

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

_____)	
T.B., Appellant)	
)	
and)	Docket No. 17-1761
)	Issued: June 6, 2018
U.S. POSTAL SERVICE, MAIN POST OFFICE,)	
Cincinnati, OH, 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 August 14, 2017 appellant filed a timely appeal from a June 29, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.²

ISSUE

The issue is whether appellant has established that she was disabled during the period April 19, 1997 to June 9, 2016 causally related to her accepted November 6, 1995 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence after OWCP rendered its June 29, 2017 decision. The Board's jurisdiction is limited to evidence that was before OWCP at the time of its final decision. Therefore, the Board is precluded from reviewing this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

On appeal appellant alleges that the medical evidence supports her claim for disability compensation.

FACTUAL HISTORY

On November 15, 1995 appellant, then a 38-year-old modified mail processor, filed an occupational disease claim (Form CA-2) alleging that on November 6, 1995 both her hands started to bother her and she noted discomfort in her right shoulder due to repetitive motions required while casing mail.³ At that time, she had an accepted claim for aggravation of chondromalacia of the right knee in OWCP File No. xxxxxx731, and she was working in a modified sedentary position. Appellant stopped work on November 9, 1995 and returned to work on November 25, 1995. On November 13, 1996 OWCP accepted appellant's claim for bilateral sprain/strain of both hands and wrists and right shoulder. (RD 8/28/00) It paid medical benefits.

On April 25, 1997 appellant filed a traumatic injury claim (Form CA-1) alleging that on April 19, 1997, while she was sitting and throwing mail to her left, she injured her left shoulder, arm, and hands. She also noted that she used her left arm and hands because her right shoulder hurt. OWCP assigned this claim File No. xxxxxx601 and accepted the claim for left shoulder sprain and tendinitis of the left forearm. Appellant stopped work on the date of the incident and was paid wage-loss compensation benefits through November 17, 1999. However, on November 18, 1999 OWCP terminated appellant's wage-loss compensation as she failed to accept an offer of suitable employment. Appellant's requests that OWCP reconsider the termination were denied. Appellant filed appeals to the Board and, by decisions dated December 3, 2003 and October 2, 2012, the Board affirmed the denial of appellant's reconsideration requests as they were untimely filed and failed to demonstrate clear evidence of error.⁴ Appellant's last request for reconsideration regarding the suitable work termination was denied by OWCP on April 23, 2015.

On June 10, 2016 appellant filed a claim for compensation (Form CA-7) for the period April 19, 1997 to June 9, 2016 in the current claim. By letter dated August 16, 2016, she indicated that she was requesting payment of wage-loss compensation with regard to the claim she filed in 1995. Appellant contended that she accepted the job offer of January 24, 1995 under duress, and that upon her return to work, following her November 6, 1995 employment injury, she was injured again. She alleged that she was never paid for this injury and has been unable to work.

Appellant saw Dr. Jennifer Massoud, an emergency medicine physician at the Good Samaritan Hospital on November 7, 1995. At that time Dr. Massoud diagnosed tendinitis. She noted that appellant could return to work on that day with restrictions of no repetitive hand movements for three days.

In a November 17, 1995 report, Dr. David H. Gillis, a Board-certified orthopedic surgeon, related that he had seen appellant on November 8, 1995 and diagnosed sprain-strain injuries to the wrist or hand with accompanying tendinitis and acute right sprain-strain shoulder with bursitis. He noted that he had suggested some restrictions in work activities upon her return to work. In a

³ OWCP assigned OWCP File No. xxxxxx340 to the present claim.

⁴ Docket No. 03-1651 (issued December 3, 2003); Docket No. 12-0471 (issued October 2, 2012).

December 6, 1995 report, Dr. Gillis noted that appellant was able to return to work on November 26, 1995.

On November 15, 1996 OWCP referred appellant to Dr. Richard T. Sheridan, a Board-certified orthopedic surgeon, for a second opinion. In a December 2, 1996 report, Dr. Sheridan noted that appellant had complaints of pain in her neck, right shoulder, and upper extremity. He noted a normal examination of her cervical spine and upper extremities. Dr. Sheridan did not believe that appellant required further treatment. He opined that appellant's complaints with regard to her neck and right shoulder and upper extremities caused her to be off work for three days and that the strain resolved in three days.

In an April 25, 1997 report, Dr. Gillis diagnosed chronic severe sprain strain left shoulder and forearm and tendinitis in the left shoulder and forearm. He noted that appellant's prognosis was continued disability in her left shoulder and forearm, with flare-ups at frequent intervals such as in the past. Dr. Gillis anticipated good and bad days for appellant. In a May 12, 1997 attending physician's supplemental statement, (Form CA-20), he indicated that appellant was disabled from her usual work due to impairment of the shoulders and hands. However, Dr. Gillis also recommended that appellant could return to work performing nonrepetitive activities. He related that appellant's date of injury was April 19, 1997.

In a December 3, 1997 report, Dr. Errol J. Stern, a Board-certified orthopedic surgeon, diagnosed subacromial tenderness, and he noted an x-ray showed irritation of the greater tuberosity of the left shoulder. He diagnosed left shoulder tendinitis and left shoulder impingement. In a progress note of the same date, Dr. Stern noted that appellant was seen for a work injury that, according to her record, occurred on November, 6, 1995. He reviewed Dr. Gillis records. Dr. Stern noted that apparently appellant had a strain to both wrists and hand and a strain of her right shoulder, and also complained of pain and weakness in her right wrist and inability to use her right wrist. He noted that appellant's grip strength was only 40 to 50 percent where it should be. Dr. Stern stated that appellant was able to be actively employed in reference to these problems, limited light work-related activities that did not require repetitive motion.

On December 15, 1997 OWCP referred appellant to Dr. E. Gregory Fisher, a Board-certified orthopedic surgeon, for a second opinion examination. In a January 15, 1998 report, Dr. Fisher indicated that from examination and history, appellant sustained bilateral strains of both wrists, hands, and right shoulder from the repetitive work she was performing at the employing establishment in November 1995. He noted that on his examination he could detect no objective findings over the upper extremities including the wrists, hands, forearms, or right shoulder. Dr. Fisher noted that his findings were strictly subjective and minimal. He noted that appellant did not show any evidence of carpal tunnel syndrome, cubital syndrome, or any nerve entrapment syndrome over the upper extremities. Because of appellant's lack of positive physical findings over the upper extremities, Dr. Fisher believed that appellant was able to perform her duties as a modified mail processor. He opined that appellant could work at least four hours a day and that if she did well, her hours could be increased.

In a March 25, 1998 report, Dr. Stern noted that appellant was having trouble with her bilateral hand, wrist, and right shoulder. He opined that appellant could do repetitive work activities moderately restricted. Dr. Stern did believe that appellant was employable. In a July 27,

1998 report, he noted that appellant may have right shoulder impingement syndrome, and could have a rotator cuff tear. In an October 29, 1998 report, Dr. Stern indicated that appellant was still having trouble with her right shoulder, but he did not place her off work.

In a February 16, 2000 progress report, Dr. John D. Wyrick, a Board-certified orthopedic surgeon, indicated that appellant's magnetic resonance imaging scan on her right shoulder only showed some changes in the "AC [acromioclavicular] joint," no rotator cuff pathology. He noted that they were still waiting approval to treat her right shoulder. On February 24, 2000, Dr. Wyrick indicated that appellant could not work until further notice. In a January 29, 2001 letter, he indicated that appellant has not worked since April 19, 1997. Dr. Wyrick indicated that, in his letter of August 8, 2000, he stated that appellant could possibly return to work part time and sedentary and did not require frequent use of her upper extremities. He stated that, to his knowledge, a job was not provided to her within those restrictions. In an October 17, 2001 note, Dr. Wyrick indicated that appellant had no significant changes on her left. He noted that appellant was not interested in any surgery unless taken covered by workers' compensation. By letter dated June 24, 2002, Dr. Wyrick terminated appellant's care.

In a December 14, 2012 report, Dr. Michael Porody, a rheumatologist, indicated that appellant was under his care for treatment of myopathy and osteoarthritis of her hands. He noted that appellant continued to experience muscle weakness as well as joint swelling and morning stiffness. Dr. Porody noted significant osteoarthritis as well as myopathy. For these medical reasons, he opined that appellant was unable to perform even the limited-duty job offer of September 15, 1999. Dr. Porody noted that she continued to be disabled. He explained that appellant had multiple injuries at work starting in 1990, including injuries on November 6, 1995 and April 19, 1997. Dr. Porody noted that appellant's joint pain began following these injuries, and that she denied experiencing joint pain prior to these injuries. He concluded that her joint pain was precipitated by the employment-related injuries.

In a December 26, 2014 report, Dr. Robert P. Baughman, a Board-certified orthopedic surgeon, noted that last year appellant saw him and wanted a letter documenting that she was not able to work because of her employment-related injury in 1995?. He noted that he explained to her that her sarcoidosis had been present since 1994, but specific problems were based on a work-related injury. Dr. Baughman noted that appellant had a problem with her shoulder, chest, and costochondritis in her hands. Appellant's sarcoidosis was not caused by her employment-related injury, and that if she needed further evaluation, she should follow up with an orthopedic surgeon or Dr. Porody. Dr. Baughman noted, "[appellant] is not able to work at this time according to her, and based on the information she is providing and Dr. Porody is providing, it sounds like she is still totally disabled." He noted that at this time appellant did not need specific therapy for her sarcoidosis.

By decision dated August 23, 2016, OWCP denied appellant's claim for wage-loss compensation from April 19, 1997 to June 9, 2016. It noted that appellant had not supported her claim for disability, since she returned to work on November 25, 1995 after her injury of November 6, 1995 and sustained a new injury on April 19, 1997 under File No. xxxxxx660.

In a medical report dated September 25, 2016, Dr. Porody opined that appellant continued to be disabled. He noted that her last day of work was April 19, 1997. Dr. Porody noted that

appellant had significant osteoarthritis of her hands as well as a myopathy which made her unable to return to work in even a limited capacity. He noted that appellant had bony swelling of the DIP (distal interphalangeal) joints bilaterally making it difficult for her to perform any job requiring the use of her hands. Dr. Pordy noted that appellant required continued medical treatment including relief of pain with narcotic analgesics on a daily basis. He doubted that there would be any significant improvement in appellant's future.

By letter dated September 19, 2016, appellant requested an oral hearing before an OWCP hearing representative. At the hearing held on April 14, 2017, she argued that OWCP improperly terminated her benefits and that she never received wage-loss compensation for her bilateral hand conditions. Appellant also alleged that appropriate treatment was never authorized for her November 6, 1995 employment injury. She contends that facts were improperly omitted, that the medical evidence was not properly developed, referral physicians were biased, and there were intentional delays in processing the claim. Appellant alleged that, as a result of returning to work on November 6, 1995, she injured herself.

By decision dated June 29, 2017, the hearing representative affirmed OWCP's August 23, 2016 decision. She determined that the evidence of record was insufficient to establish causal relationship between the claimed disability and the accepted work injury.

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 establishing that he or 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 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 not sufficient, in and of themselves,

⁵ *Supra* note 1.

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

¹¹ *Id.* at § 10.501(a)(2).

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

5 U.S.C. § 8106(c) provides that a partially disabled employee who refuses to seek suitable work, or refuses to or neglects to work after suitable work is offered to or arranged for him or her, is not entitled to compensation.

OWCP's implementing regulation interpreting 5 U.S.C. § 8106 further clarifies that OWCP will terminate the employee's entitlement to further compensation on all claims where the injury occurred prior to the termination decision, as provided by 5 U.S.C. § 8106(c)(2). However, the employee remains entitled to medical benefits.¹⁴

ANALYSIS

The Board finds that appellant is not entitled to disability compensation for the period April 1997 to June 9, 2016 due to her accepted November 6, 1995 employment injury.

Appellant's November 6, 1995 claim was accepted for bilateral sprain/strain of both hands and wrists and the right shoulder. Appellant had a separate claim for a traumatic injury of April 19, 1997. That claim was accepted for left shoulder sprain and tendinitis of the left forearm. Appellant received compensation and wage-loss benefits for the April 19, 1997 claim through November 17, 1999, but on November 18, 1999 OWCP terminated wage-loss compensation because appellant failed to accept suitable employment.

On June 10, 2016 appellant filed a claim for compensation in the present claim for the period April 19, 1997 through June 9, 2016.

When OWCP terminated appellant's compensation benefits on November 18, 1999 for refusal of suitable work it was required to consider the employment-related conditions, as well as preexisting and subsequently acquired medical conditions to determine that the offered position was in fact suitable work.¹⁵ As previously noted, OWCP's regulation clarifies that if OWCP has properly terminated compensation for refusal of suitable work, further compensation on all claims where the injury occurred prior to the termination decision is terminated.¹⁶ Therefore, pursuant to 20 C.F.R. § 10.517(b), appellant is not entitled to further compensation for her November 6, 1995 employment injury after November 18, 1999.

However, appellant's claim also includes periods of alleged disability prior to November 18, 1999. The Board will, therefore, evaluate the relevant medical evidence to

¹² *Id.*

¹³ *Id.*

¹⁴ 20 C.F.R. § 10.517(b).

¹⁵ *Martha A. McConnell*, 50 ECAB 129, 132 (1998).

¹⁶ *Supra* note 12.

determine whether appellant has established disability from April 19, 1997 to November 18, 1999 arising from her November 6, 1995 employment injury.

In a May 12, 1997 report, Dr. Gillis indicated that appellant could return to work as long as she did not perform repetitive work activity. However, he related that these restrictions were due to appellant's previous April 19, 1997 injury.

Dr. Fisher opined in his December 15, 1997 report that he could detect no objective findings in appellant's upper extremities including her wrists, hands, forearms, or right shoulder. He indicated that appellant's findings were strictly subjective and minimal. Because of appellant's lack of positive findings in her upper extremities, Dr. Fisher believed that appellant was able to perform her work duties as a modified mail processor. Dr. Stern noted, in his October 19, 1998 report, that appellant was still having trouble with her right shoulder, but that he did not place her off work. In his July 27, 1998 report, he related that appellant may have right shoulder impingement syndrome or a rotator cuff tear. Neither Dr. Fisher nor Dr. Stern opined that appellant was disabled for the period April 19, 1997 through June 9, 2016 due to objective findings of her accepted November 6, 1995 injury.¹⁷ As such these reports are of limited probative value.

In a September 25, 2016 report, Dr. Pordy indicated that appellant continued to be disabled. He noted that her last day of work was April 19, 1997, and that she was unable to perform the job duties of a modified mail processor. Dr. Pordy's opinion did not provide a well-rationalized opinion linking appellant's disability to her November 6, 1995 injury. He did not explain the process by which appellant's accepted November 6, 1995 injury would cause or contribute to her disability during the relevant period and why her inability to work after April 19, 1997 was not due to other factors, such as her subsequent 1997 work injury.¹⁸

For each period of disability claimed, an employee must establish that he or she was disabled from work as a result of the accepted employment injury. The Board will not require OWCP to pay compensation for 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.¹⁹

The Board, therefore, finds that, because the medical evidence of record does not establish disability for the period April 19, 1997 to November 18, 1999 causally related to her accepted employment injury of November 6, 1995 appellant has not met her burden of proof.

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.

¹⁷ See *S.H.*, Docket No. 16-1378 (October 16, 2017).

¹⁸ See *J.S.*, Docket No. 14-0818 (issued August 7, 2014).

¹⁹ *Amelia S. Jefferson*, *supra* note 6.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she was disabled for the period April 19, 1997 to June 9, 2016 causally related to the accepted November 6, 1995 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 29, 2017 is affirmed.

Issued: June 6, 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