

**United States Department of Labor
Employees' Compensation Appeals Board**

R.H., Appellant

and

**U.S. POSTAL SERVICE, COUNTRY LAKES
POST OFFICE, Miami, FL, Employer**

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**Docket No. 13-1286
Issued: September 18, 2013**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 7, 2013 appellant, through his attorney, filed a timely appeal from a January 31, 2013 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act¹ (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 established that he was totally disabled from May 9 to June 1, 2012 due to his August 20, 2011 employment injury.

On appeal, counsel contends that OWCP's decision is contrary to fact and law.

FACTUAL HISTORY

OWCP accepted that on August 20, 2011 appellant, then a 57-year-old distribution clerk, sustained a neck sprain due to a fall while in the performance of duty.

¹ 5 U.S.C. § 8101 *et seq.*

On June 5, 2012 appellant filed a claim (Form CA-7) for compensation for 136 hours of leave without pay from May 9 to June 1, 2012.

In an April 23, 2012 medical report, Dr. Pedro J. Carvajal, a Board-certified orthopedic surgeon, obtained a history that appellant had occasional intermittent pain of both shoulders over the years. Approximately, six weeks ago appellant tripped and fell injuring both shoulders with the right being worse than the left. He developed significant weakness of the right shoulder with resultant pain. Dr. Carvajal reviewed a magnetic resonance imaging (MRI) scan of the right shoulder and listed findings on physical examination. He advised that appellant had a rotator cuff tear of the right shoulder, which was much more symptomatic than the left shoulder, which had better strength and no significant pain with rotation and 5-/5 rotator cuff strength. Dr. Carvajal discussed arthroscopic surgery to treat the diagnosed right shoulder condition.

In an April 25, 2012 report, Dr. Aizik L. Wolf, a Board-certified neurosurgeon, noted appellant's complaints of decreased sensation in his right hand along the C6-7 distribution, which he attributed to a fall at work on August 22, 2011. He obtained a history of appellant's medical treatment. Dr. Wolf listed findings on physical, motor, sensory examination and diagnostic testing. He diagnosed cervical spondylosis for which appellant preferred to treat with surgery. In a May 15, 2012 preoperative clearance form, Dr. Wolf indicated that appellant was scheduled for an anterior cervical microdiscectomy and a fusion at C5-6 and C6-7 on May 18, 2012.

In a May 29, 2012 report, Dr. David M. Scholl, a Board-certified internist, advised that appellant had been under his care for chronic neck and bilateral shoulder pain, the right shoulder was worse than the left, which occurred after an August 22, 2011 work injury. He advised that appellant was currently unable to work as a result of his shoulder pain.

By letter dated June 6, 2012, OWCP advised appellant that the evidence submitted was insufficient to establish that he was disabled during the claimed period due to his accepted work injury. It requested that he submit medical evidence, including a rationalized medical opinion from an attending physician explaining the causal relationship between his current right shoulder and cervical conditions and accepted injury.

A June 5, 2012 duty status report contained an illegible signature and stated that appellant was unable to work due to his shoulder and neck pain.

In an April 2, 2012 report, Dr. Germaine Rodriguez, a Board-certified radiologist, advised that an MRI scan of appellant's cervical spine demonstrated a broad-based bulging disc at C3-4 and C7-T1 and central disc herniation at C4-5, C5-6 and C6-7. There was no stenosis of the spinal canal. There was stenosis of the neural foramina at C4-5, C5-6 and C6-7. On April 11, 2012 Dr. Rodriguez performed a MRI scan of appellant's lumbar spine and bilateral shoulders. The lumbar MRI scan revealed a broad based bulging disc at L1-2, L3-4, L4-5 and L5-S1. There was no stenosis of the spinal canal. There was stenosis of the neural foramina. The MRI scans of the right and left shoulder showed a complete tear of the distal supraspinatus tendon at its insertion site with retraction of the tendon. The right shoulder also had small joint effusion and subacromial-subdeltoid bursitis and mild hypertrophic change of the acromioclavicular joint. The left shoulder also had subacromial-subdeltoid bursitis and no joint

effusion. On May 15, 2012 Dr. Rodriguez reported that an x-ray of appellant's chest showed no acute cardiopulmonary process.

In a July 31, 2012 decision, OWCP denied appellant's claim for compensation from May 9 through June 1, 2012, finding that the medical evidence did not establish that he was totally disabled during the claimed period due to his accepted August 20, 2011 employment injury.

By letter dated August 14, 2012, appellant, through his attorney, requested a telephone hearing with an OWCP hearing representative.

In a November 6, 2011 report, Dr. Scholl obtained a history of the August 20, 2011 employment injury. He also obtained a history of appellant's neck pain that resulted from a military accident that occurred over 20 years ago, but stated that appellant was able to work and perform his daily activities of living without any problems prior to his work accident. Dr. Scholl reviewed the April 2012 MRI scans of the bilateral shoulders and cervical spine. He advised that appellant was unable to work from May through June 2012 due to the severity and intensity of chronic pain in his shoulders, neck and low back. An attempt to return to work with his pain would have made appellant's work environment dangerous for others. Dr. Scholl stated that appellant experienced paralysis in his right arm and hand as a result of performing his normal job duties after the work incident. The above-mentioned problems had been chronically aggravated by the performance of his normal job duties soon after his injury. Dr. Scholl concluded that appellant's injuries were not strains and they did not improve after six weeks.

In reports dated July 24 and August 27, 2012, Dr. Wolf noted that appellant was doing well, but he still had muscular stiffness on the right side of his neck and mild neck spasms. He listed findings on physical, neurologic, motor and sensory examination and diagnostic testing. Dr. Wolf diagnosed cervical spondylosis at the C5-6 and C6-7 and musculoskeletal pain.

In a January 31, 2013 decision, an OWCP hearing representative affirmed the July 31, 2012 decision. She found that the medical evidence was not sufficiently rationalized to establish appellant's entitlement to wage-loss compensation for total disability from May 9 through June 1, 2012 causally related to his accepted employment injury.

LEGAL PRECEDENT

With respect to a claimed period of disability, an employee has the burden of establishing that any disability or specific condition for which compensation is claimed is causally related to the employment injury.² The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.³

² *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ 20 C.F.R. § 10.5(f); *see e.g.*, *Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury but no loss of wage-earning capacity).

Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.⁴ The medical evidence required to establish a period of employment-related disability is rationalized medical evidence.⁵ Rationalized medical evidence is medical evidence based on a complete factual and medical background of the claimant, of reasonable medical certainty, with an opinion supported by medical rationale.⁶ The Board, however, 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.⁷ To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.⁸

ANALYSIS

OWCP accepted that appellant sustained a cervical strain on August 20, 2011 while working as a distribution clerk. Appellant claimed compensation for disability from May 9 to June 1, 2012. OWCP denied his claim on the grounds that the evidence was insufficient to establish that the claimed disability was due to his accepted cervical injury. Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his claimed disability and the accepted condition.⁹ The Board finds that he did not submit sufficient medical evidence to establish employment-related disability for the period claimed due to his accepted injury.

Dr. Scholl's May 29, 2012 report found that appellant developed chronic neck and bilateral shoulder pain following his August 22, 2011 work injury. He opined that appellant was unable to work due to his bilateral shoulder pain. Dr. Scholl provided an incorrect date for the accepted employment injury. As stated, medical reports must be based on a complete and accurate factual and medical background;¹⁰ medical opinions based on an incomplete or inaccurate history are of diminished probative value.¹¹ Furthermore, Dr. Scholl has not provided a medical diagnosis other than neck and bilateral shoulder pain. The Board has consistently held that pain is a symptom, not a compensable medical diagnosis.¹² Dr. Scholl did not explain how appellant's condition and disability were caused by the accepted August 20, 2011 employment

⁴ See *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁵ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁶ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁷ *Sandra D. Pruitt*, 57 ECAB 126 (2005).

⁸ See *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, *supra* note 4.

⁹ *Alfredo Rodriguez*, 47 ECAB 437 (1996).

¹⁰ *Leslie C. Moore*, *supra* note 6.

¹¹ *Douglas M. McQuaid*, 52 ECAB 382 (2001).

¹² *C.F.*, Docket No. 08-1102 (issued October 10, 2008); *Robert Broome*, 55 ECAB 339 (2004).

injury.¹³ Similarly, in his November 6, 2011 report, Dr. Scholl opined that appellant was unable to work from May to June 2012 due to severe, intense and chronic bilateral shoulder, neck and low back pain, but he did not provide a rationalized medical opinion with respect to the causal relationship between the diagnosed condition and disability and the August 20, 2011 work injury. Instead, he attributes appellant's disability aggravation of his shoulders, neck and low back pain, to his regular work duties that he performed following the accepted injury, which would constitute a new work factor. Dr. Scholl also failed to provide sufficient medical rationale explaining how residuals of the accepted cervical strain were disabling.¹⁴ For the stated reasons, the Board finds that his reports are insufficient to establish appellant's claim.

Dr. Carvajal's April 23, 2012 report found that appellant had a rotator cuff tear of the right shoulder that required arthroscopic surgery. He listed findings on physical examination and reviewed diagnostic test results. Dr. Carvajal did not reference the August 20, 2011 employment injury or provide a medical opinion addressing how the accepted injury caused appellant's right shoulder condition and claimed disability from May 9 to June 1, 2012. Rather he related the condition to a fall in six weeks prior in early March 2012. The Board has held that a physician's opinion, which does not address causal relationship, is of diminished probative value.¹⁵ The Board finds, therefore, that Dr. Carvajal's report is insufficient to establish appellant's claim.

Likewise, the reports and preoperative clearance form of Dr. Wolf, which found that appellant had cervical spondylosis at C5-6 and C6-7 that required an anterior cervical microdiscectomy and fusion and the diagnostic test results of Dr. Rodriguez, which addressed appellant's cervical, lumbar, bilateral shoulder and chest conditions are insufficient to establish appellant's claim. Neither physician provided a medical opinion addressing whether the diagnosed conditions and total disability during the claimed period were caused by the accepted employment injury.¹⁶

The June 5, 2012 duty status report which contained an illegible signature has no probative value in establishing that appellant has any employment-related disability during the claimed period, as it is not clear whether a physician as defined under FECA prepared the report. It is well established that medical evidence lacking proper identification is of no probative medical value.¹⁷

Appellant failed to submit rationalized medical evidence establishing that his disability from May 9 to June 1, 2012 resulted from residuals of his accepted employment-related cervical condition.

¹³ *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

¹⁴ *Dean E. Pierce*, 40 ECAB 1249 (1989).

¹⁵ *See A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

¹⁶ *Id.*

¹⁷ *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004); *Merton J. Sills*, 39 ECAB 572 (1988).

On appeal, appellant's attorney contends that OWCP's January 31, 2013 decision is contrary to fact and law. For reasons stated above, the Board finds that appellant did not submit sufficient evidence establishing his entitlement to disability compensation 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 failed to establish that he was totally disabled from May 9 to June 1, 2012 due to his August 20, 2011 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the January 31, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 18, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board