

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

S.G., Appellant)	
)	
and)	Docket No. 18-1076
)	Issued: April 11, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Phoenix, AZ, Employer)	
)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 2, 2018 appellant, through counsel, filed a timely appeal from an April 11, 2018² merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the

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 The Board notes that on April 12, 2018 the OWCP claims examiner forwarded appellant a copy of the hearing representative's decision. The Board finds that the proper decision on appeal is the April 11, 2018 decision of the hearing representative.

Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.⁴

ISSUE

The issue is whether appellant has met her burden of proof to establish intermittent periods of disability commencing January 12, 2017, causally related to her accepted employment injury.

FACTUAL HISTORY

On January 12, 2017 appellant, then a 48-year-old city letter carrier, filed an occupational disease claim (Form CA-2) alleging that repetitive pushing, pulling, and lifting required in the performance of her federal employment accelerated her nonreparable rotator cuff condition. She noted that she first became aware of her condition on December 3, 2015 and realized its relation to her federal employment on January 11, 2017.⁵ Appellant stopped work on January 11, 2017. OWCP accepted the claim for right shoulder bicipital tendinitis and impingement syndrome of right shoulder.

On June 8, 2017 appellant filed a claim for compensation (Form CA-7) for intermittent disability for the period January 12 through April 17, 2017, which she attributed to her shoulder injuries.

In a February 15, 2017 duty status report (Form CA-17), a certified physician assistant with an illegible signature, noted appellant's restrictions due to her right shoulder chronic rotator cuff tear.⁶

Medical reports dated 2015 through 2017 from Dr. Brent Hansen, an osteopath and Board-certified orthopedic surgeon, were submitted. In a January 24, 2017 progress note, Dr. Hansen noted that appellant reported difficulty casing mail and carrying letters. He indicated that her examination was essentially unchanged and that her weakness was consistent with a chronic rotator cuff pathology. Dr. Hansen diagnosed of chronic retracted rotator cuff tear right shoulder, right

³ 5 U.S.C. § 8101 *et seq.*

⁴ The Board notes that, following the April 11, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

⁵ Medical reports of record from 2009 indicate that appellant had a nonindustrial right shoulder injury approximately three and a half years prior for which she was diagnosed with impingement syndrome, rotator cuff tear with right upper extremity acromioclavicular (AC) joint arthrosis, osteoarthritis, and rotator cuff (traumatic) strain/sprain with tear-massive. Appellant underwent surgery for her rotator cuff tear on May 21, 2009. She returned to full-duty work without restrictions on August 27, 2009.

⁶ On April 3, 2017 an unknown physician countersigned the February 15, 2017 Form CA-17, which had provided restrictions for right shoulder chronic rotator cuff tear.

shoulder subacromial impingement, right shoulder bicep tendinitis, and right shoulder weakness and pain. He opined that appellant was temporarily disabled from work until further notice.

In a January 25, 2017 report, Dr. Hansen indicated that appellant had a possibly inoperable, if not irreparable, rotator cuff tear which significantly impacted her ability to work and perform daily activities. He explained that the repetitive nature of the pushing, pulling, driving, and delivering mail in appellant's work "can and will accelerate or further agitate and deteriorate her condition." Dr. Hansen indicated that appellant was able to return to work on January 12, 2017 as long as her work restrictions were maintained. He diagnosed rotator cuff tear/rupture of the right shoulder, impingement syndrome of the right shoulder, biceps tendinitis, and pain.

In a January 27, 2017 form, an unknown provider from OrthoArizona provided work restrictions for appellant's right shoulder severe chronic rotator cuff tear.

In a February 15, 2017 report, Dr. Hanson noted that appellant had not been allowed to return to work with her previously described restrictions. He reported that appellant's examination was unchanged. Dr. Hanson provided an assessment of right shoulder pain, right shoulder chronic rotator cuff tear, and right biceps tendinitis. Right shoulder surgery was discussed.

On June 16, 2017 appellant returned to full-time, full-duty work with no restrictions.

In a June 21, 2017 report, Dr. Hansen provided an assessment of right subacromial impingement, right previous rotator cuff tear and repair, right shoulder partial rotator cuff retear, and right shoulder bicipital tendinitis. He indicated that appellant had been doing well from her previous rotator cuff surgery until her December 2015 injury. Dr. Hansen noted that appellant's work restrictions were based on initial findings of bicipital problems, impingement, and partial tearing of the rotator cuff. He indicated that she could work within her current work restrictions.

By development letter dated July 3, 2017, OWCP informed appellant that the evidence submitted in support of her claim for wage-loss compensation was insufficient to establish disability for the claimed period due to the accepted right shoulder conditions. It noted that the condition of right shoulder chronic rotator cuff tear had not been accepted as part of this claim. OWCP advised appellant of the type of medical evidence needed and afforded her 30 days to submit additional evidence.

The employing establishment reported that appellant returned to work with restrictions on July 25, 2017.

By decision dated August 29, 2017, OWCP denied appellant's claim for intermittent periods of disability commencing January 12, 2017. It found that the medical evidence submitted did not support intermittent periods of temporary total disability commencing January 12, 2017 based on the accepted work-related medical conditions.

In a September 6, 2017 letter, appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative, which was held on February 5, 2018. Appellant testified that, after she developed her employment-related condition, her physician provided new restrictions effective January 12, 2017, but no work was available within the new restrictions.

In a February 27, 2018 statement, the employing establishment noted since appellant had not yet filed a claim on January 12, 2017 it had considered her request to work with restrictions light duty (usually an off-the-job injury) and provided work within her restrictions only when available. After appellant had filed her claim, it provided her with an April 17, 2017 job offer, which she accepted. The employing establishment advised that, since OWCP had not accepted the right shoulder chronic rotator cuff tear condition, it had changed appellant's assignment from limited duty to light duty. It noted that appellant's work restrictions had not changed since January 11, 2017.

In monthly progress reports and duty status reports from August 23, 2017 onwards, Dr. Hansen continued to diagnose right shoulder pain, subacromial impingement, chronic rotator cuff tear, and biceps tendinitis. He indicated that appellant's examination and current work restrictions were unchanged. In his August 23, 2017 report, Dr. Hansen opined that even though appellant's rotator cuff condition was not caused by work, this condition had been aggravated by her employment duties. In an October 31, 2017 report, Dr. Hansen opined that appellant's current position at work should be made permanent. In a November 16, 2017 report, he indicated that appellant's chronic shoulder pain had been accelerated and aggravated by her employment injury. Dr. Hansen also clarified appellant's restrictions.

On December 8, 2017 appellant filed a claim for compensation (Form CA-7) claiming disability due to a material change/worsening of her accepted work-related conditions.

In a December 22, 2017 development letter, OWCP noted that appellant had returned to work on June 20, 2017 in a full-time, full-duty capacity and had a second return to work on July 26, 2017 in a limited-duty capacity. It requested that she provide factual and medical evidence to substantiate that her disability occurred because of a spontaneous change in her medical condition which necessitated a work stoppage or that a limited-duty assignment was withdrawn. Appellant was afforded 30 days to provide the requested information.

In a January 15, 2018 questionnaire, appellant indicated that she did not have a recurrence of disability based on a change in her medical condition. Rather, she indicated that her limited-duty position was withdrawn. Appellant noted that she worked limited duty from April 17 to December 28, 2017 and that the employing establishment withdrew that assignment on December 28, 2017. Copies of an April 17, 2017 job offer was provided along with requests for or notification of absence.

In a January 11, 2018 report, Dr. Hansen noted that it was his understanding that the withdrawal of appellant's April 17, 2017 job offer was administrative. He indicated that appellant's right shoulder condition had remained unchanged since her claim was accepted and that all Form CA-7s submitted had been due to the employing establishment not providing work. Dr. Hansen further indicated that because of appellant's preexisting chronic rotator cuff tear, the impingement syndrome and bicipital tendinitis had been permanently aggravated once the initial injury occurred. He also opined that the April 17, 2017 job offer should be reinstated and made permanent as appellant had tolerated that assignment.

Progress notes and duty status reports (Form CA-17) from Dr. Hansen were received along with additional claims for compensation (Form CA-7) from appellant. In a February 7, 2018

report, Dr. Hansen opined that appellant's underlying cuff tear arthropathy was most likely aggravated if not caused by her years of work and previous surgeries to her shoulders. In a March 26, 2018 report, he opined that appellant's January 12, 2017 restrictions should remain in place until further notice.

By decision dated April 11, 2018, an OWCP hearing representative affirmed OWCP's August 29, 2017 decision.

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.⁷ 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.⁸ 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.⁹

Under FECA the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.¹⁰ Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.¹¹ An employee who has a physical impairment causally related to his or her federal employment, but who nonetheless has the capacity to earn the wages that he or she was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.¹² When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for any loss of wages.¹³

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.¹⁴ The evidence submitted must be reliable, probative, and substantial.¹⁵ The physician's opinion must be based on the facts of the case and

⁷ See *B.K.*, Docket No. 18-0386 (issued September 14, 2018); see also *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Nathaniel Milton*, 37 ECAB 712 (1986).

⁸ See *D.G.*, Docket No. 18-0597 (issued October 3, 2018); *Amelia S. Jefferson*, *id.*

⁹ See *Edward H. Horton*, 41 ECAB 301 (1989).

¹⁰ *S.M.*, 58 ECAB 166 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); 20 C.F.R. § 10.5(f).

¹¹ *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

¹² *Merle J. Marceau*, 53 ECAB 197 (2001).

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

¹⁴ *D.W.*, Docket No. 18-0644 (issued November 15, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁵ *Id.*

the complete medical background of the employee, must be one of reasonable medical certainty, and must include objective findings in support of its conclusions.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. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.¹⁷

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish intermittent periods of disability commencing January 12, 2017, causally related to her accepted employment injury. The record reflects that appellant has a preexisting, nonwork-related right shoulder rotator cuff tear for which she underwent surgery and was released to full-duty work without restrictions in August 2009.¹⁸ OWCP accepted the conditions of right shoulder bicipital tendinitis and right shoulder impingement as causally related to her accepted January 12, 2017 employment injury.

In support of her claim for wage-loss compensation, appellant submitted reports from her treating physician, Dr. Hansen. In his January 24 and 25, 2017 reports, Dr. Hansen related that appellant's examination was essentially unchanged and that her shoulder weakness was consistent with chronic rotator cuff pathology. He further explained in his January 25, 2017 report that her rotator cuff condition significantly impacted her ability to work. Dr. Hansen further related that appellant was able to return to work as of January 12, 2017 as long as her work restrictions remained the same. However, he offered no objective findings or medical rationale as to why appellant's accepted conditions caused disability.¹⁹ Rather, Dr. Hansen attributed appellant's work restrictions to her prior nonwork-related rotator cuff pathology.

In his June 21, 2017 report, Dr. Hansen indicated that appellant had been doing well following her previous rotator cuff surgery, until December 2015. He also noted that appellant's work restrictions were based on initial findings of bicipital problems, impingement and partial tearing of the rotator cuff. While Dr. Hansen added the accepted conditions to his opinion that appellant required work restrictions, a conclusory medical opinion without additional explanation as to how the accepted conditions caused disability is of limited probative value.²⁰ Similarly, while in his August 23, 2017 report, he offered an opinion that appellant's rotator cuff tear had been aggravated by her "working conditions," his opinion was conclusory in nature and not supported by rationalized medical opinion.

¹⁶ 20 C.F.R. § 10.501(a)(2).

¹⁷ See *B.K.*, *supra* note 7; *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹⁸ See *supra* note 4.

¹⁹ *A.M.*, Docket No. 09-1895 (issued April 23, 2010); *Ricky S. Storms*, 52 ECAB 349 (2001).

²⁰ See *R.T.*, Docket No. 15-0907 (issued August 18, 2015).

In his January 11, 2018 report, Dr. Hansen indicated that appellant's right shoulder condition had remained unchanged since her claim was accepted and that appellant claimed disability wage-loss compensation by filing Forms CA-7 because the employing establishment had not provided appellant work within her restrictions. He then indicated that appellant had a preexisting chronic rotator cuff tear, and her accepted employment factors permanently aggravated her right shoulder impingement syndrome and bicipital tendinitis. The issue, however, is not whether the accepted employment factors caused the accepted conditions. Rather, the issue is whether the accepted conditions caused disability. Dr. Hansen offered no objective findings from the dates in question which would substantiate that appellant required work restrictions due to her accepted conditions.²¹

In his remaining reports, Dr. Hansen continued to note that appellant's examination was unchanged and that her restrictions which went into effect on January 12, 2017 should remain in place. Again, he offered no objective findings from the dates in question which would substantiate that appellant could not perform her employment duties based on the accepted work-related medical conditions.²²

The February 15, 2017 Form CA-17 duty status report and the January 27, 2017 report of work restrictions, were both signed by a physician with an illegible signature. As such, these reports which contained illegible signatures have no probative value as it is not established that either author is a physician.²³

As appellant has not provided medical evidence containing a rationalized opinion explaining why she was disabled from work for intermittent periods commencing January 12, 2017 causally related to her accepted employment conditions, the Board finds that she has not met her burden of proof.

On appeal counsel contends that appellant had described a classic spontaneous worsening and that the change in her restrictions constituted a change in her condition. As discussed above, the medical reports of record are insufficient to establish that appellant's disability was causally related to her accepted conditions during 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 not met her burden of proof to establish intermittent periods of disability commencing January 12, 2017, causally related to her accepted employment injury.

²¹ See *supra* note 13.

²² *Id.*

²³ See *D.D.*, 57 ECAB 734 (2006); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

ORDER

IT IS HEREBY ORDERED THAT the April 11, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 11, 2019
Washington, DC

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

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

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