



Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

### **ISSUE**

The issue is whether appellant has met her burden of proof to establish total disability for the period February 6, 2016 to August 7, 2017 causally related to the accepted conditions of right shoulder and right upper arm contusions.

### **FACTUAL HISTORY**

This case has previously been before the Board.<sup>4</sup> The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On December 25, 2015 appellant, then a 40-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that she injured her right arm on December 22, 2015 when heavy boxes fell and hit her arm while in the performance of duty. She finished her shift and returned to work for a brief period on December 25, 2015. OWCP accepted right shoulder contusion and right upper arm contusion.<sup>5</sup> Appellant received continuation of pay for the period December 23, 2015 through February 5, 2016 and filed claims for compensation (Form CA-7) for the period commencing February 6, 2016.

On December 25, 2015 the employing establishment properly executed an authorization for medical examination and/or treatment (Form CA-16).

Dr. Mark A.P. Filippone, a Board-certified physiatrist, first saw appellant on December 28, 2015. He described appellant's complaint of right shoulder and biceps pain with a sense of weakness at the elbow. Dr. Filippone diagnosed contusion to the right biceps muscle area and internal derangement of the right shoulder. He indicated that a cervical spine injury could not be precluded and advised that she was totally disabled from work.

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<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that, following the May 14, 2018 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.*

<sup>4</sup> Docket No. 17-1994 (issued June 8, 2018).

<sup>5</sup> Dr. Neil Raswant, an osteopath Board-certified in emergency medicine, saw appellant at an emergency department on December 25, 2015. He noted her complaint of right bicep pain following an incident at work when a box fell on her right arm. A right humerus x-ray was normal. Following physical examination, Dr. Raswant diagnosed contusion, upper arm. He advised that appellant should avoid using her right arm until cleared by her physician, but could resume light-duty work on December 28, 2015.

On January 7, 2016 Dr. Filippone noted an additional complaint of neck pain. He advised that appellant could return to full-time limited duty and provided physical restrictions. On February 5, 2016 Dr. Filippone reported that appellant continued to be symptomatic despite not working. Right shoulder examination demonstrated a positive beer can emptying maneuver and diminished range of motion. Dr. Filippone advised that appellant was clinically manifesting a progressive right frozen shoulder and questioned whether she was developing reflex sympathetic dystrophy in the right upper extremity. He opined that appellant was in too much pain to work in any capacity and indicated that a cervical spine injury should be accepted by OWCP.

A February 11, 2016 magnetic resonance imaging (MRI) scan of appellant's cervical spine demonstrated minimal spondylosis and no acute cervical pathology. A right shoulder MRI scan demonstrated distal supraspinatus tendinosis *versus* low-grade partial tear, small subdeltoid bursal fluid, and moderate osteoarthritis of the acromioclavicular (ACL) joint. February 12, 2016 x-rays of the right shoulder and right humerus showed no acute osseous pathology and mild osteoarthritis of the right acromioclavicular joint. An x-ray of the cervical spine on February 12, 2016 demonstrated no acute osseous pathology, no ligamentous instability, and minimal spondylosis. A February 12, 2016 right humerus MRI scan demonstrated distal supraspinatus tendinosis versus low-grade partial tear, moderate osteoarthritis of the ACL joint, and no acute right humeral pathology.

On March 4, 2016 Dr. Filippone again advised that appellant was totally disabled.

In a report dated March 16, 2016, Dr. Richard P. Mackessy, a Board-certified orthopedic surgeon, noted full neck range of motion and painful shoulder range of motion with weakness of her rotator cuff. He reviewed x-rays and MRI scans and diagnosed rotator cuff tendinitis.

By decision dated April 8, 2016, OWCP denied expansion of the acceptance of appellant's claim to include additional conditions. It noted that Dr. Filippone had not provided rationale to explain why a cervical spine injury should be accepted, and that Dr. Mackessy noted full neck range of motion.

By decision dated April 18, 2016, OWCP denied appellant's claim for disability compensation commencing December 25, 2015. It found the medical evidence insufficient to establish disability because the physicians had rendered her disabled due to conditions denied by OWCP in its April 8, 2016 decision.

On April 25, 2016 appellant, through counsel, requested a hearing before an OWCP hearing representative regarding both the April 8 and 16, 2016 OWCP decisions.

In a supplemental March 16, 2016 report, Dr. Mackessy described right shoulder examination findings noting no tenderness on direct examination with full active and passive range of motion without pain. Strength testing was 5/5 in all muscle groups tested, and sensation was intact and symmetric. Dr. Mackessy noted that a right shoulder MRI scan demonstrated rotator cuff tendinitis and diagnosed an incomplete rotator cuff tear or rupture of right shoulder, not specified as traumatic.

In an April 6, 2016 treatment note, Dr. Filippone noted that appellant was not doing well despite physical therapy, reporting continued biceps tendon pain over the shoulder bilaterally.

Beer can maneuver was positive on the right. Dr. Filippone advised that, as per his initial evaluation on December 28, 2015, appellant was grossly injured by a 70-pound box that fell from above her head, striking the anterior right mid and distal third of the right biceps with great force, and that she continued to be totally disabled. In reports dated June 7 to August 30, 2016, he noted neck, right shoulder pain, and left upper arm pain, and advised that appellant could return to restricted duty. In an August 30, 2016 treatment note, Dr. Filippone reported that appellant's neck and right shoulder pain were improving. He advised that she could return to work with a 50-pound weight restriction and a 100-pound push-pull limit.

In a brief report dated April 7, 2016, Dr. Mackessy noted appellant's complaint of continued shoulder pain. He indicated that the MRI scans of her shoulder and neck were benign. In a May 5, 2016 report, Dr. Mackessy indicated that appellant's examination was fairly benign, but that she did not have strength. He advised that she could return to work with a 25-pound lifting restriction, but if 70 pounds was required, it would be another month with therapy for strengthening.

The hearing, held on September 28, 2016, addressed both causal relationship of additional conditions and entitlement to total disability compensation. Appellant testified regarding the December 22, 2015 incident, described her subsequent medical treatment, and related that she attempted to return to work on January 19, 2016, but that the employing establishment had no light duty available.

Counsel subsequently submitted a September 20, 2016 report in which Dr. Filippone described examination findings and appellant's treatment. He noted that the February 11, 2016 MRI scan demonstrated distal supraspinatus tendinosis versus a low grade partial tear of subdeltoid and small subdeltoid bursal fluid which would be totally consistent with a downward force vector on the adjacent humerus, opining that a 75-pound box falling on the humerus could damage the immediately adjacent shoulder joint. On October 24, 2016 Dr. Filippone provided physical restrictions regarding use of her right upper extremity.

On October 18, 2016 the employing establishment offered appellant a full-time limited-duty position with a 10-pound lifting/pushing restriction.

By decision dated November 9, 2016, an OWCP hearing representative vacated the April 8 and 18, 2016 decisions and remanded the case for further development as to whether additional conditions had been caused by the December 22, 2015 employment injury and appellant's entitlement to disability compensation.

In correspondence dated November 17, 2016, the employing establishment informed OWCP that appellant had not responded to its October 18, 2016 limited-duty job offer.

By report dated October 24, 2016, Dr. Filippone opined that the force of the box which fell on appellant caused damage to the muscles of her right shoulder and neck.

On February 3, 2017 OWCP referred appellant to Dr. Timothy Henderson, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a February 20, 2017 report, Dr. Henderson noted his review of the medical record and appellant's complaint of right shoulder pain with activity. He described the employment injury and appellant's medical treatment. Right

shoulder examination demonstrated tenderness to palpation over the greater tuberosity with slight tenderness to palpation over the long head of the biceps tendon. Neer's, Hawkins', O'Brien's, negative speed, and cross arm adduction tests were negative. Forward elevation and abduction were to 170 degrees bilaterally, external rotation was to 60 degrees bilaterally, and internal rotation was to T8 on the left and T10 on the right. Dr. Henderson recommended eight weeks of physical therapy two times per week and indicated that, although appellant had a mild residual disability, she could return to full duty without restrictions. He further advised that there were no objective findings that appellant suffered an aggravation of a preexisting condition. Dr. Henderson verified his recommendation that she could perform her usual job without restriction on a work capacity evaluation (Form OWCP-5c), advising that she should reach maximum medical improvement in two months.

In a supplemental report dated March 8, 2017, Dr. Henderson opined that the claim should not be accepted for right shoulder rotator cuff tear. He noted the February 2016 MRI scan findings of distal supraspinatus tendinosis *versus* low-grade partial tear and explained that his physical examination did not reveal a rotator cuff tear.

Dr. Filippone continued to submit reports in which he reiterated his findings and conclusions.

By decision dated March 9, 2017, OWCP denied expansion of the acceptance of appellant's claim. It found the weight of the medical evidence rested with the opinion of Dr. Henderson.

On March 6, 2017 OWCP asked the employing establishment if appellant had tried to report to work on December 28, 2015, or any time thereafter. In an undated response, S.M., an employing establishment human resources manager, noted that Dr. Filippone had indicated on December 28, 2015 that appellant was totally disabled from work. S.M. further explained that, based on Dr. Filippone's August 30, 2016 physical restrictions, appellant was offered a modified position, but did not respond.

In a treatment note dated February 22, 2017, received by OWCP on March 21, 2017, Dr. Filippone commented that he had reviewed a modified job offer that potentially included lifting up to 70 pounds. He requested an offer that appellant could perform. Dr. Filippone indicated that appellant could lift to shoulder level up to 35 pounds with her right arm. He continued to submit reports with these restrictions.

On March 16, 2017 appellant, through counsel, requested a hearing with OWCP's Branch of Hearings and Review. Appellant did not attend the hearing held on May 9, 2017. Counsel asserted during the hearing that Dr. Henderson's opinion was insufficiently rationalized and that Dr. Filippone's opinion consistently supported causal relationship of additional conditions.

Dr. Filippone submitted a duty status report (Form CA-17) dated May 24, 2017 in which he advised that appellant could perform full-time limited-duty work. He indicated that appellant had no left upper extremity restrictions and could not reach above the shoulder on the right. Right lifting and carrying were limited to 35 pounds, and pushing and pulling to 70 pounds.

By decision dated June 12, 2017, an OWCP hearing representative affirmed the March 9, 2017 decision. She found that the weight of the medical evidence rested with the opinion of Dr. Henderson and denied appellant's request for expansion of the acceptance of the claim to include additional conditions.

Dr. Filippone continued to submit reports in which he repeated appellant's restrictions.

On August 30, 2017 OWCP forwarded a copy of a mail handler position description to Dr. Henderson for comment. In correspondence received September 7, 2017, Dr. Henderson reiterated his opinion that appellant could return to full-duty work without restrictions.

By decision dated September 19, 2017, OWCP found that appellant had not met her burden of proof to establish entitlement to wage-loss compensation because the medical evidence submitted was insufficient to establish that she was disabled for the claimed period due to the accepted conditions.

Appellant, through counsel, requested a hearing on September 25, 2017 from the September 19, 2017 decision.<sup>6</sup>

On January 22, 2018 Dr. Filippone raised appellant's right upper extremity lifting/carrying restriction to 55 pounds and her pushing/pulling to 100 pounds. He continued to advise that she could not reach above her right shoulder.

During the hearing, held on February 28, 2018, appellant described the employment injury and her medical treatment. She testified that she had received continuation of pay but no wage-loss compensation since it ended in February 2016 and had returned to full-time limited duty on August 7, 2017. Counsel asserted that, at a minimum, a conflict in medical evidence had been created between Dr. Filippone and Dr. Henderson as to whether appellant was disabled from work during the claimed period of disability.

By decision dated May 14, 2018, the hearing representative affirmed the September 19, 2017 decision. She found the weight of the medical evidence rested with the opinion of Dr. Henderson who found no objective basis for disability.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>7</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.<sup>8</sup> For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work

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<sup>6</sup> On September 27, 2017 appellant appealed the June 12, 2017 decision denying expansion of the acceptance of his claim to the Board. *See supra* note 4.

<sup>7</sup> *Supra* note 2.

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

as a result of the accepted employment injury.<sup>9</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>10</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 of injury, has no disability as that term is used in FECA.<sup>11</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>12</sup>

To establish causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such causal relationship.<sup>13</sup> The opinion of the physician must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship.<sup>14</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>15</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish total disability for the period February 6, 2016 to August 7, 2017 causally related to the accepted conditions of right shoulder and right upper arm contusions.

Dr. Filippone, an attending physiatrist, began treating appellant on December 28, 2015 and submitted periodic reports. In addition to the accepted conditions, he also diagnosed a cervical condition and additional right shoulder conditions. While he described appellant’s symptoms in numerous reports and opined that she was totally disabled, Dr. Filippone did not explain why her

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<sup>9</sup> *Id.*

<sup>10</sup> See 20 C.F.R. § 10.5(f); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

<sup>11</sup> *Id.*

<sup>12</sup> *T.O.*, Docket No. 17-1177 (issued November 2, 2018).

<sup>13</sup> See *S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

<sup>14</sup> See *S.J.*, *id.*; *Kathryn Haggerty*, 45 ECAB 383 (1994).

<sup>15</sup> See *B.K.*, Docket No. 18-0386 (issued September 14, 2018).

claimed disability was due to the accepted conditions. His opinion was conclusory in nature and failed to explain in detail how the accepted medical conditions of right shoulder and upper arm contusions were responsible for her disability and why she could not perform her federal employment during the period claimed due to her accepted contusions.<sup>16</sup> Dr. Filippone discussed the right shoulder MRI scan findings, advising that they were abnormal. However, other than a contusion, no additional right shoulder condition has been accepted. Dr. Filippone further opined that the force of the box fall caused shoulder and cervical injuries. A cervical condition has also not been accepted. Whether a claimant's disability is related to an accepted condition is a medical question which must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to employment factors and supports that conclusion with sound medical reasoning.<sup>17</sup> Consequently, the Board finds that Dr. Filippone's reports were insufficient to establish appellant's claim that she was totally disabled for the period from February 6, 2016 to August 7, 2017 causally related to her accepted medical conditions.

Dr. Mackessy saw appellant on March 16, April 7, and May 5, 2016. He advised that the right shoulder MRI scan findings were not specified as traumatic. Dr. Mackessy diagnosed rotator cuff tendinitis, which is a condition that has not been accepted. The only comment he made regarding disability was that on May 5, 2016 he reported that appellant could return to limited duty, commenting that, if 70-pound lifting was required, she needed another month of strengthening as her examination was fairly benign, but she did not have strength. Dr. Mackessy did not indicate that any restrictions were due to the accepted conditions. The Board has held that a report is of limited probative value if it does not contain medical rationale explaining how a given period of disability was related to the accepted employment injury.<sup>18</sup> Without a specific opinion as to how her employment injury caused the claimed period of disability, the opinions expressed by Dr. Mackessy were insufficient to establish total disability for the claimed period.

Dr. Henderson, OWCP's referral orthopedic surgeon, provided reports dated February 20, March 8, and September 5, 2017. He noted his review of the record, described the employment injury, and noted appellant's complaints of continued right shoulder pain. Dr. Henderson provided examination findings and advised that appellant had no disabling residuals as of his examination on February 20, 2017, and that she could return to full duty without restrictions.

The issue of disability for work can only be resolved by competent medical evidence.<sup>19</sup> A physician's opinion on causal relationship between a claimant's disability and an employment injury is not dispositive simply because it is rendered by a physician. To be of probative value, the physician must provide rationale for the opinion reached. Where no such rationale is present, the medical opinion is of diminished probative value.<sup>20</sup> As Dr. Filippone and Dr. Mackessy

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<sup>16</sup> *G.T.*, Docket No. 17-1994 (issued June 8, 2018).

<sup>17</sup> *See M.C.*, Docket No. 18-1391 (issued February 1, 2019).

<sup>18</sup> *See M.B.*, Docket No. 18-1455 (issued March 11, 2019).

<sup>19</sup> *Id.*

<sup>20</sup> *E.G.*, Docket No. 17-1955 (issued September 10, 2018).

referenced conditions that have not been accepted, their opinions are insufficient to establish that appellant was disabled commencing February 6, 2016.<sup>21</sup>

On appeal counsel asserts that because OWCP had expanded acceptance of the claim on September 12, 2018, the case should be remanded for it to reassess appellant's claim for wage loss. The Board's jurisdiction is limited to reviewing final adverse decisions of OWCP issued under FECA within 180 days from the date of issuance.<sup>22</sup> OWCP had not issued its decision expanding the acceptance of appellant's claim on or before May 14, 2018, OWCP's decision at issue in this case. Therefore the Board is precluded from considering this argument on appeal.

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 6, 2016 to August 7, 2017 causally related to the accepted conditions of right shoulder and right upper arm contusions.

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<sup>21</sup> *Supra* note 11.

<sup>22</sup> 20 C.F.R. §§ 501.2(c), 501.3(a) & (e); *see N.M.*, Docket No. 18-1244 (issued March 4, 2019).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 14, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 28, 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