

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

_____)	
G.H., Appellant)	
)	
and)	Docket No. 17-1893
)	Issued: August 23, 2018
U.S. POSTAL SERVICE, POST OFFICE,)	
Collierville, TN, Employer)	
_____)	

Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On September 7, 2017 appellant, through counsel, filed a timely appeal from an August 11, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.³

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

³ The case record provided to the Board includes evidence received after OWCP issued its August 11, 2017 decision. The Board's jurisdiction is limited to the evidence that was before OWCP at the time of its final decision. Therefore, the Board is precluded from considering this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

ISSUE

The issue is whether appellant met her burden of proof to establish total disability from work on September 7, 2016 and commencing December 17, 2016 causally related to her accepted right shoulder condition.

FACTUAL HISTORY

On December 3, 2015 appellant, then a 54-year-old rural mail carrier, filed a traumatic injury claim (Form CA-1) alleging that, on December 2, 2015, her right shoulder popped when she opened the door of her long life vehicle (LLV). OWCP accepted the claim for sprain of right rotator cuff capsule.

Appellant stopped work on December 2, 2015. She returned to full-time modified work on February 20, 2016 and worked until February 23, 2016. Appellant again stopped work on February 24, 2016 as the employing establishment was unable to accommodate new restrictions regarding her right arm from Dr. John J. Lochemes, a Board-certified orthopedic surgeon. OWCP paid appellant wage-loss compensation benefits from February 24 until April 26, 2016 as the employing establishment withdrew light duty. Appellant returned to full-duty work on April 26, 2016 based upon Dr. Lochemes' April 20, 2016 opinion.

In a May 3, 2016 report, Dr. Lochemes reported appellant's continued complaints of right shoulder pain. He provided a cortisone injection into the right shoulder and released her to light-duty work with no reaching overhead. Appellant accepted a full-time modified position on May 6, 2016.

In a May 26, 2016 report, Dr. Lochemes reported nearly full range of motion and a bit of impingement pain. He added an hour to appellant's driving time for a total of 2.5 hours and released her to full duty effective June 11, 2016. Appellant returned to full-duty work on June 11, 2016. Dr. Lochemes continued to allow appellant to perform full-duty work.

In an August 30, 2016 report, Dr. Lochemes noted appellant's complaints of right shoulder pain and a new complaint of numbness and tingling in the fingers (6-7 nerve distribution). A cervical x-ray demonstrated no acute abnormalities. Dr. Lochemes indicated that he was trying to sort out whether she was suffering cervical spine or rotator cuff problems. He released appellant to full duty.

In a September 13, 2016 report, Dr. Lochemes reviewed appellant's September 7, 2016 magnetic resonance imaging (MRI) scan of her cervical spine. He diagnosed cervical radiculopathy at C4-C5, annular tear of cervical disc, and sprain of right rotator cuff capsule. Dr. Lochemes released appellant to full duty.

Appellant continued to complain of cervical pain and right shoulder pain. In a September 29, 2016 report, Dr. Lochemes reported that appellant wanted to return to work with restrictions. He released appellant to light-duty work with permanent restrictions.

In a December 1, 2016 report, Dr. Lochemes' examination revealed generalized pain and stiffness in the neck with limited motion in extension. He noted possible right shoulder C5 radicular symptoms, but no weakness in the shoulder. Dr. Lochemes' diagnosed cervical

radiculopathy and cervical spondylosis. Appellant was to resume modified light duty with restrictions.

Appellant stopped work on December 17, 2016 and has not returned.⁴

In a December 27, 2016 report, Dr. Lochemes reported appellant's continued complaints of elusive cervical pain and right shoulder pain which appeared to be related to impingement. A diagnosis of cervical radiculopathy, cervical spondylosis, annular tear of cervical disc, supraspinatus tear right shoulder, and tendinosis right shoulder was provided. Dr. Lochemes noted that appellant could resume modified light duty with restrictions. He ordered a functional capacity evaluation (FCE), which appellant underwent on January 5, 2017.

On January 9, 2017 appellant filed a claim for compensation (Form CA-7) for medical appointments for 16 hours for September 7 and 13, 2016. The employing establishment certified 16 hours total leave without pay (LWOP) for the above dates.

On January 19, 2017 appellant filed a Form CA-7 for total disability for the period December 17 to 30, 2016 and continuing.

In a January 23, 2017 development letter, OWCP informed appellant that the medical evidence of record was insufficient to support her claims for compensation. It noted that the medical evidence for September 7 and 13, 2016 pertained to medical treatment for a cervical condition which had not been accepted as work related. With regards to the claimed total disability beginning December 17, 2016, OWCP noted that Dr. Lochemes had released her to full duty on April 20, 2016. It advised that she must submit medical evidence which explained how her accepted condition had worsened such that she was no longer able to perform the duties of her position. Appellant was afforded 30 days to submit the additional evidence.

Medical reports from Dr. Lochemes dated September 29 through December 1, 2016 were received. In a January 11, 2017 report, Dr. Lochemes reported that appellant presented for reevaluation of cervical annular tear at C4-C5 with spinal stenosis and supraspinatus tendon tear. He also reported the results of the FCE, noting that it demonstrated some issues with lifting. Dr. Lochemes provided an assessment of annual tear of cervical disc, supraspinatus tear of right shoulder, tendinosis of right shoulder, and cervical radiculopathy. Appellant was released to work with permanent restrictions.

In a February 9, 2017 report, Dr. Lochemes indicated that appellant's cervical annular tear at C4-C5 with spinal stenosis and supraspinatus tendon tear were essentially unchanged. Appellant reported some difficulty with reaching the seatbelt and reaching out the right window repetitively with the shoulder. Dr. Lochemes felt that she would not do well delivering mail from a motorized vehicle and modified her restrictions to include no driving company vehicle.

⁴ Appellant filed an occupational disease claim (Form CA-2) on January 25, 2017 to which OWCP assigned OWCP File No. xxxxxxxx585.

By decision dated March 6, 2017, OWCP denied appellant's claim for attending medical appointments on September 7 and 13, 2016 as there was no evidence of record that she had sought treatment for her accepted work-related condition on the claimed dates.

By decision also dated March 6, 2017, OWCP denied appellant's claim for total disability compensation from December 17, 2016 and continuing. It found that the medical evidence of record did not substantiate that her disability was caused by the accepted work-related medical condition. OWCP noted that appellant was released and returned to full-duty work for the accepted condition and that she was receiving medical treatment for a nonaccepted cervical condition.

On July 28, 2017 appellant, through counsel, requested reconsideration. She resubmitted a copy of the September 6, 2016 MRI scan of her cervical spine.

Medical reports from Dr. Lochemes dated January 11, February 9, and March 29, 2017 discussed appellant's cervical annular tear at C4-C5 with spinal stenosis and supraspinatus tendon tear. Dr. Lochemes continued to opine that appellant could return to work with permanent restrictions. In his March 29, 2017 report, he reported that appellant continued to complain of some neck and shoulder issues particularly when driving for her job. Dr. Lochemes advised that he did not have a strong argument to causally connect her neck to her other pathology because there was no mechanism of injury other than she delivered mail and may have turned her head right and left a lot.

In an April 26, 2017 report, Dr. Stephen Waggoner, a Board-certified orthopedic surgeon, noted the history of the injury. He reported that appellant complained mainly of pain in the anterior shoulder that was worsened by overhead activity and some neck pain. Dr. Waggoner provided an assessment of impingement syndrome of right shoulder, sprain of right rotator cuff capsule, and incomplete tear of right rotator cuff. He released appellant to light duty with restrictions.

In a May 11, 2017 report, Dr. Christopher M. Pokabla, an orthopedic surgeon, noted the history of the work injury and appellant's medical course, including her cervical issues. He reported examination findings of the right shoulder, took x-rays, and reviewed a December 23, 2015 right shoulder MRI scan. Dr. Pokabla provided an assessment of incomplete tear of right rotator cuff. He opined that appellant could return to light duty with restrictions.

On May 24, 2017 appellant underwent an MRI scan of her right shoulder. In a June 2, 2017 report, Dr. Pokabla noted the results of the right shoulder MRI scan and noted that surgical clearance was needed for incomplete tear of right rotator cuff. He also assessed cervical radiculopathy. Dr. Pokabla released appellant to light-duty work status with restrictions.

In a July 5, 2017 report, Dr. John D. Brophy, a Board-certified neurologist, evaluated appellant's right upper extremity symptoms. He noted the history of injury, appellant's medical course, and that she had been off work since November 2016. Dr. Brophy provided an impression of cervical/trapezius myofascial pain associated with cervical spondylosis without clinical evidence of radiculopathy or myelopathy and right shoulder joint pain. He opined that there was no indication for surgical intervention related to her cervical spondylosis. In a July 21, 2017 report, Dr. Brophy discussed the September 7, 2016 cervical MRI scan results and opined that surgical intervention was not indicated.

In a July 6, 2017 priority for assignment worksheet, the employing establishment indicated that they were unable to accommodate appellant's work restrictions.

By decision dated August 11, 2017, OWCP modified the March 6, 2017 decision in part to reflect payment for eight hours on September 13, 2016 as appellant attended the medical appointment, in part, to check on her work-related shoulder condition. The remainder of the March 6, 2017 decisions regarding denial of payment for the medical appointment on September 7, 2016 and denial of the claimed total disability from December 17, 2016 and continuing were affirmed.

LEGAL PRECEDENT

Under FECA,⁵ the term disability is defined as incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.⁶ Whether a particular injury causes an employee to be disabled from work and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative, and substantial medical evidence.⁷ Findings on examination are generally needed to support a physician's opinion that an employee is disabled from work. When a physician's statements consist only of a repetition of the employee's complaints that excessive pain caused an inability to work, without making an objective finding of disability, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.⁸ The Board will not require OWCP to pay compensation for disability without 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.⁹

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.¹⁰ To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such causal relationship.¹¹ 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 specific employment factors identified by the claimant.¹² Neither the mere fact that a disease

⁵ *Supra* note 2.

⁶ *See Prince E. Wallace*, 52 ECAB 357 (2001).

⁷ *See Fereidoon Kharabi*, 52 ECAB 291, 293 (2001); *Edward H. Horton*, 41 ECAB 301, 303 (1989).

⁸ *G.T.*, 59 ECAB 447 (2008); *see Huie Lee Goal*, 1 ECAB 180, 182 (1948).

⁹ *Id.*

¹⁰ *Jaja K. Asaramo*, 55 ECAB 200 (2004).

¹¹ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

¹² *James Mack*, 43 ECAB 321 (1991).

or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹³

ANALYSIS

The Board finds that appellant has not established that she was entitled to wage-loss compensation on September 7, 2016 and commencing December 17, 2016 causally related to her accepted right shoulder condition.

There is, however, no probative evidence of record that appellant's medical appointment on September 7, 2016, during which she underwent a cervical MRI scan, was for treatment of her accepted work-related right shoulder condition.¹⁴ The record therefore does not establish that appellant was entitled to wage-loss compensation on September 7, 2016.¹⁵

Furthermore, the medical evidence of record does not establish that appellant was totally disabled on or after December 17, 2016 causally related to her accepted employment condition of right rotator cuff capsule strain.¹⁶

Appellant has the burden of proving by the weight of the substantial, reliable, and probative evidence a causal relationship between her claimed disability on or after December 17, 2016 and the accepted December 2, 2015 employment injury.¹⁷ The reports of her physicians do not provide a rationalized medical opinion substantiating that appellant was disabled from work on or after December 17, 2016 due to her accepted sprain of right rotator cuff capsule. Therefore, the medical evidence submitted is insufficient to meet appellant's burden of proof.¹⁸

Dr. Lochemes treated appellant on a number of occasions for her right shoulder injury. He released appellant to return to full-duty work as of June 11, 2016. On December 1, 2016 Dr. Lochemes diagnosed cervical radiculopathy and cervical spondylosis and related that appellant could resume modified light-duty work. However, these cervical conditions were not accepted as employment related. Appellant bears the burden of proof to establish that a diagnosed condition is causally related to the employment injury.¹⁹ On December 27, 2016 Dr. Lochemes noted that appellant had continued elusive cervical and right shoulder pain complaints. He diagnosed

¹³ *V.W.*, 58 ECAB 428 (2007); *Ernest St. Pierre*, 51 ECAB 623 (2000).

¹⁴ *M.B.*, Docket No. 06-0701 (issued December 4, 2006); *Thomas Lee Cox*, 54 ECAB 509 (2003); *Stella M. Bohlig*, 53 ECAB 341 (2002).

¹⁵ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Administrative Matters*, Chapter 3.900.8 (November 1998); see also *Daniel Hollars*, 51 ECAB 355 (2000); *Jeffrey R. Davis*, 35 ECAB 950 (1984).

¹⁶ 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. *L.L.*, Docket No. 13-2146 (issued March 12, 2014). See also *William A. Archer*, 55 ECAB 674, 679 (2004).

¹⁷ See *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001); see also *Amelia S. Jefferson*, 57 ECAB 183 (2005).

¹⁸ *Alfredo Rodriguez*, 47 ECAB 437 (1996).

¹⁹ *Jaja K. Asaramo*, 55 ECAB 200 (2004).

cervical radiculopathy, cervical spondylosis, annular tear of the cervical disc, supraspinatus tear of the right shoulder, and tendinosis of the right shoulder. Dr. Lochemes did not note appellant's accepted right shoulder conditions. In his March 29, 2017 report, he noted that he did not have a strong argument to causally connect appellant's neck conditions to her other pathology because there was no mechanism of injury other than she delivered mail and may have turned her head right and left a lot. It is noted that appellant failed to provide a sufficient explanation as to the mechanism of injury pertaining to this traumatic injury claim, namely, how the traumatic injury of December 2, 2015 would cause or aggravate her neck conditions.²⁰ As such, Dr. Lochemes' reports are of limited probative value and insufficient to meet appellant's burden of proof.²¹

In his April 26, 2017 report, Dr. Waggoner diagnosed sprain of right rotator cuff capsule, as well as impingement syndrome of the right shoulder and incomplete tear of right rotator cuff. He released appellant to light duty with restrictions. Dr. Waggoner released appellant to light-duty work, but offered no opinion as to whether appellant was totally disabled as of December 17, 2016 due to the accepted condition. Since Dr. Waggoner's report did not specifically address appellant's accepted condition and dates of disability, his report is insufficient to establish appellant's burden of proof.²²

In medical reports dated May 11 and June 2, 2017, Dr. Pokabla diagnosed appellant with incomplete tear of right rotator cuff and released appellant to light duty with restrictions. While Dr. Pokabla noted the history of the December 2, 2012 work injury, he failed to provide any opinion that appellant's right shoulder condition and possibility of elective surgery were caused or aggravated by the December 2, 2015 work injury.²³ Thus, Dr. Pokabla's reports are insufficient to meet appellant's burden of proof.

In a July 5, 2017 report, Dr. Brophy provided an impression of cervical/trapezius myofascial pain associated with cervical spondylosis without clinical evidence of radiculopathy or myelopathy and right shoulder joint pain. He indicated in his July 5 and 21, 2017 reports that surgical intervention related to the cervical spondylosis was not indicated. While he had some knowledge of appellant's employment injury, Dr. Brophy failed to provide any opinion that the conditions diagnosed were caused or aggravated by the December 2, 2015 employment injury.²⁴ Thus, his reports are insufficient to meet appellant's burden of proof.

The FCE and MRI scan testing are of no probative value on appellant's claim for wage-loss compensation as they do not establish disability or provide an opinion that the diagnosed

²⁰ S.W., Docket 08-2538 (issued May 21, 2009).

²¹ See L.M., Docket No. 14-0973 (issued August 25, 2014); R.G., Docket No. 14-0113 (issued April 25, 2014); K.M., Docket No. 13-1459 (issued December 5, 2013); A.J., Docket No. 12-0548 (issued November 16, 2012).

²² *Supra* note 10.

²³ See *supra* note 17.

²⁴ *Id.*

conditions are causally related to the December 2, 2015 employment injury and support that conclusion with sound medical reasoning.²⁵

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.²⁶ Because appellant has not submitted reasoned medical opinion evidence to establish employment-related disability on or after December 17, 2016 as a result of her accepted sprain of right rotator cuff capsule, the Board finds that appellant has not met her burden of proof to establish her claim for disability compensation.

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 established total disability from work on September 7, 2016 and commencing December 17, 2016 causally related to her accepted right shoulder condition.

²⁵ See *Sandra D. Pruitt*, 57 ECAB 126 (2005).

²⁶ See *supra* note 17.

ORDER

IT IS HEREBY ORDERED THAT the August 11, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 23, 2018
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