

ISSUE

The issue is whether appellant has met her burden of proof to establish total disability during the periods March 18 to June 4, 2013 and July 22 to September 6, 2013 due to her accepted employment conditions.

FACTUAL HISTORY

On March 12, 2014 appellant, then a 59-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that, as a result of factors of her federal employment, she suffered pain in her left arm, left hand, and shoulder. She also noted a back spasm. Appellant alleged that her job on the flat sorting machine (FSM) was to pull heavy mail trays, mail tubs, and heavy bundles of magazines using her left hand and arm to slide and separate mail in a tub on the automation machine. She explained that she first became aware of her condition on December 12, 2012 and first realized that it was caused or aggravated by her federal employment on March 15, 2013. Appellant indicated that she had initially filed a notice of recurrence (Form CA-2a), rather than a new occupational disease claim.³ She stopped work on March 15, 2013.

By decision dated June 13, 2014, OWCP initially denied appellant's occupational disease claim. On June 19, 2014 appellant, through counsel, requested a hearing before an OWCP hearing representative. By decision dated February 18, 2015, the hearing representative found that further development of the medical evidence was necessary. He, therefore, set aside the June 13, 2014 denial and remanded the case for referral to a second opinion physician. On June 15, 2015 OWCP accepted appellant's claim for cervical sprain, thoracic sprain, lumbar sprain, and lumbosacral sprain, based upon the opinion of second opinion physician, Dr. Jeffrey Lakin, a Board-certified orthopedic surgeon.⁴ However, it indicated that the condition had resolved by April 21, 2015. By separate decision of the same date, OWCP denied appellant's claim for internal derangement of her left shoulder, cervical radiculopathy, bilateral carpal tunnel syndrome, and internal derangement of the right thoracic spine.

On January 4, 2016 appellant filed claims for compensation (CA-7 forms) for the periods March 18 through June 13, 2013 and July 22 through September 6, 2013.

In support of appellant's claims for wage-loss compensation, OWCP received reports from appellant's treating physician, Dr. Mark A.P. Filippone, a Board-certified psychiatrist, as well as a supplemental narrative statement from appellant.

In a June 13, 2013 duty status report (Form CA-17), Dr. Filippone noted that on October 21, 2003 appellant felt a cramp in her upper back and left arm while lifting a heavy bag.

³ Appellant had filed prior claims before OWCP. OWCP accepted that on November 27, 2009, appellant sustained an aggravation of preexisting contusion of the left wrist under OWCP File No. xxxxxx414; OWCP also accepted that on October 21, 2003, appellant suffered a cervical strain and left shoulder strain under OWCP File No. xxxxxx443; OWCP accepted appellant's September 1, 2003 occupational disease claim for bilateral carpal tunnel syndrome arising out of the claimed work activities under OWCP File No. xxxxxx447; and OWCP accepted appellant's August 13, 2001 occupational disease claim for left arm sprain under OWCP File No. xxxxxx376.

⁴ Dr. Lakin was not asked and did not address appellant's disability status during the periods in question.

He provided work restrictions indicating that she could return to work for eight hours a day, lifting a maximum of 10 pounds, and pushing/pulling a maximum of 20 pounds.

A handwritten note from an R.B. dated June 18, 2013, related that there was no work available within the restrictions appellant had provided.

In a supplemental statement dated June 19, 2013, appellant explained that she underwent left shoulder surgery on October 27, 2010 due to a work injury. When she returned to work in October 2011 she was placed on a four-hour work schedule. Appellant met with a reasonable accommodations committee on April 22, 2013 to discuss a rehabilitation position. She was asked to provide a report from her treating physician which clarified her medical situation and restrictions. Appellant explained that she returned to work on June 16, 2013, but was sent home after two hours. She returned to work again on June 17, 2013, but was again sent home from work after two hours. On June 17, 2013 the employing establishment offered appellant a modified job, which required her to lift 20 pounds. The job offer was dated June 6, 2013. When appellant returned to work on June 18, 2013 she was sent home because no work was available within her restrictions.

In a report dated July 24, 2013, Dr. Filippone noted that he reexamined appellant that day and that she was being followed for bilateral carpal tunnel syndrome related to OWCP File No. xxxxxx447. He explained that while he had allowed her to return to work on June 14, 2013 on a full-time limited-duty basis, employing establishment management did not allow her to return to work.

On September 4, 2013 Dr. Filippone, reported that appellant last worked for the employing establishment on March 14, 2013. He indicated that she visited him on March 15, 2013 and that he took her off work on that date due to worsening of her neck, left shoulder, and left wrist conditions. Dr. Filippone indicated that appellant had been working in rewrap for years and on October 11, 2011 her job changed from working four hours per day on the FSM to five hours per day on September 12, 2012. He noted that he had allowed her to return to work full-time limited duty in June 2013. Dr. Filippone noted that appellant continued working on the FSM for five hours per day until she was taken off of work on August 15, 2013. He opined that her job duties over one and half years resulted in a material worsening of her condition and would be a new occupational disease, noting that she was given a new job on June 20, 2013 which increased her lifting, pushing, pulling, and lifting up to 20 pounds for eight hours a day and also required that she work on the FSM. Dr. Filippone opined that appellant had a new occupational disease claim secondary to working on the FSM. He noted her status as post left open shoulder surgery, internal derangement of the left shoulder/arm. Dr. Filippone further opined that appellant's cervical radiculopathy was aggravated by the strenuous, repetitive activity which aggravated her left shoulder injury and cervical radiculopathy. He opined that this was a new injury status post returning to work referable to the left shoulder following the shoulder surgery and cervical radiculopathy.

OWCP continued to receive reports from Dr. Filippone regarding his treatment of appellant in 2014.

By letter dated January 14, 2016, OWCP informed appellant that further information was necessary to support her claims for wage-loss compensation and afforded her 30 days to submit the requested information.

By decision dated March 30, 2016, OWCP denied appellant's claims for compensation for the periods March 18 through June 14, 2013 and July 22 through September 6, 2013.

On April 19, 2016 appellant, through counsel, requested a hearing before a representative with OWCP's Branch of Hearings and Review. During the hearing, held on September 27, 2016, she repeated her earlier explanation regarding the duties of her position and her medical care. Appellant described in greater detail how, in September 2012, her job duties changed when she began working on the FSM 1000, where the mail was much heavier and she had to stand five or six hours straight. She noted that she left work on March 15, 2013 and returned in mid-June 2013, but that the employing establishment sent her home after she clocked in because they wanted her to work the FSM and Dr. Filippone indicated that she could not work on that machine. Appellant also indicated that she accepted the June 2013 offer on September 9, 2013. She noted that she was no longer working in any capacity.

By decision dated December 6, 2016, the hearing representative affirmed OWCP's March 30, 2016 decision. She noted that, during the periods March 18 to June 4, 2013 and July 22 to September 6, 2013, appellant was partially disabled and was compensated for partial disability under OWCP File No. xxxxxx443. The hearing representative noted that the record was devoid of any medical evidence demonstrating that appellant was totally disabled during these claimed periods, due to this accepted claim.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ has the burden proof to establish the essential elements of his or her claim by the weight of the evidence.⁶ For each period of disability claimed the employee has the burden of proof to establish that she was disabled from work as a result of the accepted employment injury.⁷ Whether a particular injury caused an employee to 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.⁸

The claimant must submit medical evidence showing that the condition claimed is disabling.⁹ The evidence submitted must be reliable, probative, and substantial.¹⁰ The physician's opinion must be based on the facts of the case and the complete medical background

⁵ *Supra* note 2.

⁶ *See Amelia S. Jefferson*, 57 ECAB 183 (2005); *see also Nathaniel Milton*, 37 ECAB 712 (1986).

⁷ *Id.*

⁸ *See Edward H. Horton*, 41 ECAB 301 (1989).

⁹ 20 C.F.R. § 10.115(f).

¹⁰ *Id.* at § 10.115

of the employee, must be one of reasonable medical certainty, and must include objective findings in support of its conclusions.¹¹ Subjective complaints of pain are insufficient, in and of themselves, to support payment of continuing compensation.¹² Likewise, medical limitations based solely on the fear of a possible future injury are also insufficient to support payment of continuing compensation.¹³

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.¹⁴ Rationalized medical evidence is medical evidence which includes a physician's detailed medical opinion on the issue of whether there is causal relationship between the claimant's diagnosed condition and the implicated employment injury. 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.¹⁵ 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.¹⁶

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.¹⁷

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that she was totally disabled from work during the periods March 8 to June 4, 2013 and July 22 to September 6, 2013 causally related to her accepted employment-related conditions of cervical, thoracic, lumbar, and lumbosacral sprain.

In support of her claim, appellant submitted multiple reports from Dr. Filippone. Dr. Filippone initially addressed her disability as of March 18, 2013 in his September 4, 2013 report. He noted that he took appellant off work after her March 15, 2013 visit, due to worsening of her neck, left shoulder, and left wrist conditions. Dr. Filippone allowed her to return to work in June 2013, but that she was taken off of work again on August 15, 2013. He discussed appellant's job duties and noted that it was his opinion that her duties resulted in a material worsening of her condition. Dr. Filippone further opined that her cervical radiculopathy was

¹¹ *Id.* at § 10.501(a)(2).

¹² *Id.*

¹³ *Id.*

¹⁴ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁵ *Leslie C. Moore*, 52 ECAB 132 (2000).

¹⁶ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹⁷ *See William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

aggravated by the strenuous repetitive activity which aggravated her left shoulder injury and cervical radiculopathy. The Board notes, however, that cervical radiculopathy and left shoulder conditions are not accepted as causally related to appellant's 2014 occupational disease claim. For conditions not accepted by OWCP as being employment related, it is the employee's burden of proof to provide rationalized medical evidence sufficient to establish causal relationship.¹⁸ None of the reports from Dr. Filippone contain medical rationale explaining how or why the additional diagnosed conditions had been caused or aggravated by the accepted occupational disease claim. His reports, therefore, do not establish appellant's claim for intermittent total disability.

In his June 13, 2013 duty status report (Form CA-17), Dr. Filippone provided work restrictions including no lifting over 10 pounds and no pushing pulling over 20 pounds. However, he noted appellant's date of injury as October 21, 2003, when she felt a cramp in her upper back and left arm while lifting a heavy bag. In this report Dr. Filippone did not relate her work restrictions as of June 13, 2013 to her occupational disease claim of March 2014. This report, therefore, does not establish that appellant was totally disabled from work during the claimed period due to her accepted conditions.¹⁹

None of the other medical evidence of record addresses appellant's claimed disability during the periods in question.²⁰ The medical evidence does not establish that she was totally disabled from March 18 to June 4, 2013 and from July 22 to September 6, 2013, due to the accepted conditions in this claim.²¹

As appellant has not submitted medical reports containing medical rationale relating her claimed dates of disability to her diagnosed conditions, she has not met her burden of proof to establish disability for the periods March 18 to June 4, 2013 and July 22 to September 6, 2013.

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 has not met her burden of proof to establish total disability during the periods March 18 to June 4, 2013 and July 22 to September 6, 2013 due to her accepted employment conditions.

¹⁸ See *M.W.*, Docket No. 16-1560 (issued May 8, 2017).

¹⁹ *Supra* note 9.

²⁰ *Supra* note 17.

²¹ *J.S.*, Docket No. 14-0818 (issued August 7, 2014).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 6, 2016 is affirmed.

Issued: January 26, 2018
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