

ISSUE

The issue is whether appellant has met his burden of proof to establish disability from work for the period December 20, 2018 to February 12, 2019 causally related to his accepted December 20, 2018 employment injury.

FACTUAL HISTORY

On February 12, 2019 appellant, then a 48-year-old supervisory transportation security officer (STSO), filed a traumatic injury claim (Form CA-1) alleging that on December 20, 2018 he was lifting bags from a conveyor belt when he experienced a sharp pain and frozen right shoulder while in the performance of duty.⁴ It also controverted continuation of pay (COP).⁵ The employing establishment further noted that appellant stopped work on “December 31, 2018” and returned to work on February 12, 2019. On March 19, 2019 OWCP accepted appellant’s claim for adhesive capsulitis of the right shoulder.

In a February 11, 2019 work capacity evaluation (Form OWCP-5c), Dr. Lawrence Kusior, a Board-certified orthopedist, opined that appellant could not perform his usual job however, he was able to work in a sedentary capacity with lifting restricted to five pounds. He noted additional restrictions on reaching, reaching above the shoulder, climbing, pushing, and pulling. In a February 11, 2019 attending physician’s report (Form CA-20), Dr. Kusior diagnosed adhesive capsulitis of the right shoulder and checked a box marked “yes” indicating that the condition was caused or aggravated by an employment activity. He noted that the period of total disability was from January 1 to February 5, 2019 and partial disability from February 6 to 27, 2019. Dr. Kusior also noted that appellant was advised to resume work full time on February 6, 2019 with limitations of no lifting over five pounds and no pushing and pulling.

On February 11, 2019 the employing establishment offered appellant a limited-duty position as a STSO effective the same day. Appellant was assigned administrative (clerical) duties full time from 8:00 a.m. to 4:30 p.m. with restrictions on reaching with the right arm and reaching over the shoulder with the right arm. On February 12, 2019 he accepted the position and returned to work.

OWCP received a January 9, 2019 report from Dr. Kusior who diagnosed adhesive capsulitis of the right shoulder. Findings on examination of the right shoulder revealed right shoulder pain and stiffness with limited range of motion. Dr. Kusior advised that appellant could not return to work and was temporarily totally disabled. In reports dated February 6 and 27, 2019, he treated appellant in follow up for adhesive capsulitis of the right shoulder. Appellant reported improvement in pain and motion after physical therapy. Findings on examination of the right shoulder revealed tenderness to palpation in the anterior aspect of the shoulder and positive impingement test. Dr. Kusior found appellant to be temporarily, partially disabled from work. He

⁴ In an undated statement, appellant indicated that the correct date of his injury was December 20, 2018 not December 21, 2018 as noted on the Form CA-1.

⁵ By decision dated March 19, 2019, OWCP denied appellant’s claim for COP during his absence from work for the period December 31, 2018 to February 11, 2019. It found that the injury was not reported on a form approved by OWCP within 30 days following the injury.

returned appellant to light-duty work with restrictions of no lifting over five pounds, no pushing or pulling.

In an April 2, 2019 work capacity evaluation form (Form OWCP-5c), Dr. Kusior noted that appellant could not perform his usual job duties due to right shoulder pain and stiffness and was temporarily totally disabled. In an April 2, 2019 attending physician's report (Form CA-20), he diagnosed adhesive capsulitis of the right shoulder and checked a box marked "yes" indicating that the condition was caused or aggravated by an employment activity. Dr. Kusior noted that the period of total disability was from January 1 to April 30, 2019. He noted that appellant was unable to perform any and all job duties.

On April 9, 2019 appellant filed a claim for compensation (Form CA-7) and requested leave without pay (LWOP) for the period December 20, 2018 to February 12, 2019. The employing establishment indicated that appellant accepted a full-time limited-duty position and returned to work on February 12, 2019.

In an April 9, 2019 development letter, OWCP requested additional factual and medical evidence supporting the alleged period of total disability. It afforded appellant 30 days to respond.

OWCP received a March 27, 2019 report from Dr. Kusior who diagnosed adhesive capsulitis of the right shoulder and right shoulder pain as a result of a work injury on December 20, 2018. Appellant reported slight improvement in his pain. Dr. Kusior administered a cortisone injection, and recommended physical therapy. He opined that appellant remained temporarily partially disabled at 50 percent and provided a note indicating that appellant was to remain off work. In an April 30, 2019 work note, Dr. Kusior again diagnosed adhesive capsulitis of the right shoulder and held appellant off work from April 30 to June 11, 2019.⁶

In an April 30, 2019 report, Dr. Kusior noted that appellant remained symptomatic from his work-related adhesive capsulitis of the right shoulder. He reported persistent stiffness of the right shoulder with very limited range of motion. Dr. Kusior recommended a magnetic resonance imaging scan of the right shoulder. He advised that appellant was temporarily, totally disabled from work and could not perform any significant physical activity.

By decision dated May 14, 2019, OWCP denied appellant's claim for compensation for the period December 20, 2018 to February 12, 2019. It found that there was no medical documentation establishing that he was disabled from work due to his accepted employment injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁷ has the burden of proof to establish the essential elements of his or her claim by the preponderance of the evidence.⁸ Under FECA the

⁶ On May 1, 2019 appellant filed a claim for compensation (Form CA-7) and for disability from March 27 to April 29, 2019. That period of disability is not presently before the Board.

⁷ 5 U.S.C. § 8101 *et seq.*

⁸ *M.C.*, Docket No. 18-0919 (issued October 18, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005); *see also Nathaniel Milton*, 37 ECAB 712 (1986).

term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁹ 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.¹⁰ Whether a particular injury caused an employee to be disabled from 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.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 disability from work for the period December 20, 2018 to February 12, 2019 causally related to his accepted December 20, 2018 employment injury.

In support of his claim for wage-loss compensation, appellant submitted numerous reports from Dr. Kusior. In his initial report of January 9, 2019, Dr. Kusior diagnosed pain and adhesive capsulitis of the right shoulder. He advised that appellant could not return to work at that time and was temporarily totally disabled. The Board notes that while Dr. Kusior related that appellant was temporarily totally disabled, he did not relate appellant's disability to his accepted condition of adhesive capsulitis of the right shoulder.¹³ Further, Dr. Kusior did not explain how appellant's accepted adhesive capsulitis of the right shoulder caused disability during the period alleged. Medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.¹⁴

The Board notes that Dr. Kusior saw appellant on February 6 and 27, 2019, in follow-up for adhesive capsulitis of the right shoulder and right shoulder pain. Dr. Kusior found appellant to be temporarily partially disabled at 50 percent and returned him to work full-time light duty with restrictions of no lifting over five pounds, and no pushing or pulling. The Board finds that these reports do not support work-related disability. Rather, Dr. Kusior returned appellant to work full time in a limited-duty capacity.

Dr. Kusior continued to treat appellant. His February 11 and April 2, 2019 work capacity evaluations and attending physician's reports provided diagnoses of adhesive capsulitis of the right shoulder. Dr. Kusior indicated by checkmark on a form that this condition was caused or

⁹ *A.S.*, Docket No. 17-2010 (issued October 12, 2018); *S.M.*, 58 ECAB 166 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); 20 C.F.R. § 10.5(f).

¹⁰ *K.C.*, Docket No. 17-1612 (issued October 16, 2018); *William A. Archer*, 55 ECAB 674 (2004).

¹¹ *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

¹² *J.B.*, Docket No. 19-0715 (issued September 12, 2019).

¹³ *V.G.*, Docket No. 18-0936 (issued February 6, 2019).

¹⁴ *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

aggravated by an employment activity. However, the checking of a box marked “yes” in a form report, without additional explanation or rationale, is not sufficient to establish causal relationship.¹⁵ These reports, therefore, are insufficient to establish appellant’s claim.

OWCP received a March 27, 2019 report from Dr. Kusior who opined that appellant’s diagnoses of adhesive capsulitis of the right shoulder and right shoulder pain was a result of a work injury on December 20, 2018. Dr. Kusior administered a cortisone injection and again found that appellant remained temporarily partially disabled at 50 percent and provided a note for him to remain off work. In reports dated April 30, 2019, he noted that appellant remained symptomatic from his work-related adhesive capsulitis of the right shoulder. He advised that appellant was temporarily totally disabled from work for the period April 30 to June 11, 2019. The Board finds that these reports do not support work-related disability during the claimed period December 20, 2018 to February 12, 2019. 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 employees to self-certify their disability and entitlement to compensation.¹⁶

As noted appellant must submit reasoned medical evidence directly addressing the specific dates of disability for work for which he claims compensation.¹⁷ He did not provide medical evidence containing a rationalized opinion establishing that he could not work from December 20, 2018 to February 12, 2019 causally related to his December 20, 2018 employment injury, and thus appellant has not met his burden of proof.

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 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 disability from work for the period December 20, 2018 to February 12, 2019 causally related to his accepted December 20, 2018 employment injury.

¹⁵ *M.D.*, Docket No. 18-0195 (issued September 13, 2018).

¹⁶ *See E.B.*, Docket No. 17-0875 (issued December 13, 2018); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹⁷ *See K.A.*, Docket No. 16-0592 (issued October 26, 2016).

ORDER

IT IS HEREBY ORDERED THAT the May 14, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 25, 2020
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board