

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

_____)	
D.J., Appellant)	
)	
and)	Docket No. 18-0200
)	Issued: August 12, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Southaven, MS, Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 6, 2017 appellant filed a timely appeal from an August 22, 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 to consider the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the August 22, 2017 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant met her burden of proof to establish total disability for the periods February 8 to 19, February 23 to April 22, and May 2 to August 19, 2016 causally related to her accepted employment injury.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

Under OWCP File No. xxxxxx326 appellant, now a 56-year-old former rural carrier, has an accepted traumatic injury claim for left shoulder sprain, thoracic sprain, and aggravation of cervical degenerative disc disease (C5-6), which occurred in the performance of duty on August 30, 2013. Beginning February 19, 2014, OWCP paid compensation for intermittent wage loss on the supplemental rolls. As of December 13, 2014, it paid compensation based on appellant's loss of wage-earning capacity. Appellant was restricted to working part time (four hours), limited duty and OWCP paid her four hours of wage-loss compensation per day. OWCP placed her on the periodic compensation rolls effective July 26, 2015.

Appellant submitted a work release note from Dr. Jovie Bridgewater, a Board-certified anesthesiologist, dated February 11, 2016, who treated her for increased neck pain, shoulder pain, and spasm and advised that she could not return to work.

Appellant submitted a work excuse form dated February 16, 2016, signed by an unidentified health care provider, who returned her to work on February 22, 2016 with restrictions of no lifting over 20 pounds for a maximum of four hours a day.

On February 23, 2016 appellant filed a claim for compensation (Form CA-7) for total disability due to a change or worsening of her accepted work-related conditions beginning February 11, 2016. OWCP developed the claim as a recurrence of disability.⁴

Appellant submitted a work excuse form, dated February 23, 2016, from Dr. N. Craig Clark, a Board-certified neurosurgeon, who indicated that she was off work from February 23 to April 4, 2016. Dr. Clark noted that she would be reevaluated after she completed physical therapy. In a return to work slip dated April 22, 2016, he indicated that appellant was unable to return to work until she underwent an electromyogram (EMG) and had a follow-up visit.

Dr. Patrick M. Curlee, an orthopedic surgeon, treated appellant on March 8 and April 4, 2016 for increased neck pain extending to her shoulders bilaterally, interscapular region, and

³ Docket No. 17-1653 (issued January 29, 2018). The periods of total disability (December 24, 2016 to March 31, 2017) which were addressed in OWCP's June 15, 2017 decision, which have already been considered by the Board are not before the Board on the present appeal. *See* 20 C.F.R. § 501.2(c).

⁴ By a July 11, 2016 decision, OWCP denied appellant's claim for a recurrence of disability commencing February 11, 2016 in OWCP File No. xxxxxx326.

intermittent tingling in the bilateral forearms, caused by work activities. He diagnosed cervical thoracic strain/sprain caused by an August 2013 work injury, moderate C5-6 degenerative disc disease, C5-6 broad-based disc bulging, and persistent neck and shoulder myofascial pain. Dr. Curlee attributed appellant's increased symptoms to work activities. He returned her to work with restrictions on February 22, 2016, but she was unable to finish the day due to increased neck and arm pain caused by her work activities. Dr. Curlee kept appellant off work.

On April 20, 2016 Dr. Clark treated appellant for neck and left shoulder pain, and diffuse numbness in the left arm and index, long, and ring fingers. Appellant reported working as a rural mail carrier and in August 2013, while casing mail, she reached to retrieve mail from a top shelf and felt a "pop" in her neck. Dr. Clark noted that her symptoms worsened and she sought medical treatment including three months of physical therapy. A functional capacity evaluation (FCE) revealed that appellant could work four hours a day. Dr. Clark noted magnetic resonance imaging (MRI) scans performed in February 2014 and April 2016 were unremarkable. He diagnosed chronic cervical strain, left occipital neuralgia, left subacromial bursitis, and left carpal tunnel syndrome. Dr. Clark recommended an EMG, a left shoulder steroid injection, a left occipital nerve block, and a left wrist splint. He noted that appellant was totally disabled.

On June 8, 2016 appellant filed an occupational disease claim (Form CA-2) alleging that she developed neck and back pain as a result of her federal employment duties including repetitively lifting, pushing, and pulling packages. She became aware of her condition and its relationship to her federal employment on February 8, 2016. Appellant noted that she was unsure if she should file a new claim or a recurrence of disability claim attributable to her earlier claim. OWCP developed this claim as OWCP File No. xxxxxx660.

On August 11, 2016 OWCP accepted appellant's claim for an aggravation of a sprain of ligaments of the cervical spine in OWCP File No. xxxxxx660.⁵

On August 23, 2016 OWCP requested Dr. Clark advise whether appellant had residual disability directly related to or caused by her employment injury, when she would be able to return to gainful employment in any capacity, when she would reach maximum medical improvement, and what restrictions she had at that time.

On August 24, 2016 appellant filed claims for compensation (Form CA-7) for leave without pay for total disability for the periods February 8 to 19, February 23 to April 22, and May 2 to August 19, 2016. The employing establishment noted that there was no medical evidence received which supported disability. It noted that appellant had a modified assignment under OWCP File No. xxxxxx326.

In a certificate to return to work dated April 22, 2016, Dr. Clark advised that appellant was unable to return to work at that time and was off work until she underwent an EMG and had a follow-up visit.

⁵ OWCP administratively combined OWCP File Nos. xxxxxx326 and xxxxxx660, with the former serving as the master file.

In a development letter dated August 31, 2016, OWCP requested that appellant submit additional information to support her claim for compensation for the periods beginning February 8, 2016, including medical evidence establishing that her total disability was due to the accepted conditions.

Appellant submitted a report from Dr. Curlee dated March 31, 2016 who noted that she had no relief after four physical therapy sessions and continued to have pain extending into her shoulders bilaterally, interscapular region, and intermittent tingling into the forearms. Dr. Curlee diagnosed chronic cervical, thoracic strain/sprain caused by work-related injury of August 2013, moderate C5-6 degenerative disc disease, C5-6 broad-based disc bulging, and persistent neck, and shoulder myofascial pain. He returned appellant to work for four hours a day on April 25, 2016 with restrictions on lifting over 20 pounds.

On June 9, 2016 appellant was treated by Dr. Bridgewater for worsening neck pain radiating into both shoulders, arms, fingers, and upper back. Dr. Bridgewater noted findings on examination of neck pain, neck stiffness, back pain, and bilateral shoulder pain. He diagnosed chronic pain, degeneration of lumbar and lumbosacral disc, degeneration of cervical disc, and chronic pain of both shoulders.

Appellant was treated by Dr. Clark on June 24, 2016 who noted an EMG was normal and MRI scans showed no evidence of significant neurocompression. Her major complaint continued to be cervical and thoracic axial pain. Dr. Clark diagnosed chronic cervical strain and left subacromial bursitis. He recommended a repeat FCE.

By decision dated October 27, 2016, OWCP denied appellant's claim for compensation for total disability for the periods February 8 to 19, February 23 to April 22, May 2 to August 19, and June 7 to September 2, 2016. It advised that the evidence of record failed to establish work-related disability during the periods claimed.

On October 8, 2016 appellant was treated in the emergency room by Dr. Roderick A. Hart, a Board-certified family practitioner, for neck pain, which she reported was chronic from a work-related injury in February 2016. She noted that her pain became worse after physical therapy. Dr. Hart noted findings of neck muscular tenderness and decreased range of motion secondary to pain. He diagnosed cervicalgia, chronic pain, myalgia, and pain in the thoracic spine.

In an October 26, 2016 work capacity evaluation (Form OWCP-5c) Dr. Clark diagnosed sprain of the ligaments of the cervical spine. He noted that appellant was able to perform her preinjury job without restrictions. Dr. Clark indicated that she could work sedentary, light-duty, and medium-duty work. He did not note restrictions on driving.

Appellant disagreed with OWCP's October 27, 2016 decision and requested an oral hearing before an OWCP hearing representative which was held on June 15, 2017.

Appellant was treated by Dr. Bridgewater on November 1, 2016 for pain and burning in her upper back, middle back, and shoulders. Dr. Bridgewater diagnosed chronic pain, degeneration of lumbar/lumbosacral disc, degeneration of cervical disc, and chronic pain in both shoulders. Appellant indicated that her pain medication was controlling her pain and allowing her to function daily, but she was unable to drive due to the sedative effects of the medication. She

requested a letter be written to her employing establishment stating that she was unable to drive to work due to the side effects of her medication.

Appellant submitted a statement dated November 4, 2016 and indicated that she was intimidated during her FCE and was in considerable pain. She requested that she be referred to another facility for an FCE.⁶

In a November 21, 2016 field nurse report, it was noted that Dr. Clark earlier released appellant to her regular job, but that she had not returned to work based on Dr. Bridgewater's recommendation. The nurse noted appellant's concern about her prescribed medication and driving. She noted a similar assessment on December 21, 2016.

On March 31, 2017 appellant filed a claim for compensation (Form CA-7), for total disability for the period December 24, 2016 to March 31, 2017.

On June 9, 2017 OWCP referred appellant to Dr. James T. Galyon, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine the nature and extent of her thoracic sprain, left shoulder sprain, and aggravation of cervical degenerative disc disease at C5-6.

Appellant was treated in follow up by Dr. Bridgewater on April 25, 2017 for upper back, neck, and bilateral shoulder pain. Dr. Bridgewater noted findings on examination of neck pain, neck stiffness, back pain, and bilateral shoulder pain. He diagnosed chronic pain, chronic pain of both shoulders, cervical disc degeneration, and lumbar/lumbosacral disc degeneration.

In a June 30, 2017 report, Dr. Galyon discussed appellant's work history and noted that she had current complaints of pain in the cervical area radiating to the left periscapular area down the left arm. He noted that she was significantly overweight, she had drop foot on the left, a decided limp of her left leg, mild tenderness of the left subacromial space, and moderate tenderness over the posterior cervical spine. Dr. Galyon diagnosed chronic degenerative cervical disc disease aggravated by work activities, particularly reaching, reaching and pulling, and carrying activities with left shoulder radiculopathy. He noted that appellant had not responded to conservative care and her recovery was modified because of a stroke. Dr. Galyon opined that her current findings were related to a lifting injury she sustained while casing mail on February 8, 2016. He noted that appellant's work-related conditions had not resolved and indicated that degenerative disease was an irreversible process. Dr. Galyon indicated that she had nonwork-related disability from a stroke including a drop foot and partial visual problems. He opined that appellant was not capable of performing her duties as a rural carrier casing mail with repetitive lifting. Dr. Galyon noted that she could work in a sedentary position with no overhead reaching, no repetitive reaching, and no weight lifting over 10 or 15 pounds. In a work capacity evaluation (Form OWCP-5c) dated June 30, 2017, he noted that appellant could work four hours per day with permanent restrictions. In a supplemental report dated July 17, 2017, Dr. Galyon opined that she was restricted to weight lifting, pushing, and pulling limited to 10 pounds, collectively for no more than one hour.

⁶ Appellant continued to file claims for compensation (Form CA-7), for leave without pay for total disability for the period beginning August 22, 2016.

By decision dated August 22, 2017, an OWCP hearing representative affirmed the October 27, 2016 decision.

LEGAL PRECEDENT

Section 8102(a) of FECA⁷ 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.”⁸ This meaning, for brevity, is expressed as disability for work.⁹

For each period of disability claimed, the employee has the burden of proving that he was disabled for work as a result of the accepted employment injury.¹⁰ 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.¹¹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish total disability for the period February 8 to 19, February 23 to April 22, and May 2 to August 19, 2016 causally related to her accepted employment injury.

In a work release note dated February 11, 2016, Dr. Bridgewater reported that appellant was treated for increased neck pain, shoulder pain, and spasm and could not return to work. On November 1, 2016 he diagnosed chronic pain, degeneration of lumbar/lumbosacral disc, degeneration of cervical disc, and chronic pain in both shoulders. Appellant indicated that her pain medication was controlling her pain and allowing her to function daily, but she was unable to drive due to the sedative effects of the medication. Even though Dr. Bridgewater noted that she was totally disabled from work, he did not specifically explain how her accepted conditions would cause total disability for the claimed periods.¹² Additionally, he attributed appellant’s disability, at least partially, to a lumbar and bilateral shoulder condition. However, OWCP has not accepted that she developed a lumbar condition or a bilateral shoulder condition as a result of her

⁷ 5 U.S.C. § 8102(a).

⁸ 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).

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

¹⁰ *See William A. Archer*, 55 ECAB 674 (2004).

¹¹ *See Fereidoon Kharabi*, 52 ECAB 291-92 (2001).

¹² *See Jimmie H. Duckett*, 52 ECAB 332 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

employment injury.¹³ Dr. Bridgewater also has not discussed how appellant's prescribed medication use for an accepted condition interfered with her ability to drive.¹⁴ The Board notes that Dr. Clark did not list a restriction on driving.

Other medical reports from Dr. Bridgewater dated June 9, 2016 and April 25, 2017, do not otherwise address how total disability for the periods of February 8 to 19, February 23 to April 22, and May 2 to August 19, 2016 were due to the accepted conditions. As noted, for each period of disability claimed, the employee has the burden of proof to establish that she was disabled for work as a result of the accepted employment injury.¹⁵

Appellant submitted a work excuse form from Dr. Clark dated February 23, 2016, who indicated that she was off work from February 23 to April 4, 2016. Dr. Clark noted that she would be reevaluated after she completed physical therapy. On April 20, 2016 he treated appellant for neck and left shoulder pain, and diffuse numbness in the left upper extremity. Appellant reported working as a rural mail carrier and that she had previously sustained a work injury in August 2013 while casing mail. Her symptoms worsened and she sought medical treatment and underwent three months of physical therapy. Dr. Clark diagnosed chronic cervical strain, left occipital neuralgia, left subacromial bursitis, and left carpal tunnel syndrome. He concluded that appellant was totally disabled. Similarly, in a return to work slip dated April 22, 2016, Dr. Clark indicated that she was unable to return to work until she underwent an EMG and had a follow-up visit. While Dr. Clark indicated that appellant was totally disabled from work he did not specifically explain how her accepted conditions had caused or contributed to the claimed periods of disability beginning February 8, 2016. Additionally, he appeared to at least partially attribute her disability to occipital neuralgia, bursitis, and left carpal tunnel syndrome, which are conditions not accepted by OWCP.¹⁶ As noted, part of appellant's burden of proof includes submitting rationalized medical evidence, which supports a causal relationship between the period of disability and the accepted injury.¹⁷ Therefore, these reports are insufficient to meet her burden of proof.

Appellant submitted a June 24, 2016 report from Dr. Clark who noted that her EMG was normal and that serial MRI scans showed no evidence of significant neurocompression. Dr. Clark noted her major complaint continues to be cervical and thoracic axial pain. He diagnosed chronic cervical strain and left subacromial bursitis. Even though Dr. Clark noted that appellant was still experiencing symptoms of her diagnosed conditions, he did not specifically address whether she

¹³ For conditions not accepted by OWCP as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not OWCP's burden to disprove such relationship. *Alice J. Tysinger*, 51 ECAB 638 (2000).

¹⁴ *See B.W.*, Docket No. 14-0372 (issued November 12, 2014) (the physician did not address the medical condition for which narcotic medication was prescribed and did not state any opinion that residuals of the accepted conditions disabled appellant). There also is no indication in the record that other appropriate modes of transportation were not available for commuting to work.

¹⁵ *See supra* note 10.

¹⁶ *Supra* note 13.

¹⁷ *See Jimmie H. Duckett*, *supra* note 12; *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

had employment-related disability for the periods of February 8 to 19, February 23 to April 22, and May 2 to August 19, 2016. Other reports from Dr. Clark failed to address disability during the claimed period.

Appellant submitted reports from Dr. Curlee dated March 8 and April 4, 2016, who noted her treatment for neck pain extending to her shoulders bilaterally, which was caused by her work activities. He diagnosed chronic cervical thoracic strain/sprain caused by work-related injury in August 2013, moderate C5-6 degenerative disc disease, C5-6 broad-based disc bulging, and persistent neck and shoulder myofascial pain. Dr. Curlee opined that appellant's increased symptoms were directly related to her work activities and placed her off work status pending completing her physical therapy. While he indicated that she was totally disabled from work he did not specifically explain how any accepted condition caused or contributed to the period of disability beginning February 8, 2016.

Similarly, on March 31, 2016, Dr. Curlee noted that appellant had no relief after four sessions of physical therapy and continued to have pain extending into her shoulders bilaterally, interscapular region and intermittent tingling into the forearms. He diagnosed chronic cervical, thoracic strain/sprain caused by work-related injury of August 2013, moderate C5-6 degenerative disc disease, C5-6 broad-based disc bulging and persistent neck and shoulder myofascial pain. Dr. Curlee returned appellant to work on April 25, 2016 with permanent restrictions of work four hours a day and no lifting over 20 pounds. This report is insufficient to meet her burden of proof as he failed to provide a specific opinion on causal relationship between the claimed period of disability and the accepted employment conditions.¹⁸

Appellant submitted a duty status report (Form CA-17) prepared by Dr. Curlee on December 3, 2014; however, this report is insufficient to establish disability as it significantly predates and does not address the claimed period of disability.

In a work release note dated January 20, 2016, Dr. McCoy treated appellant for ongoing neck pain. Similarly, in an emergency room report dated October 8, 2016, Dr. Hart treated appellant for neck pain which she reported was chronic from a work-related injury from February 2016. She noted her pain became worse after physical therapy. He diagnosed cervicalgia, chronic pain, myalgia, and pain in the thoracic spine. Even though Dr. Hart and Dr. McCoy noted that appellant was still experiencing symptoms of her diagnosed conditions, the physicians did not specifically address whether appellant had developed employment-related disability for the claimed periods February 8 to 19, February 23 to April 22, and May 2 to August 19, 2016.

Other medical reports of record, including the second opinion reports from Dr. Galyon dated June 30 and July 17, 2017, do not otherwise address how total disability beginning February 8, 2016 was due to the accepted employment injury or the conditions related thereto. As

¹⁸ See *Alice J. Tysinger*, *supra* note 13.

noted, for each period of disability claimed, the employee has the burden of proof to establish that she was disabled for work as a result of the accepted employment injury.¹⁹

On appeal, appellant asserts that she submitted sufficient medical evidence supporting disability for the periods claimed. The Board finds that she failed to submit rationalized medical evidence establishing causal relationship between the specific periods of claimed disability and the conditions accepted due to her August 30, 2013 employment injury.

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 for the periods February 8 to 19, February 23 to April 22, and May 2 to August 19, 2016 causally related to the accepted employment conditions.

ORDER

IT IS HEREBY ORDERED THAT the August 22, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 12, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹⁹ See *supra* note 10.