

ISSUE

The issue is whether appellant has met her burden of proof to establish intermittent disability for the period December 21, 2017 through September 11, 2018, causally related to her accepted September 19, 2015 employment injury.

FACTUAL HISTORY

On September 19, 2015 appellant, then a 53-year-old custodian, filed a traumatic injury claim (Form CA-1) alleging that, on that date, she lifted a heavy parcel and sustained a right shoulder strain while in the performance of duty. She stopped work on September 19, 2015 and returned to full-time work with restrictions on November 10, 2015. OWCP accepted the claim for cervical ligament sprain, right shoulder lesion, and right shoulder incomplete rotator cuff tear or rupture and paid intermittent wage-loss compensation on the supplemental rolls from November 20, 2015 to March 4, 2016.

OWCP subsequently received a March 13, 2018 report from Dr. Charles E. Willis, II, a Board-certified anesthesiologist, which noted appellant's September 15, 2015 date of injury and current complaints of neck and shoulder pain. Dr. Willis related that appellant was currently employed performing light-duty work, and would be seen again in eight weeks. In duty status reports (Form CA-17) dated January 9 and March 13, 2018, he indicated that she could perform work for eight hours a day with restrictions.

In a work status note dated May 8, 2018, Dr. Willis related that appellant was disabled from work on December 21, 2017 and January 18 and 25, February 22, April 17, and May 8 and 9, 2018 due to a flare-up of her original employment injury. He released her to return to work on May 10, 2018 with restrictions.

Appellant filed a claim for wage-loss compensation (Form CA-7) for intermittent disability during the period December 21, 2017 to September 11, 2018. In an attached time analysis form (Form CA-7a), she claimed 40 hours of leave without pay (LWOP) for the dates December 21, 2017 and June 26 and 27, July 14, and September 11, 2018.

In a development letter dated October 1, 2018, OWCP informed appellant that her claim for 32 hours of LWOP for June 26 and 27, July 14, and September 11, 2018 was currently not payable due to the lack of supporting medical evidence that her disability was causally related to her accepted employment conditions.³ It advised her regarding the medical evidence required to establish her wage-loss claim and afforded her 30 days to provide the necessary evidence.

In response, appellant submitted reports dated September 25, November 6, and December 18, 2018 from Dr. Willis. Dr. Willis noted that appellant was seen for complaints of right shoulder pain and provided an assessment of her condition.

³ OWCP did not note the eight hours of disability appellant claimed on December 21, 2017.

By decision dated December 28, 2018, OWCP denied appellant's claim for wage-loss compensation for intermittent disability during the period December 21, 2017 to September 11, 2018.⁴

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.⁵ 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.⁶ 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.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. 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.⁸

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.⁹ 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 claimed disability and the accepted employment injury. 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 claimed period of disability.¹⁰

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.¹¹

⁴ OWCP incorrectly noted the date as December 27, 2017 rather than December 21, 2017.

⁵ See *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *D.W.*, Docket No. 18-0644 (issued November 15, 2018).

⁶ *Id.*

⁷ 20 C.F.R. § 10.5(f); *B.O.*, *supra* note 5; *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

⁸ *Id.*

⁹ *J.M.*, Docket No. 19-0478 (issued August 9, 2019).

¹⁰ *R.H.*, Docket No. 18-1382 (issued February 14, 2019).

¹¹ *A.W.*, Docket No. 18-0589 (issued May 14, 2019).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish intermittent disability for the period December 21, 2017 through September 11, 2018, causally related to her accepted September 19, 2015 employment injury.

Appellant alleged on a Form CA-7a that she was entitled to eight hours of wage-loss compensation for December 21, 2017 and June 26 and 27, July 14, and September 11, 2018.

In a May 18, 2018 work status note, Dr. Willis indicated that appellant was disabled from work due to a flare-up of her employment injury for various dates including the claimed December 21, 2017 date. However, he did not explain why appellant's accepted conditions caused her to be disabled on the claimed dates.¹² He did not address her alleged disability on June 26 and 27, July 14, and September 11, 2018. The Board has held that medical evidence must directly address the specific dates of disability claimed and must provide a rationalized medical opinion substantiating disability from work.¹³ Thus, this report from Dr. Willis is insufficient to establish appellant's claim.

The remaining evidence submitted in support of appellant's claim for wage-loss compensation fails to address the claimed period of intermittent disability. Therefore, this evidence is also insufficient to meet appellant's burden of proof.¹⁴

The issue of whether a claimant's disability from work is related to an accepted condition must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability was causally related to the employment injury and supports that conclusion with sound medical reasoning.¹⁵ As appellant has not submitted such evidence in this claim, the Board finds that she has not met her burden of proof.¹⁶

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 intermittent disability for the period December 21, 2017 through September 11, 2018, causally related to her accepted September 19, 2015 employment injury.

¹² *V.G.*, Docket No. 18-0936 (issued February 6, 2019).

¹³ *G.J.*, Docket No. 18-1335 (issued March 22, 2019); *K.A.*, Docket No. 16-0592 (issued October 26, 2016); *C.S.*, Docket No. 08-2218 (issued August 7, 2009); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

¹⁴ *Supra* note 11.

¹⁵ *G.J.*, *supra* note 13; *G.B.*, Docket No. 16-1033 (issued December 5, 2016).

¹⁶ *G.J.*, *supra* note 13; *K.A.*, Docket No. 17-1718 (issued February 12, 2018).

ORDER

IT IS HEREBY ORDERED THAT the December 28, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 25, 2019
Washington, DC

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

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board