

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

_____)	
F.P., Appellant)	
)	
and)	Docket No. 18-1677
)	Issued: April 27, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Dallas, NC, Employer)	
_____)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On September 4, 2018 appellant filed a timely appeal from a June 26, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.²

ISSUE

The issue is whether appellant has met her burden of proof to establish disability from work for intermittent periods from January 5 through May 13, 2016 causally related to her accepted March 15, 2005 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the June 28, 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.*

FACTUAL HISTORY

On March 26, 2005 appellant, then a 46-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on March 15, 2005 she sustained a right arm injury when her mail truck was struck by another vehicle as she was delivering mail while in the performance of duty. She stopped work on March 16, 2005. OWCP initially accepted appellant's claim for sprain/strain of the rotator cuff (capsule) of the right shoulder, and it later expanded the accepted conditions to include adhesive capsulitis of the right shoulder.³

On June 16, 2012 appellant returned to work for the employing establishment as a modified mail handler. By decision dated September 19, 2012, OWCP reduced her wage-loss compensation to zero effective June 16, 2012 to reflect that her actual earnings as a modified mail handler fairly and reasonably represented her wage-earning capacity. It determined that appellant's actual earnings met or exceeded the current wages of the job held when injured and therefore found that she had no loss in wage-earning capacity.

On November 28, 2012 Dr. Erik C. Johnson, a Board-certified orthopedic surgeon, performed OWCP-authorized right shoulder surgery, including arthroscopy with distal clavicle excision, subacromial decompression, and tenotomy of the long head of the biceps.

On December 2, 2015 appellant was treated by Dr. Kirsten D'Amore, a Board-certified in physical medicine and rehabilitation, for complaints of continued neck and bilateral shoulder pain. She reported physical examination findings, noting that appellant exhibited pain upon palpation and range of motion testing of her neck. Dr. D'Amore diagnosed chronic neck and bilateral shoulder pain, and she recommended a follow-up visit in three months.

In a March 9, 2016 report, Dr. Adelle Anthony-Williams, a Board-certified anesthesiologist, noted that appellant complained of "upper extremity injury/pain" and reported that her condition had been stable since her last appointment which was in December 2015. She detailed physical examination findings, noting that appellant moved all four of her extremities without difficulty. Dr. Anthony-Williams diagnosed chronic right shoulder pain and recommended a follow-up visit in three months. In reports dated June 8, September 7, November 30, 2016 and March 1, May 31, August 23, and November 15, 2017, she provided follow-up treatment and diagnosed several conditions including chronic shoulder pain, arthralgia of the right shoulder, and chronic pain syndrome.⁴

In an attending physician's report (Form CA-20) dated July 2, 2016, Dr. Johnson diagnosed left shoulder impingement with associated acromioclavicular joint arthritis and related this condition to the March 15, 2005 employment injury. He returned appellant to light-duty work. In reports dated August 29, November 14, December 21, 2016 and May 23, August 29, and September 14, 2017, Dr. Johnson further discussed his treatment of appellant's left shoulder

³ OWCP paid appellant wage-loss compensation benefits on the supplemental rolls from May 28 through June 10, 2005. In early-July 2005 she returned to work for the employing establishment in a modified position without wage loss. Appellant stopped work again on February 11, 2010 and OWCP paid her wage-loss compensation benefits on the supplemental rolls commencing February 11, 2010 and on the periodic rolls commencing June 6, 2010.

⁴ On July 21, 2016 Dr. Patrice Rodgers-Morales, a Board-certified family practitioner, diagnosed several conditions, including chronic pain syndrome and chronic shoulder arthralgia.

condition. In his August 29 and September 14, 2017 reports, he diagnosed incomplete tear of the rotator cuff of the left shoulder.

On December 13, 2017 appellant filed several wage-loss compensation claims (CA-7 forms) alleging entitlement to compensation for intermittent disability between January 5 and May 13, 2016 causally related to her accepted March 15, 2005 employment injury.⁵

In a development letter dated December 20, 2017, OWCP requested that appellant submit additional information to support her claim for intermittent disability including medical evidence establishing that her disability during this period was causally related to her accepted March 15, 2005 employment injury.

Appellant submitted an August 9, 2017 health care provider certificate from Dr. Johnson who diagnosed status post November 28, 2012 right shoulder surgery and detailed permanent work restrictions, including limits on lifting, pushing, pulling, and overhead work.

By several decisions dated January 24, 2018, OWCP denied appellant's disability claims for intermittent wage-loss compensation because she had not submitted sufficient medical evidence to establish the claimed disability causally related to her accepted March 15, 2005 employment injury.⁶

On May 16, 2018 appellant requested reconsideration of the January 24, 2018 decisions and submitted a January 19, 2018 report from Dr. Johnson who indicated that appellant missed work on January 5, March 11, 24, April 29, and May 8, 2016. He noted that it was within medical reasonability that appellant had to skip work on these days secondary to incapacitating left shoulder pain. In a February 20, 2018 report, Dr. Johnson discussed his treatment of appellant's left shoulder condition and diagnosed left shoulder incomplete rotator cuff tear, left shoulder acromioclavicular joint arthrosis, and "work-related injury."

Appellant also submitted February 7 and May 2, 2018 reports from Dr. Anthony-Williams who diagnosed several conditions, including chronic pain syndrome and arthralgia of the right shoulder.⁷ On February 15, 2018 Dr. Andrew M. Bruton, a Board-certified emergency medicine physician, treated appellant for bilateral shoulder pain.

By decision dated June 26, 2018, OWCP denied modification of its January 24, 2018 decision.

⁵ The claim forms identified the following specific periods, two of which overlap each other: January 5 to 8, 2016; March 11 to 24, 2016; March 19 to April 1, 2016; April 16 to 29, 2016; and April 30 to May 13, 2016.

⁶ OWCP issued five decisions dated January 24, 2018, each addressing one of appellant's claimed periods of disability. *See id.*

⁷ Appellant also submitted reports from Dr. Anthony-Williams dated September 7 and November 30, 2016 which were previously of record. In a February 15, 2018 report, Jeffrey Harre, a physician assistant, and Amy Propst, a registered nurse, discussed appellant's medical problems.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁸

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.⁹ Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.¹⁰ 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.¹¹ 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 loss of wages.¹²

The medical evidence required to establish causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. 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 claimed disability and the specific employment factors identified by the claimant.¹³

ANALYSIS

The Board finds that appellant has not meet her burden of proof to establish disability from work for intermittent periods from January 5 through May 13, 2016 causally related to her accepted March 15, 2005 employment injury.

Appellant only submitted one medical report which discussed her medical condition contemporaneous with the claimed periods of disability, *i.e.*, intermittent periods between January 5 and May 13, 2016. In a March 9, 2016 report, Dr. Anthony-Williams detailed physical examination findings noting that appellant moved all four of her extremities without difficulty, and diagnosed chronic right shoulder pain. However, this report is of no probative value regarding the underlying issue of this case because it does not contain an opinion that appellant had disability

⁸ *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

⁹ 20 C.F.R. § 10.5(f).

¹⁰ *See L.W.*, Docket No. 17-1685 (issued October 9, 2018).

¹¹ *See K.H.*, Docket No. 19-1635 (issued March 5, 2020).

¹² *See D.R.*, Docket No. 18-0323 (issued October 2, 2018).

¹³ *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

from work during the claimed periods due to the accepted March 15, 2005 employment injury to her right shoulder. The Board has held that 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 Therefore, Dr. Anthony-Williams' March 9, 2016 report is insufficient to establish appellant's claim.

Appellant also submitted numerous medical documents which discussed her medical condition after the claimed period of disability, including reports dated between June 8, 2016 and May 2, 2018 from Dr. Anthony-Williams, reports dated between July 2, 2016 and February 20, 2018 from Dr. Johnson, a July 21, 2016 report from Dr. Rodgers-Morales, and a February 15, 2018 report from Dr. Bruton. These reports also lack probative value regarding the underlying issue of this case because they do not contain an opinion that appellant had disability during the claimed periods causally related to her accepted March 15, 2005 employment injury.¹⁵ Dr. Johnson indicated in a January 19, 2018 report that appellant missed work on January 5, March 11, 24, April 29, and May 8, 2016, and that it was within medical reasonability that she had to skip work on these days secondary to incapacitating left shoulder pain. However, OWCP has not accepted appellant's claim for a left shoulder condition and the reports of Dr. Johnson do not contain a rationalized medical opinion establishing the existence of such a work-related condition.¹⁶ Therefore, these reports are insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical evidence establishing causal relationship between her claimed periods of disability and the accepted March 15, 2005 employment injury, she has not met her 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(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not meet her burden of proof to establish disability from work for intermittent periods from January 5 through May 13, 2016 causally related to her accepted March 15, 2005 employment injury.

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

¹⁵ *Id.*

¹⁶ See *D.T.*, Docket No. 19-0399 (issued August 1, 2019) (finding that medical rationale is necessary to establish the relationship between a given employment injury and a medical condition/period of disability). Appellant also submitted a February 15, 2018 report produced by Mr. Harre, a physician assistant, and Ms. Propst, a registered nurse. This report does not address appellant's claimed periods of disability and would not be considered probative medical evidence as physician assistants and registered nurses are not physicians within the meaning of FECA. *P.S.*, Docket No. 17-0598 (issued June 23, 2017); *R.S.*, Docket No. 16-1303 (issued December 2, 2016); *L.L.*, Docket No. 13-0829 (issued August 20, 2013). See 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

ORDER

IT IS HEREBY ORDERED THAT the June 26, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 27, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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