

ISSUE

The issue is whether appellant has met her burden of proof to establish total disability for the period February 13 through March 31, 2017 causally related to her accepted employment injuries.

FACTUAL HISTORY

On February 13, 2017 appellant, then a 40-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she developed right shoulder pain and right neck pain due to factors of her federal employment, including using her “right side for doing [her] job every day.” She indicated that she first became aware of her condition on January 15, 2017 and first realized that it had been caused or aggravated by her federal employment on February 8, 2017. Appellant stopped work on February 13, 2017.

In a duty status report (Form CA-17) dated February 13, 2017, Dr. Mallapur S. Rao, a family medicine specialist, diagnosed right shoulder sprain due to a January 30, 2017 work injury and indicated that appellant had injured her right shoulder three weeks prior while carrying mail, and she continued working thereafter. He advised that she was not capable of returning to work.

In an initial medical narrative report dated February 13, 2017, Dr. Rao noted that appellant continued to perform her normal job duties through February 13, 2017 with a great amount of difficulty and discomfort. He diagnosed cervical disc disorder with radiculopathy, right rotator cuff sprain and strain, and cervical sprain and strain. Dr. Rao advised that appellant was to remain off work in order to avoid the possibility of reinjury or reaggravation until further notice.

In a note dated February 27, 2017, Dr. Rao advised that appellant was to remain off work until March 27, 2017.

By decision dated April 7, 2017, OWCP accepted the claim for cervical disc disorder with radiculopathy (mid-cervical region), sprain of right rotator cuff capsule, strain of muscle(s) and tendon(s) of the rotator cuff of right shoulder, sprain of ligaments of cervical spine, and strain of muscle, fascia, and tendon at neck level.

Appellant subsequently submitted a note dated March 27, 2017 from Dr. Rao who advised that she was to remain off work until April 24, 2017.

In two duty status reports (Form CA-17) dated February 23 and March 27, 2017, Dr. Rao reiterated his opinion that appellant was not capable of returning to work.

In a note dated May 22, 2017, Dr. Rao advised that appellant was to remain off work until June 19, 2017.

Appellant filed a claim for wage-loss compensation (Form CA-7) for the period February 13 through March 31, 2017.

In a development letter dated July 3, 2017, OWCP advised appellant of the deficiencies of her claim. It specifically requested a comprehensive narrative report from her physician, which included a history of the injury and a thorough examination with objective findings, as to how her

condition(s) had worsened such that she was no longer able to perform the duties of her position when she stopped work on February 13, 2017. OWCP afforded appellant 30 days to respond.

In response, appellant submitted a note and a duty status report (Form CA-17) dated July 17, 2017 from Dr. Kent Zieser, a Board-certified internist, who diagnosed cervical disc disease with radiculopathy and opined that she was not capable of returning to work.

By decision dated August 8, 2017, OWCP denied appellant's claim for compensation finding that the medical evidence of record had not established total disability for the period February 13 through March 31, 2017 causally related to her accepted employment injuries.

On September 5, 2017 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Appellant submitted reports dated May 22 and June 13, 2017 from Dr. Christopher Chun, a Board-certified anesthesiologist and pain medicine specialist, who diagnosed radiculopathy, cervical region, and other cervical disc displacement, mid-cervical region. Dr. Chun reported that she had been involved in a work-related accident on January 15, 2017 and her pain had been worsening since the date of the incident due to repetitive motion. He related that appellant was currently dependent on analgesics for pain relief and her activities of daily living were limited.

On February 10, 2017 Dr. Rao related that appellant's initial onset of pain began on February 10, 2017 and reported increased pain with range of motion of the cervical spine and any type of lifting. He also reported that her symptoms were aggravated while at work and trying to sleep. Dr. Rao later indicated that appellant reported being injured on January 30, 2017 while at work. He advised that she was to remain off work in order to avoid the possibility of reinjury or reaggravation until further notice.

In a report dated August 15, 2017, Dr. Zieser indicated that appellant's initial onset of pain began on January 30, 2017 while at work and diagnosed cervical disc disorder with radiculopathy, right rotator cuff sprain and strain, and cervical sprain and strain. He advised that she was to remain off work in order to avoid the possibility of reinjury or reaggravation until further notice.

A telephonic hearing was held before an OWCP hearing representative on February 14, 2018. Appellant provided testimony and the hearing representative held the case record open for 30 days for the submission of additional evidence.

In a note and a duty status report (Form CA-17) dated March 26, 2018, Dr. Zieser diagnosed cervical degenerative disc disease and radiculopathy and advised that appellant was not capable of returning to work.⁴

By decision dated April 30, 2018, an OWCP hearing representative affirmed the April 8, 2017 decision finding that the medical evidence of record was insufficient to establish that appellant was totally disabled for the period claimed due to her accepted work-related conditions.

⁴ The record also contains two reports dated September 11, 2017 from Dr. Rajesh G. Arakal, a Board-certified orthopedic surgeon, who recommended surgery for appellant's cervical conditions. On April 2, 2018 Dr. Andrew R. Block, a Ph.D. in psychology, cleared appellant for an OWCP-approved cervical surgery.

She found that appellant's physicians provided no reasoning, other than a prophylactic one, for taking her off work, stating that they wanted to avoid "reinjury or reaggravation."

LEGAL PRECEDENT

Section 8102(a) of FECA⁵ 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."⁶ This meaning, for brevity, is expressed as disability for work.⁷ 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.⁸ Whether a particular injury caused an employee to be disabled for employment and the duration of that disability are medical issues which must be proven by the preponderance of the reliable, probative, and substantial medical evidence.⁹

Disability is not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to his or her federal employment, but who nonetheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used under FECA, and is not entitled to compensation for loss of wage-earning capacity. The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the particular period of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.¹⁰

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish total disability for the period February 13 through March 31, 2017 causally related to her employment injuries.

While OWCP accepted that appellant sustained cervical disc disorder with radiculopathy (mid-cervical region), sprain of right rotator cuff capsule, strain of muscle(s) and tendon(s) of the rotator cuff of right shoulder, sprain of ligaments of cervical spine, and strain of muscle, fascia, and tendon at neck level due to factors of her federal employment, she bears the burden of proof to establish, through rationalized medical evidence, that she was totally disabled during the

⁵ 5 U.S.C. § 8102(a).

⁶ 20 C.F.R. § 10.5(f); *see also N.M.*, Docket No. 18-0939 (issued December 6, 2018); *William H. Kong*, 53 ECAB 394 (2002).

⁷ *See T.O.*, Docket No. 17-1177 (issued November 2, 2018); *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

⁸ *See T.O., id.*; *William A. Archer*, 55 ECAB 674 (2004).

⁹ *See T.O., id.*; *Fereidoon Kharabi*, 52 ECAB 291-92 (2001).

¹⁰ *J.R.*, Docket No. 17-0926 (issued July 12, 2018); *Fereidoon Kharabi, id.*

claimed period and that her disability was causally related to the accepted injuries.¹¹ Appellant stopped work on February 13, 2017. The Board finds that she has not submitted rationalized medical evidence explaining how the accepted employment injury caused her to be disabled for work for the period February 13 through March 31, 2017.

In his reports, Dr. Chun diagnosed radiculopathy, cervical region, and other cervical disc displacement, mid-cervical region. He reported that appellant had been involved in a work-related accident on January 15, 2017 and her pain had been worsening since the date of the incident due to repetitive motion. Dr. Chun related that she was currently dependent on analgesics for pain relief and her activities of daily living were limited. The Board finds that this evidence failed to provide a probative medical opinion on whether appellant was disabled on the dates at issue due to her accepted right shoulder and cervical conditions.¹² Consequently, the above-noted evidence is insufficient to satisfy her burden of proof.

In response to OWCP's July 3, 2017 development letter, appellant submitted numerous form reports from her physicians, Drs. Rao and Zieser, indicating that she was not capable of working and advising her to remain off work in order to avoid the possibility of reinjury or reaggravation until further notice. Although Drs. Rao and Zieser opined that she was totally disabled for work, their opinions are conclusory in nature and fail to explain how the accepted cervical and right shoulder conditions were responsible for her disability and why she could not perform her federal employment during the period claimed.¹³ Furthermore, they failed to explain how appellant's work-related conditions had worsened such that she was no longer able to perform her federal duties when she stopped working on February 13, 2017. Consequently, the Board finds that the reports from Drs. Rao and Zieser are insufficient to establish her claim that she was totally disabled for the period February 13 through March 31, 2017, causally related to her accepted employment injuries.

The Board finds that appellant's physicians have not provided sufficiently rationalized medical opinion evidence establishing that she was disabled for the period February 13 through March 31, 2017 causally related to her accepted right shoulder and cervical conditions. Thus, appellant has not met her burden of proof to establish that she is entitled to compensation for total disability.

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 period February 13 through March 31, 2017 causally related to her accepted employment injuries.

¹¹ See *supra* notes 8 and 9. See also *V.P.*, Docket No. 09-0337 (issued August 4, 2009).

¹² See *Amelia S. Jefferson*, 57 ECAB 183 (2005).

¹³ See *J.J.*, Docket No. 15-1329 (issued December 18, 2015).

ORDER

IT IS HEREBY ORDERED THAT the April 30, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 20, 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