



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

### **ISSUE**

The issue is whether appellant has met his burden of proof to establish total disability from work for the period September 18, 2016 to June 24, 2017 causally related to his accepted July 9, 2016 employment injuries.

### **FACTUAL HISTORY**

On July 9, 2016 appellant then a 41-year-old transportation security officer (screener), filed a traumatic injury claim (Form CA-1) alleging on that date he felt a pop and injured his left shoulder pulling a checked bag off of the screening table while in the performance of duty. He stopped work on July 9, 2016. On July 16, 2016 appellant accepted a light-duty assignment with restrictions for no lifting. He subsequently accepted a full-time light-duty assignment on August 8, 2016 with no reaching above the shoulder, no pushing, and no lifting, effective July 12, 2016.<sup>4</sup> On August 31, 2016 OWCP accepted appellant's claim for left shoulder acromioclavicular (AC) joint strain.

Appellant's attending physician, Dr. Sivaram Rajan, a Board-certified orthopedic surgeon, found on August 17, 2016 that appellant was unable to return to work and noted that he was scheduled for left shoulder surgery on September 9, 2016.

On September 6, 2016 appellant advised OWCP that he had not returned to work. In a letter of even date, Dr. Rajan noted his history of injury and recommended surgery. He also completed an attending physician's report (Form CA-20) and diagnosed labral tear, instability and rotator cuff syndrome. Dr. Rajan found appellant totally disabled beginning July 9, 2016 and "ongoing." He completed a note on September 23, 2016 and recommended that he remain out of work until his surgery.

Beginning on October 7, 2016, appellant completed claims for compensation (Form CA\_7) for disability from work for the period September 18, 2016 through June 24, 2017.<sup>5</sup>

By decision dated October 17, 2016, OWCP denied the expansion of the acceptance of claim to include the additional conditions of left shoulder rotator cuff syndrome, AC joint arthritis, impingement syndrome of the left shoulder and left shoulder superior and anterior labral tears. Appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review on November 10, 2016.

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

<sup>4</sup> The Board notes that the light-duty assignment did not otherwise specify appellant's light duties or requirements as the employing establishment manager did not select any of the listed duties.

<sup>5</sup> The employing establishment indicated that appellant used intermittent leave from July 11 through August 13, 2016. Appellant received continuation of pay (COP) for the periods July 25 to 31, 2016 and August 21 to September 17, 2016.

In October 18 and 20, 2016 development letters, OWCP requested additional medical evidence from appellant to establish disability from work commencing September 18, 2016. It afforded him 30 days to submit the requested information.

On October 18, 2016 OWCP denied appellant's request for left shoulder arthroscopy to repair a torn labrum.

By decision dated November 28, 2016, OWCP denied appellant's claim for compensation for disability, commencing September 18, 2016. On December 8, 2016 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a February 17, 2017 report, Dr. Rajan found that, following his July 9, 2016 work injury, appellant was unable to return to his regular-duty work activities of lifting heavy bags in a repetitive manner and further, that he would not be able to perform this duty until he had surgical stabilization of his left shoulder. He concluded that he was completely disabled from the injury to the present with respect to his job requirements.

In April 24 and May 12, 2017 reports, Dr. Michael A. Meese, a Board-certified orthopedic surgeon, examined appellant due to his left shoulder injury and noted that he had not been working since his July 9, 2016 employment injury as a result of the pain, popping, and clicking inside his left shoulder. He found that he had experienced chronic symptoms that limited his ability to function with daily, recreational, and occupational activities.

Following an oral hearing on February 28, 2017, by decision dated May 24, 2017, OWCP's hearing representative reversed the October 17, 2016 decision and directed OWCP to expand the accepted of appellant's claim to include left shoulder impingement, as well as anterior and superior labral tears and to pay the appropriate medical benefits. She further vacated the November 28, 2016 decision and remanded the case for additional development regarding the issue of disability, including a second opinion evaluation and a *de novo* decision on this issue.

On May 25, 2017 OWCP expanded the acceptance of the claim to include impingement syndrome of the left shoulder and superior glenoid labrum lesion of the left shoulder.

In a June 1, 2017 development letter, OWCP requested that appellant provide additional medical evidence addressing his claim for total disability from work. It afforded him 30 days for response.

Dr. Rajan completed a note on April 19, 2017 and found that appellant could return to work performing sedentary duties only.

On June 9, 2017 the employing establishment provided a copy of appellant's position description, which included the requirement that he repeatedly lift and carry items weighing up to 70 pounds, that he maintain physical agility to squat, bend, and inspect baggage/cargo, and maintain the ability to walk up to two miles during a shift, and stand for three or four hours at a time.

In a June 13, 2017 narrative statement, appellant related that he had not received any compensation benefits since his employment injury. He noted that he received COP and that he returned to limited duty on July 12, 2016. Appellant asserted that he was not provided a job offer,

but was advised to perform “no lifting” and returned to his regular job. He noted that Dr. Rajan took him off work, but asserted that he did not receive a formal light-duty job offer. Appellant provided a copy of a July 9, 2016 limited-duty assignment, effective on July 12, 2016, with a handwritten comment that he was a baggage officer and that the duties assigned were for a check point screening position.

On June 20, 2017 appellant alleged that his physicians refused to provide more medical evidence. He asked that OWCP advise him on how to obtain more medical evidence. Appellant asserted that he had returned to work on limited-duty status, but performing his same job function. He alleged that his shoulder condition worsened and that his physician took him off work pending surgery.

In a June 22, 2017 development letter, OWCP requested that appellant provide medical evidence establishing total disability from work during the entire period claim. It afforded him 30 days for a response.

On June 29, 2017 OWCP referred appellant, a statement of accepted facts (SOAF), and a list of questions to Dr. Timothy Henderson, a Board-certified orthopedic surgeon, for a second opinion evaluation.

Appellant underwent left shoulder arthroscopy on June 27, 2017.<sup>6</sup>

In a July 19, 2017 report, Dr. Henderson noted appellant’s history of injury and accepted employment injuries. He noted that he stopped work on July 9, 2016, his date of injury, returned to full-time light-duty work from July 12 through August 17, 2016 and stopped working on August 17, 2016. Dr. Henderson advised that he was unable to examine appellant’s left shoulder as any meaningful physical examination could disrupt the repair and destroy the surgical work performed on June 27, 2017. In response to OWCP’s question of whether appellant was capable of performing his full-time limited-duty assignment beginning August 17, 2016, Dr. Henderson opined that he was not totally disabled and was able to work with lifting restrictions of 10 pounds in a sedentary position. He noted that appellant was currently totally disabled.

By decision dated August 4, 2017, OWCP denied appellant’s claims for compensation for the period September 18, 2016 through June 24, 2017. It found that Dr. Meese’s May 12, 2017 report lacked sufficient medical rationale to establish that he was totally disabled from work during the claimed period and further found that he had not reviewed the physical requirements for the limited-duty position. OWCP found that, based on the opinion of Dr. Henderson, following a thorough review of the file, that appellant was not totally disabled for the claimed period as he was capable of performing a sedentary position with a lifting restriction of 10 pounds. On August 15, 2017 appellant, through counsel, requested an oral hearing before a representative of OWCP’s Branch of Hearings and Review.

OWCP referred appellant for an additional second opinion examination with Dr. Henderson on October 5, 2017 to address his physical condition and disability following his recovery from surgery. In his October 25, 2017 report, Dr. Henderson found that he continued to experience medical residuals of his accepted conditions. He opined that appellant could currently

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<sup>6</sup> OWCP authorized wage-loss compensation beginning June 27, 2017.

perform full-time sedentary work utilizing only his right upper extremity.<sup>7</sup> On the accompanying work capacity evaluation (Form OWCP-5c) Dr. Henderson indicated that he could sit, walk, and stand for eight hours a day, but could not reach or reach above the shoulder. He further restricted appellant's pushing, pulling, and lifting to 10 pounds.

Appellant testified before an OWCP hearing representative on January 17, 2018 and described the July 9, 2016 employment injury. He noted that, after he searched a bag, he pulled it off the table and felt a pop in his left shoulder. Appellant returned to full duty on July 9 through 12, 2016 and began working limited duty on July 12, 2016. He asserted that his limited-duty assignment included restrictions on pulling and lifting. Appellant continued to operate the x-ray machine and perform bag searches on 30-minute rotations. He noted that his regular duties also included carrying bags weighing up to 70 pounds. Appellant further alleged that his limited-duty position required him to use the x-ray machine, which entailing swiping and pulling 5 to 10 bags during a 30-minute rotation. He disputed that his limited-duty position was sedentary. Appellant noted that Dr. Rajan found that he was totally disabled on August 17, 2016. Counsel contended that his limited-duty position was not sedentary and that the position, therefore, violated Dr. Henderson's work restrictions for the period beginning September 18, 2016, which included no use of the left arm. He noted that the limited-duty position required up to eight hours of reaching up to shoulder height and eight hours repetitive movements of the left shoulder.

On February 26, 2018 OWCP requested a supplemental report from Dr. Henderson addressing appellant's current work restrictions and whether he was limited to a full-time sedentary position or if he could sit, stand, and walk for eight hours a day. It required medical rationale to support his conclusions.

In a March 2, 2018 supplemental report to Dr. Henderson's October 24, 2017 report, Dr. Andrew Farber, an osteopath specializing in orthopedic surgery, reviewed Dr. Henderson's report and found that appellant could return to work in a sedentary position only utilizing his right upper extremity. Dr. Faber opined that he could work eight hours a day with no restrictions on sitting, but walking and standing each for two hours a day.

In a March 9, 2018 letter, the employing establishment reported that appellant had been off work since September 16, 2016.

By decision dated April 2, 2018, OWCP's hearing representative vacated the August 4, 2017 OWCP decision regarding appellant's disability from work for the period September 18, 2016 through June 24, 2017 and remanded the case for a supplemental report from Dr. Henderson or a new second opinion evaluation addressing his work restrictions during this period.

On May 11, 2018 OWCP referred appellant, a SOAF, and a list of questions to Dr. Jeffrey Lakin, a Board-certified orthopedic surgeon for a second opinion evaluation.

Appellant underwent electrodiagnostic studies on May 16, 2018, which were most consistent with bilateral C6 radiculopathy due to underlying cervical stenosis at C5-6.

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<sup>7</sup> Dr. Henderson did not address appellant's disability from work for the period September 18, 2016 through June 24, 2017 in this report.

In his June 22, 2018 report, Dr. Lakin reviewed appellant's history of injury and medical treatment. He listed his accepted conditions of left shoulder AC joint strain, impingement syndrome of the left shoulder, and superior glenoid labral lesion of the left shoulder as well as a diagnoses of aggravation of glenohumeral arthritis. Dr. Lakin opined that appellant's accepted conditions were not causing objective symptoms, but that he had some residual pain, stiffness, and decreased strength in the left shoulder, which he attributed to preexisting glenohumeral osteoarthritis aggravated by the July 9, 2016 work injury. OWCP requested that Dr. Lakin address appellant's work capacities, beginning August 17, 2016, and his capacity to perform the light-duty position at that time. Dr. Lakin responded by indicating that, at the time of this report, appellant was capable of returning to work with restrictions on lifting over 50 pounds more than four hours a day, limiting reaching over the shoulder to no more than four hours per day and climbing for four hours a day.

In a July 12, 2018 development letter, OWCP requested appellant provide additional medical evidence addressing the causal relationship between the conditions of cervical disc herniation, cervical radiculopathy, cervicgia, and cervical lordosis and the accepted July 9, 2016 employment injury. It afforded him 30 days for a response.

On August 7, 2018 OWCP further expanded the acceptance of appellant's claim to include aggravation of osteoarthritis glenohumeral joint left shoulder.

By decision dated August 14, 2018, OWCP denied appellant's claim for the additional conditions of cervical disc herniation, cervical radiculopathy, cervicgia, and cervical lordosis as causally related to his July 9, 2016 employment injury.

On August 15, 2018 OWCP requested a supplemental report from Dr. Lakin reviewing the August 8, 2016 limited-duty job offer and opining whether appellant was physically capable of performing these duties up until his June 27, 2017 surgery. It further requested that he provide medical rationale in support of his opinion.

In a September 7, 2018 supplemental report, Dr. Lakin reviewed the limited-duty job offer and listed appellant's accepted conditions. He concluded, "Based on this diagnosis with the limited-duty assignment involving no reaching above the shoulder, no pushing, and no lifting, there is no reason why he cannot accomplish this limited-duty job from the date of the offer from August 8, 2016, up to his surgery on June 27, 2017."

By decision dated March 20, 2019, OWCP denied appellant's claim for total disability from work for the period September 18, 2016 through June 24, 2017. On March 28, 2019 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

On July 17, 2019 appellant testified before a hearing representative describing his date-of-injury work duties and his July 9, 2016 employment injury. He noted that he continued working after July 9, 2016 performing his regular job duties including screening bags and operating x-ray machines with restrictions of no lifting or pulling. Appellant alleged that he was assisted when he performed bag checks. He received a limited-duty job offer on August 8, 2016, which required him to continue to his full duties with restrictions. Appellant stopped work on August 17, 2016 based on Dr. Rajan's recommendation and due to tingling and numbness in his left shoulder with extreme pain. He drew a distinction between his normal work with restrictions and a limited-duty

position such as a desk job. Counsel contended that the limited-duty job offer did not meet the requirement to be a proper job offer and, therefore, its availability did not affect appellant's entitlement to wage-loss benefits during the period in question. He noted that, while appellant was restricted from reaching above the shoulder, pushing, and pulling, many of the actual duties required these activities.

By decision dated October 11, 2019, OWCP's hearing representative found that appellant had not established disability from work for the period September 18, 2016 to June 24, 2017 due to his accepted employment injury.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA 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.<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 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 which must be proven by the preponderance of the reliable, probative, and substantial medical 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.<sup>11</sup> 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>12</sup>

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.<sup>13</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 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

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<sup>8</sup> See *C.B.*, Docket No. 20-0629 (issued May 26, 2021); *D.S.*, Docket No. 20-0638 (issued November 17, 2020); *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *C.R.*, Docket No. 18-1805 (issued May 10, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>9</sup> *Id.*; *William A. Archer*, 55 ECAB 674 (2004).

<sup>10</sup> 20 C.F.R. § 10.5(f); *D.N.*, Docket No. 19-1344 (issued November 6, 2020); *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *N.M.*, Docket No. 18-0939 (issued December 6, 2018); *Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

<sup>11</sup> *Id.* at § 10.5(f); *B.K.*, Docket No. 18-0386 (issued September 14, 2018); *S.M.*, 58 ECAB 166 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004).

<sup>12</sup> *Id.*

<sup>13</sup> *D.N.*, *supra* note 10; *J.M.*, Docket No. 19-0478 (issued August 9, 2019).

explaining the nature of the relationship between the diagnosed condition and the claimed period of disability.<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 his or her disability and entitlement to compensation.<sup>15</sup>

Section 8123(a) of FECA provides that, if there is a disagreement between the physician making the examination for the United States and the physician of an employee, the Secretary shall appoint a third physician (known as a referee physician or impartial medical examiner (IME)) who shall make an examination.<sup>16</sup> This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.<sup>17</sup> When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>18</sup>

### ANALYSIS

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

Dr. Rajan provided reports dated August 17, 2016 through February 17, 2017, finding that appellant was totally disabled from work as he was unable to return to his regular-duty work activities of lifting heavy bags in a repetitive manner. He completed a note on April 19, 2017 and found that appellant could return to work performing sedentary duties only. In April 24 and May 12, 2017 reports, Dr. Meese found appellant disabled as a result of the pain, popping, and clicking inside his left shoulder. He further found that his chronic symptoms limited his ability to function with daily, recreational and occupational activities.

Dr. Henderson, a second opinion physician, opined on July 19, 2017 that appellant was restricted to working in a sedentary position with lifting no more than 10 pounds. On September 7, 2018 Dr. Lakin, a second opinion physician, found that, based on the accepted diagnoses and restrictions involving no reaching above the shoulder, no pushing, and no lifting, he could perform a limited-duty job from August 8, 2016, up to his surgery on June 27, 2017.

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<sup>14</sup> *D.N.*, *supra* note 10; *R.H.*, Docket No. 18-1382 (issued February 14, 2019).

<sup>15</sup> *M.A.*, Docket No. 20-0033 (issued May 11, 2020); *A.W.*, Docket No. 18-0589 (issued May 14, 2019); *Fereidoon Kharabi*, *supra* note 10.

<sup>16</sup> 5 U.S.C. § 8123(a); *K.C.*, Docket No. 19-0137 (issued May 29, 2020); *M.W.*, Docket No. 19-1347 (issued December 5, 2019); *C.T.*, Docket No. 19-0508 (issued September 5, 2019); *R.S.*, Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009).

<sup>17</sup> 20 C.F.R. § 10.321.

<sup>18</sup> *K.C.*, *supra* note 16; *M.W.*, *supra* note 16; *C.T.*, *supra* note 16; *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

The Board finds that there is an unresolved conflict of medical opinion between Drs. Rajan and Meese, for appellant, and Drs. Henderson and Lakin, for the government, regarding the extent of appellant's disability for work on and after September 18, 2016.

OWCP's regulations provide that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination.<sup>19</sup> The Board will, thus, remand the case to OWCP for referral to an IME regarding whether appellant has met his burden of proof to establish disability for work on and after September 18, 2016.<sup>20</sup> Following this and any such further development as may be deemed necessary, OWCP shall issue a *de novo* decision.

### **CONCLUSION**

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

### **ORDER**

**IT IS HEREBY ORDERED THAT** the October 11, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: August 2, 2022  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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<sup>19</sup> 5 U.S.C. § 8123(a); *K.C.*, *supra* note 16; *M.W.*, *supra* note 16.

<sup>20</sup> *Id.*