



## **FACTUAL HISTORY**

On August 1, 2017 appellant, then a 35-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that, on July 30, 2017, she injured her upper back and both sides of her neck and shoulders when she lifted a package while in the performance of duty.

In an August 4, 2017 work activity status note and attending physician's report (Form CA-20), Dr. Anna Jonascu-Devine, Board-certified in emergency medicine, related that on July 30, 2017 appellant sustained an upper back injury when she lifted a wooden flat bed and felt pain in her upper back and sides of the neck. She noted examination findings and diagnosed bilateral trapezius strain and thoracic strain. Dr. Jonascu-Devine also indicated that appellant could return to limited duty with restrictions of occasional lifting, pushing, and pulling up to 10 pounds up to three hours per day and no reaching above the shoulders. She completed a duty status report (Form CA-17) with the specified restrictions.

On August 4, 2017 appellant accepted a full-time modified city carrier assistant position.

By decision dated September 11, 2017, OWCP accepted appellant's claim for: strain of other muscles, fascia, and tendons at shoulder and upper arm level, right arm, initial encounter; strain of other muscles, fascia, and tendons at shoulder and upper arm level, left arm, initial encounter; and strain of muscle, fascia, and tendon at neck level, initial encounter.

On October 25, 2017 appellant filed a claim for wage-loss compensation (Form CA-7) for the period September 13 through October 13, 2017. On the reverse side of the Form CA-7 the employing establishment reported that appellant had no hours in the system and that it therefore could not verify her hours. On the time analysis form (Form CA-7a) appellant indicated that she was not claiming any hours for the period September 13 to October 13, 2017.

By letter dated October 27, 2017, OWCP advised appellant that her Form CA-7 was incomplete and requested that she resubmit the form which specifically set forth the hours that were claimed.

On October 30, 2017 appellant filed another Form CA-7 claiming wage-loss compensation for the period September 14 through October 27, 2017. On the reverse side of the claim form the employing establishment reported that appellant stopped work on July 31, 2017 and received continuation of pay (COP) until September 13, 2017. It indicated that appellant was in a leave without pay (LWOP) status from September 14 through 27, 2017 and had claimed 256 hours. Appellant continued to file additional CA-7 forms claiming wage-loss compensation for total disability.

OWCP received handwritten work status notes by Dr. William Gonte, Board-certified in sports medicine and internal medicine. In an August 25, 2017 note, Dr. Gonte related that appellant was unable to work until August 28, 2017. He also completed a duty status report (Form CA-17) indicating that appellant could return to work with specified restrictions. In an October 3, 2017 note, Dr. Gonte recounted that appellant was unable to work from September 13 to November 1, 2013 due to her current medical conditions of cervical radiculitis and shoulder and thoracic strains.

By letter dated October 31, 2017, OWCP informed appellant of the type of evidence needed to support her wage-loss compensation claims for total disability. It afforded her 30 days to submit additional evidence.

On October 31, 2017 appellant telephoned OWCP and asserted that she had been totally disabled no work being available. She explained that she signed a job offer, but the offer was rescinded. In a claim note (Form CA-110) of that same date an OWCP claims examiner indicated that she had left a message for the employing establishment to verify if it had work available for appellant based on her restrictions.

Appellant again telephoned OWCP on October 31, 2017. She explained that the first day she had missed work was on July 31, 2017 and then again on August 1, 2017 she had a scheduled day off. Appellant recounted that on August 4, 2017 she returned to work on a job offer and then missed intermittent time for medical appointments during the COP period. She indicated that she missed the dates for the period August 25 to 28, 2017 completely and returned to work with intermittent time lost through September 13, 2017. Appellant reported that she was taken off work for total disability by Dr. Gonte on September 13, 2017.

OWCP received an August 10, 2017 work status note by Ron Dobrzynski, a certified physician assistant. Mr. Dobrzynski indicated that: appellant could return to work with specified restrictions of occasionally lifting, pushing, and pulling up to five pounds for up to three hours a day; no reaching above the shoulders; and changing positions periodically to relieve discomfort.

By decision dated November 30, 2017, OWCP denied appellant's claim for compensation beginning September 14, 2017, finding that the evidence of record was insufficient to establish that she was disabled as a result of her employment-related conditions.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.<sup>3</sup> For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.<sup>4</sup> Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.<sup>5</sup>

Under FECA the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus 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 a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time

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<sup>3</sup> See *D.W.*, Docket No. 18-0644 (issued November 15, 2018).

<sup>4</sup> *Id.*

<sup>5</sup> See 20 C.F.R. § 10.5(f); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

of injury, has no disability as that term is used in FECA.<sup>6</sup> Furthermore, whether a particular injury causes an employee to be disabled from employment and the duration of that disability are medical issues which must be proven by a preponderance of the reliable, probative, and substantial medical evidence.<sup>7</sup>

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>8</sup> Rationalized medical evidence is medical evidence which includes a physician's detailed medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment incident. 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 employee.<sup>9</sup> Neither the mere 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.<sup>10</sup>

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 their disability and entitlement to compensation.<sup>11</sup>

### ANALYSIS

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

OWCP accepted appellant's traumatic injury claim for bilateral shoulder and neck strains. Appellant filed several claims for wage-loss compensation for total disability beginning September 13, 2017. She continued to file wage-loss compensation claims. On October 31, 2017 appellant contacted OWCP by telephone and asserted that there was no work available within her restrictions. She recounted that she had signed a job offer, but the offer was rescinded. According to another claim note (Form CA-110), appellant telephoned OWCP again and explained that after the July 31, 2017 employment injury she had returned to modified-duty work on August 4, 2017. She related that she missed work again from August 25 to 28, 2017 and returned to work with intermittent time lost until September 13, 2017. Appellant alleged that her treating physician placed her on total disability from work on September 13, 2017.

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<sup>6</sup> *Id.*

<sup>7</sup> *T.O.*, Docket No. 17-1177 (issued November 2, 2018).

<sup>8</sup> *D.W.*, Docket No. 18-0644 (issued November 15, 2018).

<sup>9</sup> *C.B.*, Docket No. 18-0633 (issued November 16, 2018).

<sup>10</sup> *Supra* note 8.

<sup>11</sup> *See B.K.*, Docket No. 18-0386 (issued September 14, 2018).

The Board finds that the record contains conflicting information from appellant regarding whether she is claiming a recurrence of disability because there was no work available or because Dr. Gonte placed her on total disability. As OWCP's regulations allow for appellant to establish a recurrence of disability under either scenario, the evidence of record must contain accurate information regarding appellant's claim. The Board, therefore, finds that due to the factual inconsistencies in the record it is unable to determine whether appellant was unable to work her August 4, 2017 modified-duty position beginning September 13, 2017.<sup>12</sup>

Furthermore, the record indicates that on October 31, 2017 an OWCP claims examiner telephoned the employing establishment and left a message for it to verify appellant's work status. There is no evidence of record demonstrating that OWCP received responsive information from the employing establishment regarding appellant's work status beginning on September 13, 2017. It is well established that proceedings under FECA are not adversarial in nature and, while the employee has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.<sup>13</sup> Once OWCP undertook development of the evidence by requesting additional information from the employing establishment, it had a duty to secure appropriate information addressing the relevant issues.<sup>14</sup> Accurate information regarding appellant's work status and the availability of the August 4, 2017 modified-duty position is essential to determine whether she sustained a recurrence of disability beginning on September 13, 2017. The Board notes that this evidence is of the character normally obtained by the employing establishment and is more readily accessible to OWCP than to appellant.<sup>15</sup>

Upon remand, OWCP should request that the employing establishment furnish documentation regarding appellant's work status for the applicable period with specific information regarding the days and hours work was made available, to be followed by a *de novo* decision on the issue of disability claimed for this period.<sup>16</sup>

### **CONCLUSION**

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

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<sup>12</sup> See *J.G.*, Docket No. 17-0910 (issued August 28, 2017); *M.A.*, Docket No. 16-1602 (issued May 22, 2017).

<sup>13</sup> *Donald R. Gervais*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

<sup>14</sup> *Peter C. Belkind*, 56 ECAB 580 (2005); *Ayanle A. Hashi*, 56 ECAB 234 (2004).

<sup>15</sup> *J.T.*, Docket No. 15-1133 (issued December 21, 2015); *J.S.*, Docket No. 15-1006 (issued October 9, 2015).

<sup>16</sup> See *T.L.*, Docket No. 17-1391 (issued July 3, 2018).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 30, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this decision of the Board.

Issued: May 14, 2019  
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