015 to January 8, 2016; May 17, 2016 for the period January 23 to February 19, 2016; June 3, 2016 for the period January 9 to March 18, 2016; August 4, 2016 for the period April 16 to May 13, 2016; September 15, 2016 for the period May 14 to 27, 2016; October 5, 2016 for the period June 27 to July 8, 2016; October 27, 2016 for the period July 23 to September 2, 2016; and December 14, 2016 for the period September 3, 2016 to October 14, 2016. OWCP paid appellant 12 hours of compensation from June 11 to 24, 2016 on the supplemental rolls for attendance at medical appointments to treat the accepted employment injury.

her attending physician explaining how and why work factors totally disabled her from work for the claimed period. It afforded appellant 30 days to submit such evidence.

In response, appellant submitted a November 11, 2016 report from Dr. Murphy, who noted that appellant's right upper extremity complaints began when she lifted a heavy box. Dr. Murphy diagnosed RSD of the right shoulder "and probably associated adhesive capsulitis." He released appellant to restricted duty. Dr. Murphy opined that appellant had attained maximum medical improvement (MMI).

In a November 28, 2016 report, Dr. Katz diagnosed right shoulder pain with diffuse tenderness to palpation and limited motion throughout the right arm.

On December 16, 2016 appellant filed claims (Form CA-7) for compensation from November 12 to December 9, 2016. In a December 21, 2016 letter, OWCP notified her of the type of additional evidence needed to establish her claim, including a report from her attending physician explaining how and why work factors totally disabled her from work for the claimed period. It afforded appellant 30 days to submit such evidence.

In response, appellant submitted June 17 and December 21, 2016 reports from Dr. Katz, who noted that appellant's symptoms of chronic neck and right shoulder pain began approximately two years before when she lifted an item at work. Appellant felt a "pop" in her right shoulder and experienced the onset of right shoulder pain, which progressed over time to involve the entire right arm and the cervical spine. Dr. Katz noted inconsistencies between appellant's symptoms and objective findings on examination. He diagnosed cervical radiculitis and right shoulder pain. Dr. Katz prescribed analgesic medication.

By decision dated February 9, 2017, OWCP denied appellant's claim for compensation for the period October 15 to December 9, 2016 as the medical evidence of record was insufficient to establish total disability for work for the claimed period.

In a letter dated February 9, 2017 and received by OWCP on March 3, 2017, appellant requested reconsideration of OWCP's February 9, 2017 decision. She provided her August 3, 2015 affidavit in which she asserted that she had no difficulties with her right shoulder prior to the accepted March 21, 2014 employment injury. Appellant submitted April and May 2015 affidavits from five coworkers who attested that she had no physical limitations prior to the accepted March 21, 2014 employment injury. She also provided copies of medical evidence previously of record, and literature about FECA claim procedures.

By decision dated April 11, 2017, OWCP denied modification of its prior decision as the evidence of record failed to establish that appellant was totally disabled for work from October 15 to December 9, 2016 due to the accepted March 21, 2014 employment injury.

LEGAL PRECEDENT

Section 8102(a) of FECA⁸ sets forth the basis upon which an employee is eligible for compensation benefits. That section provides: “The United States shall pay compensation as specified by this subchapter for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty....” In general the term “disability” under FECA means “incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury.”⁹ This meaning, for brevity, is expressed as disability for work.¹⁰ For each period of disability claimed, the employee has the burden of proving that she was disabled for work as a result of the accepted employment injury.¹¹ Whether a particular injury caused an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by the preponderance of the reliable probative and substantial medical evidence.¹²

ANALYSIS

The Board finds that appellant failed to establish that she was totally disabled from work for the period October 15 to December 9, 2016, causally related to her accepted March 21, 2014 right acromioclavicular shoulder sprain.

To meet her burden of proof, appellant must submit medical evidence with a reasoned explanation as to why the accepted right shoulder injury would totally disable her for work for the claimed period.

Dr. Park, an attending Board-certified orthopedic surgeon, did not address appellant’s disability status for the period October 15 to December 9, 2016. His opinion is therefore of limited probative value in establishing the claimed period of disability.¹³ For each period of disability claimed, an 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 without sufficient medical evidence to support the claim. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.¹⁴

Dr. Murphy, an attending Board-certified orthopedic surgeon, diagnosed possible CRPS and RSD in reports from February 1 to November 11, 2016. He explained that the etiology of the

⁸ 5 U.S.C. § 8102(a).

⁹ 20 C.F.R. § 10.5(f). *See also William H. Kong*, 53 ECAB 394 (2002); *Donald Johnson*, 44 ECAB 540, 548 (1993); *John W. Normand*, 39 ECAB 1378 (1988); *Gene Collins*, 35 ECAB 544 (1984).

¹⁰ *See Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

¹¹ *See William A. Archer*, 55 ECAB 674 (2004).

¹² *See Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

¹³ *T.P.*, Docket No. 17-0423 (issued December 20, 2017).

¹⁴ *See C.Y.*, Docket No. 17-0605 (issued January 11, 2018).

diagnosed conditions was unclear as the March 21, 2014 injury had occurred “quite a while ago.” Dr. Murphy found that appellant had attained MMI as of November 11, 2016 and released her to restricted duty. The only accepted condition in this case was right acromioclavicular shoulder sprain. To establish that additional diagnosed conditions were causally related to the accepted injury, the physician’s opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant’s specific employment injury.¹⁵ The Board has held that an opinion which is equivocal in nature is of limited probative value regarding the issue of causal relationship.¹⁶ His opinion is therefore equivocal and does not demonstrate that appellant was totally disabled for work during the claimed period.

Dr. Katz, an attending Board-certified anesthesiologist, provided reports from October 3 through December 21, 2016 which addressed appellant’s condition during the claimed period of disability. He opined that appellant’s presentation was inconsistent with the objective findings on examination. Dr. Katz noted that appellant’s right shoulder symptoms began when she lifted an item at work in 2014, but did not specifically identify the accepted March 21, 2014 employment injury. He diagnosed right upper extremity pain and cervical radiculitis, neither of which were conditions accepted by OWCP. As Dr. Katz did not provide medical rationale supporting that the accepted March 21, 2014 right acromioclavicular sprain disabled appellant for work from October 15 to December 9, 2016, his opinion is insufficient to meet appellant’s burden of proof.¹⁷

OWCP notified appellant by November 30 and December 21, 2016 letters of the additional evidence needed to establish her claim, including her physician’s well-rationalized opinion supporting that the accepted right acromioclavicular sprain disabled her for work from October 15 to December 9, 2016. As she did not submit such evidence, appellant has failed to meet her burden of proof.

On appeal, counsel contends that OWCP ignored the medical evidence of record. As set forth above, the medical evidence of record is insufficient to establish that appellant was totally disabled for work for the claimed period.

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 totally disabled from work for the period October 15 to December 9, 2016, causally related to her accepted March 21, 2014 employment injury.

¹⁵ *W.W.*, Docket No. 09-1619 (issued June 2, 2010).

¹⁶ *See Leonard J. O’Keefe*, 14 ECAB 42, 48 (1962); *James P. Reed*, 9 ECAB 193, 195 (1956).

¹⁷ *Supra* note 11.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 11, 2017 is affirmed.

Issued: April 6, 2018
Washington, DC

Christopher J. Godfrey, 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