

ISSUE

The issue is whether appellant has met her burden of proof to establish disability on or after April 2, 2016 due to her accepted February 16, 2016 employment injury.

FACTUAL HISTORY

On March 11, 2016 appellant, then a 65-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that she sustained injury on February 16, 2016 due to a motor vehicle accident, which occurred while she was in the performance of duty.³ She asserted that the vehicle she was driving was rear ended by another vehicle. Appellant stopped work on February 17, 2016 and returned to work on February 22, 2016 in a modified position for five hours per day without wage loss.⁴ She stopped work again on February 26, 2016 and retired from the employing establishment effective January 1, 2017.

OWCP accepted appellant's claim for sprain of muscle, fascia, and tendon at her neck level, bilateral knee contusions, and sprain of ligaments of her lumbar spine.

In a March 30, 2016 report, Dr. Paul D. Jackson, a Board-certified family practitioner, diagnosed low back and thoracic spine pain and indicated that appellant could not work for two weeks. The findings of a May 2, 2016 magnetic resonance imaging (MRI) scan of appellant's lumbar spine contained an impression of disc bulge at L1-2 and disc herniations at L2-3, L3-4, L4-5, and L5-S1.

On May 27, 2016 appellant filed a compensation claim (Form CA-7) alleging disability from work for the period April 2 to May 20, 2016 due to her February 16, 2016 employment injury. She filed additional compensation claim forms alleging employment-related disability for the period May 21, 2016 and continuing.

Appellant subsequently submitted medical evidence in support of her disability claim, including April 12, June 3, and 10, 2016 reports from Dr. Kori F. Rothman, a Board-certified physical medicine and rehabilitation physician, who diagnosed right shoulder pain, sacroiliitis, low back pain, and radicular pain of the left lower extremity. Dr. Rothman noted that appellant reported experiencing pain when engaging in such activities as lifting and walking.⁵

In a July 11, 2016 development letter, OWCP requested that appellant submit additional evidence in support of her disability claim, including a physician's opinion supported by a medical

³ The city carrier position required intermittent lifting up to 70 pounds, carrying up to 44 pounds, walking/standing for eight hours per day, and reaching above the shoulder level.

⁴ The position required occasional trunk rotation and occasional lifting, pushing, and pulling of up to 15 pounds.

⁵ Appellant submitted other reports of Dr. Jackson, including a May 20, 2016 report in which he provided the additional diagnosis of cervicalgia. The findings of a June 20, 2016 MRI scan of appellant's right shoulder contained an impression of partial tears of the supraspinatus tendon, mild-to-moderate subacromial/subscapularis bursitis, moderate fibro-osseous capsular hypertrophy of acromioclavicular joint, moderate acromioclavicular joint effusion, fraying of the superior/anterosuperior labrum, tendinosis/tendinitis of the biceps anchor and tendon, and conical erosions of the humeral head.

explanation as to how the February 16, 2016 employment injury caused disability on or after April 2, 2016.

In response, appellant submitted a July 12, 2016 work capacity evaluation (Form OWCP-5c) in which Dr. Rothman indicated that appellant could not perform her usual work and could only work four to six hours per day due to sacroiliac dysfunction and right rotator cuff syndrome. Dr. Rothman advised that appellant could not engage in lifting, pushing, pulling, and reaching above the shoulder level. In a July 12, 2016 attending physician's report (Form CA-20), she listed February 16, 2016 as the date of injury and diagnosed sacroiliitis, unspecified disorder of shoulder tendon/synovium, and impingement syndrome of the left shoulder. Dr. Rothman indicated that appellant could not engage in prolonged walking or heavy lifting.⁶

In a July 22, 2016 report, Dr. Rothman indicated that appellant recently reported that her back pain had flared. Appellant reported that she could not tolerate such activities as prolonged standing, walking, bending, and twisting due to her back condition, as well as lifting, pushing, and pulling due to her shoulder condition. Dr. Rothman noted, "Obviously, I am unable to establish cause and effect; however, the patient does report to me that these symptoms flared and started following the accident she was in on February 16, 2016."⁷

In August 2016, OWCP referred appellant for a second opinion examination to Dr. Sukhjit Purewal, a Board-certified orthopedic surgeon. It requested that Dr. Purewal provide an opinion regarding whether appellant had disability on or after April 2, 2016 due to her accepted February 16, 2016 employment injury.

In an August 22, 2016 report, Dr. Purewal discussed appellant's factual and medical history, including the treatment of the medical conditions accepted in connection with the February 16, 2016 accident. He detailed the findings of the physical examination he conducted on August 22, 2016, noting that appellant had guarded range of motion on her neck with a negative Spurling compression test and that examination of her upper extremities did not reveal any motor or sensory deficits. Appellant's back revealed no gross malalignment and there were no motor or sensory deficits in the lower extremities. Dr. Purewal posited that appellant's neck sprain, lumbar sprains, and bilateral knee contusions were the type of injuries which would have resolved within six to eight weeks after February 16, 2016 and he found that appellant did not currently have any residuals of her February 16, 2016 injury. He noted, "In my opinion, the accepted conditions noted above resolved after about two months after the injury, sometime in mid-April 2016, and there are no permanent residuals related to those accepted conditions." Dr. Purewal noted that appellant had been unable to work since March 14, 2016 and indicated, "Considering the accepted conditions noted above only, she would have been capable of performing her normal job duties beginning on or about April 15, 2016."

⁶ In June 30 and July 12, 2016 reports, Dr. Rothman provided additional low back and bilateral shoulder diagnoses.

⁷ On August 12, 2015 Dr. Rothman indicated that she suspected that appellant's reported difficulty with walking was due to sacroiliac pain "as well as likely some underlying spondylosis." She noted that appellant reported difficulty in carrying large items due to "right shoulder pain with rotator cuff syndrome."

Dr. Purewal asserted that appellant's present neck and back problems and any resultant disability were entirely due to the natural progression of her underlying degenerative neck and back conditions with no current contribution from the February 16, 2016 injury. He found that appellant currently could not perform her regular city carrier position and recommended work restrictions, including occasionally lifting no more than 20 pounds, frequently lifting no more than 10 pounds, standing or walking no more than four hours per day, and no reaching above chest level. Dr. Purewal noted that these restrictions were necessitated by appellant's nonwork-related back and neck conditions. He attached an August 22, 2016 work capacity evaluation (Form OWCP-5c), which detailed similar work restrictions.

By decision dated September 14, 2016, OWCP denied appellant's disability claim. It noted that Dr. Purewal, OWCP's referral physician, found that appellant's February 16, 2016 employment injury resolved about two months after February 16, 2016. OWCP determined that the reports of appellant's attending physicians did not establish employment-related disability on or after April 2, 2016.

On September 27, 2016 appellant, through counsel, requested a telephonic hearing with a representative of OWCP's Branch of Hearings and Review.⁸ She submitted additional medical reports, primarily from Dr. Rothman, which discussed her neck, shoulder, back, and knee conditions in late-2016. In a September 30, 2016 report, Dr. Rothman noted that appellant reported that she developed low back, shoulder, and knee pain after her February 16, 2016 accident. Appellant indicated that her knee pain was still present at a tolerable level, but that her back and shoulder pain represented her main complaint. Dr. Rothman indicated, "Whereas I do agree that imaging does show that many of these changes are degenerative and chronic, it is certainly possible to have flare and cause pain [sic] following her rear-end motor vehicle accident, particularly in the back."

During the hearing held on April 26, 2017, counsel argued that the February 16, 2016 accident was significant enough to cause continuing disability.

By decision dated June 19, 2017, OWCP's hearing representative affirmed OWCP's September 14, 2016 decision, noting that appellant had not submitted probative medical evidence sufficient to establish her disability claim.

On November 10, 2017 appellant, through counsel, requested reconsideration of the June 19, 2017 decision.

Appellant submitted September 1 and 15, 2017 reports from Dr. Marvin Bleiberg, a Board-certified orthopedic surgeon, who diagnosed sprain of the right rotator cuff capsule, bilateral knee sprains, left knee medial meniscus tear, and "chronic pain due to trauma."⁹ In September 12 and 19, 2017 reports, Dr. Ashley Abramson, a Board-certified orthopedic surgeon, indicated that

⁸ Appellant submitted an August 25, 2016 work capacity evaluation from Dr. Sean Bak, a Board-certified surgeon, who provided work restrictions, including lifting, pushing, and pulling no more than five pounds.

⁹ In an August 22, 2017 report, Dr. Michael Slesinski, a Board-certified orthopedic surgeon, indicated that appellant had right rotator cuff surgery on May 25, 2017 "as a result of a work injury on [February 26, 2016]." The case record does not contain a report of appellant's right shoulder surgery.

ultrasound testing she obtained showed that appellant had bilateral shoulder osteoarthritis, right knee patellar tendinosis (and/or postsurgical change), and left knee osteoarthritis/medial meniscus extrusion. In a September 26, 2017 report, Dr. Bak indicated that appellant requested evaluation of right biceps pain which she related to a bowling outing a week prior.

By decision dated November 19, 2018, OWCP denied modification of its June 19, 2017 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.¹⁰ In general, the term disability under FECA means incapacity because of injury in employment to earn the wages which the employee was receiving at the time of such injury.¹¹ This meaning, for brevity, is expressed as disability from work.¹²

The medical evidence required to establish causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. 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 explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹³

ANALYSIS

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

Appellant submitted numerous attending physician reports in support of her claim that she had established disability on or after April 2, 2016 due to her accepted February 16, 2016 employment injury.¹⁴ While some of these reports indicated that appellant was disabled from her regular city carrier position on or after April 2, 2016, none of the reports contained a rationalized medical opinion establishing that she had employment-related disability on or after April 2, 2016. The Board has held that a report is of limited probative value regarding causal relationship if it

¹⁰ *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

¹¹ *See* 20 C.F.R. § 10.5(f).

¹² *See S.W.*, *supra* note 10. *See also A.M.*, Docket No. 09-1895 (issued April 23, 2010); *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

¹³ *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

¹⁴ OWCP accepted appellant's claim for sprain of muscle, fascia, and tendon at her neck level, bilateral knee contusions, and sprain of ligaments of her lumbar spine.

does not contain medical rationale explaining how an employment activity could have caused or aggravated a medical condition.¹⁵

For example, in a March 30, 2016 report, Dr. Jackson diagnosed low back and thoracic spine pain and indicated that appellant could not work for two weeks and, in a July 12, 2016 form report, Dr. Rothman noted that appellant could not perform her usual work and could only work four to six hours per day due to sacroiliac dysfunction and right rotator cuff syndrome. In an August 25, 2016 form report, Dr. Bak provided work restrictions, including lifting, pushing, and pulling no more than five pounds. As noted, none of these reports contained a clear opinion that appellant had disability on or after April 2, 2016 due to an accepted employment condition.

The Board notes that OWCP referred appellant for a second opinion examination to Dr. Purewal and requested that he provide an opinion regarding whether she had disability on or after April 2, 2016 due to her accepted February 16, 2016 employment injury. In an August 22, 2016 report, Dr. Purewal posited that appellant's neck sprain, lumbar sprains, and bilateral knee contusions were the type of injuries which would have resolved within six to eight weeks after February 16, 2016 and he found that appellant did not currently have any residuals of her February 16, 2016 injury. He noted, "In my opinion, the accepted conditions noted above resolved after about two months after the injury, sometime in mid-April 2016, and there are no permanent residuals related to those accepted conditions." Dr. Purewal noted that appellant had been unable to work since March 14, 2016 and indicated, "Considering the accepted conditions noted above only, she would have been capable of performing her normal job duties beginning on or about April 15, 2016."

Therefore, the Board finds that Dr. Purewal has indicated that appellant had disability during the presently claimed period of disability, *i.e.*, approximately April 2 to 14, 2016. The Board notes that clarification is needed regarding the precise period and nature of the employment-related disability indicated by Dr. Purewal. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹⁶ Accordingly, once OWCP undertakes to develop the medical evidence further, it has the responsibility to do so in the proper manner.¹⁷

In order to address this matter, the case shall be remanded to OWCP for further development concerning appellant's claimed employment-related disability on or after April 2, 2016 by seeking clarification from the second opinion physician, Dr. Purewal. After carrying out the necessary development, OWCP shall issue a *de novo* decision regarding the issue of employment-related disability.

CONCLUSION

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

¹⁵ See *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

¹⁶ See *D.V.*, Docket No. 17-1590 (issued December 12, 2018); *Russell F. Polhemus*, 32 ECAB 1066 (1981).

¹⁷ See *A.K.*, Docket No. 18-0462 (issued June 19, 2018); *Robert F. Hart*, 36 ECAB 186 (1984).

ORDER

IT IS HEREBY ORDERED THAT the November 19, 2018 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further action consistent with this decision.

Issued: August 7, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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