

ISSUE

The issue is whether appellant has met his burden of proof to establish total disability for the period March 17, 2017 to August 26, 2018 causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On August 29, 2017 appellant filed an occupational disease claim (Form CA-2) alleging that he sustained a torn right rotator cuff due to factors of his federal employment.⁴ He attributed his condition to the accepted January 16, 2016 employment injury, and a March 11, 2017 incident in which he placed mail in a mailbox and experienced sharp pain in his right shoulder. Appellant stopped work on March 11, 2017 and did not return. OWCP assigned that claim File No. xxxxxx622. On October 16, 2017 it accepted that appellant sustained an incomplete right rotator cuff tear.

Prior to filing his Form CA-2, on August 22, 2017, OWCP received in File No. xxxxxx022 appellant's claim for wage-loss compensation (Form CA-7) for leave without pay for the period March 11 to August 18, 2017.

In a compensation claim development letter dated August 23, 2017, OWCP advised appellant of the deficiencies in the evidence of record and of the additional evidence needed to establish his claim for total disability. It afforded him 30 days to submit the necessary evidence.

By decision dated November 21, 2017, OWCP denied appellant's claim for wage-loss compensation for the period March 11 to August 18, 2017 and continuing. It found that no medical evidence was received to establish total disability for work for the claimed period.

In a letter dated November 28, 2017 and received by OWCP on December 4, 2017, appellant, through counsel, requested a telephonic oral hearing before a representative of OWCP's Branch of Hearings and Review. During the hearing, held on May 22, 2018, counsel noted that he would provide additional medical evidence.

In a May 25, 2018 report, Dr. Timothy Dickson, a Board-certified internist and pediatrician, opined that appellant had attained maximum medical improvement as of March 14, 2017.

By decision dated July 23, 2018, an OWCP hearing representative affirmed the November 21, 2017 decision, finding that the medical evidence of record did not establish total disability from work commencing March 11, 2017 and continuing.

⁴ On January 20, 2016 appellant, then a 53-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 16, 2016 at 11:30 a.m., he sustained a separated right shoulder, bruised hip, and dislocated fingers when he slipped and fell on ice carrying packages while in the performance of duty. OWCP assigned the claim File No. xxxxxx022. On August 22, 2017 it accepted that the January 16, 2016 employment incident caused a left hand sprain, left wrist sprain, left hand contusion, right shoulder contusion, right shoulder sprain, right hip contusion, right hip sprain, and dislocation of the left index finger. On November 16, 2017 OWCP administratively combined File Nos. xxxxxx622 and xxxxxx022, with File No. xxxxxx022 designated as the master file number.

On August 27, 2018 Dr. Richard S. Bartholomew, an osteopathic physician Board-certified in orthopedic surgery, performed an authorized arthroscopic right rotator cuff repair with debridement and subacromial decompression. He submitted periodic progress notes and prescriptions for physical therapy treatments through January 29, 2019.⁵ Dr. Bartholomew held appellant off work.

On September 11, 2018 appellant filed additional claims for wage-loss compensation (Form CA-7) for the periods April 22 to September 1, 2017, September 16 to October 27, 2017, and November 4, 2017 to August 31, 2018. OWCP paid appellant wage-loss compensation commencing August 27, 2018.

In a report dated January 29, 2019, Dr. Dickson noted treating appellant beginning on August 3, 2016. He found appellant “unable to perform his job as a mail carrier since March 2017” due to bilateral rotator cuff tears, left glenohumeral joint degeneration, right biceps tendon tear, postsurgical status, liver disease, thyroid disease, pancreatitis, chronic vomiting, adrenal dysfunction, and depression.

In a January 30, 2019 statement, appellant contended that he was medically unable to continue working after March 11, 2017.

On February 20, 2019 appellant, through counsel, requested reconsideration.

By decision dated March 13, 2019, OWCP denied modification of its July 23, 2018 decision, finding that the additional evidence submitted failed to establish total disability for work from March 17, 2017 to August 26, 2018 causally related to the accepted injuries.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁷

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.”⁸ The question of whether an employee is disabled from work is an issue that must be resolved by competent medical evidence.⁹ The employee is responsible for providing sufficient medical evidence to justify payment of any compensation sought.¹⁰

⁵ Appellant participated in physical therapy treatments from September to December 2018.

⁶ *Supra* note 1.

⁷ *A.T.*, Docket No. 19-0410 (issued August 13, 2019); *see C.R.*, Docket No. 18-1805 (issued May 10, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ 20 C.F.R. § 10.5(f).

⁹ *S.A.*, Docket No. 18-0399 (issued October 16, 2018); *see also R.C.*, 59 ECAB 546, 551 (2008).

¹⁰ *Id.*; *see T.A.*, Docket No. 18-0431 (issued November 7, 2018); *see also Amelia S. Jefferson*, 57 ECAB 183 (2005).

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.¹¹ 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 his or her disability and entitlement to compensation.¹²

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish total disability for the period March 17, 2017 to August 26, 2018 causally related to his accepted March 11, 2017 employment injury.

In support of his claim for total disability, appellant submitted an August 27, 2018 report from Dr. Bartholomew. Dr. Bartholomew found appellant disabled for work following authorized August 27, 2018 right shoulder surgery. As OWCP paid appellant wage-loss compensation commencing August 27, 2018, this period is not at issue. In the remainder of the reports from Dr. Bartholomew, he did not explain how the accepted injury caused or contributed to the claimed period of disability presently before the Board. These reports are therefore insufficient to establish the claim for total disability.¹³

In his January 29, 2019 report, Dr. Dickson found appellant totally disabled from his mail carrier position commencing in March 2017 due, in part, to the accepted bilateral shoulder conditions. He did not explain, however, how and why the accepted injuries would continue to disable appellant for work on and after March 17, 2017. 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 employment factors.¹⁴ Without a specific opinion as to how the accepted employment incident had caused the claimed period of disability, the opinion expressed by Dr. Dickson is insufficient to establish the claim for total disability.¹⁵

The issue of disability from work can only be resolved by competent medical evidence.¹⁶ Drs. Bartholomew and Dickson failed to provide a rationalized medical opinion that appellant's inability to work from March 17, 2017 to August 26, 2018 resulted from the accepted injury. As none of the medical evidence of record provided a discussion of how appellant's accepted injury caused total disability during the period in question, he has not met his burden of proof.¹⁷

¹¹ See *S.M.*, Docket No. 17-1557 (issued September 4, 2018); *William A. Archer*, 55 ECAB 674, 679 (2004); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

¹² *A.T.*, *supra* note 7; *T.L.*, Docket No. 18-0934 (issued May 8, 2019); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

¹³ *A.T.*, *supra* note 7; see *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

¹⁴ *A.T.*, *supra* note 7.

¹⁵ *Id.*

¹⁶ *Id.*; *R.C.*, 59 ECAB 546 (2008).

¹⁷ *A.T.*, *supra* note 7.

On appeal counsel contends that OWCP's March 13, 2019 decision is contrary to fact and law. However, for the reasons noted above, appellant failed to meet his burden of proof to establish that the March 11, 2017 employment injury disabled him from work for the claimed period.

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 his burden of proof to establish total disability for the period March 17, 2017 to August 26, 2018 causally related to the accepted factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the March 13, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 13, 2019
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board