

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

Y.D., Appellant

and

**U.S POSTAL SERVICE, POST OFFICE,
Carson, CA, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 16-1896
Issued: February 10, 2017**

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 27, 2016 appellant filed a timely appeal of an June 24, 2016 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.

ISSUE

The issue is whether appellant met her burden of proof to establish total disability for the period January 29 to April 15, 2016 causally related to the accepted January 21, 2010 employment injury.

FACTUAL HISTORY

On February 22, 2016 appellant, then a 49-year-old city carrier, filed a traumatic injury claim (Form CA-1), alleging that on January 21, 2016 she lost control of a mail truck and

¹ 5 U.S.C. § 8101 *et seq.*

crashed into a mobile home, injuring her neck, shoulder, chest, and knee. She stopped work on January 29, 2016. An employing establishment customer service manager controverted continuation of pay because appellant did not file her claim within 30 days of the date of injury.

Appellant submitted a duty status report (Form CA-17) from Dr. Nathan J. Wilson, an osteopath, dated February 5, 2016, who noted that appellant injured her neck, right upper arm, right front rib cage, left upper abdomen, and right knee on January 23, 2016. Dr. Wilson returned appellant to full-time limited duty from February 5 to March 18, 2016.

In an undated accident report, on January 21, 2016, appellant stated that, while delivering her route, mail fell onto the vehicle floor between the brake and the gas pedal. She reported that she attempted to put her car into park, but instead put the car in reverse, the car then ran over a brick fence and struck a mobile home.

On February 24, 2016 the employing establishment controverted the claim noting that appellant was not entitled to continuation of pay as she had not filed her claim within 30 days. It further noted that she continued to work on January 21, 2016 and stopped work on January 29, 2016. In a February 17, 2016 note, a customer service manager indicated that appellant had not returned to work since January 29, 2016 and had been placed in absence without leave status.

By letter dated March 7, 2016, OWCP advised appellant of the type of medical evidence needed to establish her claim. It advised that medical evidence must be submitted by a qualified physician under FECA.

Appellant submitted a work slip from a nurse practitioner dated February 2, 2016 which noted that appellant was unable to work from February 2 to 5, 2016. A magnetic resonance imaging scan of the cervical spine dated March 2, 2016 revealed a disc protrusion at C3-4, C4-5, C5-6, and C6-7, and cervical kyphosis.

Appellant submitted a federal first report of injury from Dr. Wilson dated February 5, 2016, who treated appellant for neck, right arm, ribcage, and knee pain from the work accident. She reported that on January 23, 2016 while delivering mail her mail truck gas pedal got stuck and the gear shifted into reverse and struck a trailer home. Dr. Wilson noted findings of tenderness of the paravertebral musculature, right upper trapezial area, right deltoid and biceps, bruises on the right suprapatellar of the right knee, patellar crepitus and bruising on the right arm, ribcage, abdominal, and patellar knee area. He diagnosed post motor vehicle accident cervical strain, cervical myoligamentous sprain, seat belt bruise of the right glenohumeral area, right medial biceps area, right anterior ribcage area and left upper lateral abdominal area, and right knee contusion. Based on the mechanism of injury and the resulting symptoms and physical evidence, Dr. Wilson opined that the traumatic injury that occurred on January 23, 2016 was consistent with the above diagnoses. He returned appellant to modified duty from February 5 to March 18, 2016.

Appellant was treated by Dr. Christopher P. DeCarlo, a Board-certified physiatrist, on April 1, 2016, for injuries sustained to her neck, left arm, and right knee during a work accident on January 21, 2016. She reported that on January 21, 2016 due to an equipment malfunction

her mail truck reversed into a trailer home, causing whiplash and pain in the arm. Dr. DeCarlo diagnosed cervical strain/whiplash, seat belt bruise of right glenohumeral area and biceps, right ribcage bruise, abdominal area bruise, and right knee contusion, resolved. He opined that based on the history provided by appellant, physical examination, and examining the diagnostic data, appellant's medical injury arose as a direct result of the motor vehicle accident which took place during her duties as a mail carrier when her truck reversed into a trailer home. Dr. DeCarlo returned appellant to work full time with restrictions.

On April 8, 2016 OWCP accepted appellant's claim for cervical strain, contusion of the right shoulder, right front wall of thorax, and left upper lateral abdominal area and resolved right knee contusion. It informed her of the steps to take if she wished to claim wage-loss compensation.

In a separate decision dated April 8, 2016, OWCP denied appellant's claim for continuation of pay as she had failed to submit a written claim within 30 days of her January 21, 2016 employment injury.

The employing establishment on April 19, 2016 again reiterated that appellant had not filed the Form CA-1 within 30 days of the accident. It further noted that she was currently under suspension from her position for crashing her mail vehicle into a motor home. The employing establishment contends that there were no documents supporting total disability due to the January 21, 2016 employment injury. It submitted leave breakdown forms for the period January 23 to April 16, 2016 which noted that appellant worked eight hours on January 29, 2016, she used eight hours of annual leave on January 30, 2016, she was without official leave from February 1 to March 8, 2016 and from March 28 to 31, 2016. Appellant was on sick leave from March 9 to 26, 2016 and she was suspended from April 1 to 15, 2016.

On April 17, 2016 appellant filed a claim for compensation (Form CA-7), for reimbursement for leave without pay for total disability for the period January 29 to April 15, 2016. Her supervisor noted on the Form CA-7 that there was no medical evidence to support disability and indicated that appellant was absent without official leave and off work due to a suspension.

Appellant submitted progress reports from Dr. DeCarlo dated March 15 and April 21, 2016, who noted appellant's neck, right knee and right shoulder pain improved with physical therapy. Dr. DeCarlo diagnosed post motor vehicle accident cervical strain, resolved cervical myoligamentous sprain headache, seat belt bruise right glenohumeral area, right medial biceps area, right anterior ribcage area and left upper lateral abdominal area, and right knee contusion. He returned appellant to work full-time modified duty on March 5, 2016. Appellant also submitted an April 21, 2016 prescription for acupuncture from Dr. DeCarlo.

In a letter dated April 25, 2016, OWCP requested that appellant submit additional information to support her claim for compensation beginning January 29, 2016, including medical evidence establishing that her total disability was due to the accepted condition for the period claimed. No response was received.

In a decision dated June 24, 2016, OWCP denied appellant's claim for compensation for total disability for the period January 29 to April 15, 2016. It advised that the evidence of record failed to establish work-related disability during the period claimed.

LEGAL PRECEDENT

Section 8102(a) of FECA² sets forth the basis upon which an employee is eligible for compensation benefits. That section provides: "The United States shall pay compensation as specified by this subchapter for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty...." In general, the term "disability" under FECA means "incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury."³ This meaning, for brevity, is expressed as disability for work.⁴

For each period of disability claimed, the employee has the burden of proving that he was disabled for work as a result of the accepted employment injury.⁵ Whether a particular injury caused an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by the preponderance of the reliable, probative, and substantial medical evidence.⁶

ANALYSIS

OWCP accepted appellant's claim for cervical strain, contusion of the right shoulder, right front wall of thorax, and left upper lateral abdominal area, and resolved contusion of the right knee. On April 17, 2016 appellant filed a claim for reimbursement for compensation, for leave without pay for total disability for the period January 29 to April 15, 2016.⁷ The Board finds that the medical evidence of record is insufficient to establish total disability for the period January 29 to April 15, 2016 causally related to the accepted January 21, 2016 employment incident.

Appellant submitted a duty status report from Dr. Wilson dated February 5, 2016, who noted that appellant injured her neck, right upper arm, right front rib cage, left upper abdomen and right knee on January 23, 2016 and could return to full-time limited duty from February 5 to March 18, 2016. Similarly, in a separate February 5, 2016 report, Dr. Wilson treated appellant for injuries sustained when she backed her mail truck into a trailer home while delivering mail. He diagnosed post motor vehicle accident cervical strain, cervical myoligamentous sprain,

² 5 U.S.C. § 8102(a).

³ 20 C.F.R. § 10.5(f). *See also William H. Kong*, 53 ECAB 394 (2002); *Donald Johnson*, 44 ECAB 540, 548 (1993); *John W. Normand*, 39 ECAB 1378 (1988); *Gene Collins*, 35 ECAB 544 (1984).

⁴ *See Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

⁵ *See William A. Archer*, 55 ECAB 674 (2004).

⁶ *See Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

⁷ As noted, *infra*, evidence from the employing establishment indicates that appellant worked on January 29, 2016.

headache resolved, seat belt bruise right glenohumeral area, right medial biceps area, right anterior ribcage area and left upper lateral abdominal area, and right knee contusion. Dr. Wilson returned appellant to modified duty from February 5 to March 18, 2016. Even though he noted that she was still experiencing symptoms of her diagnosed conditions, Dr. Wilson did not specifically address whether appellant had any employment-related disability beginning January 29, 2016 causally related to her January 19, 2016 employment injury. Rather, Dr. Wilson opined that appellant could work modified duty from February 5 to March 18, 2016. As he provided no opinion on causation, his report is insufficient to establish causal relationship.⁸

Similarly, reports from Dr. DeCarlo dated March 15 and April 21, 2016 noted appellant's treatment for injuries sustained to her neck, left arm, and right knee after a work accident on January 21, 2016. He noted diagnoses and opined that based on the history provided by appellant, physical examination and examining the diagnostic data, appellant's medical injury arose as a direct result of the motor vehicle accident which took place during her duties as a mail carrier when her truck reversed into a trailer home. Dr. DeCarlo returned appellant to work full time with restrictions on March 15, 2016. He failed to provide a specific opinion on causal relationship between the claimed period of disability and the accepted employment injury.⁹ Rather, Dr. DeCarlo indicated that appellant could return to work full time with restrictions on March 15, 2016. Consequently, the medical evidence did not establish that the claimed period of disability was due to appellant's employment injury of January 21, 2016.

Appellant submitted a return to work slip from a nurse practitioner dated February 2, 2016; however, the Board has held that treatment notes signed by a nurse practitioner are not considered medical evidence as these providers are not a physician under FECA.¹⁰ Consequently their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.

On appeal appellant asserts that she submitted sufficient medical evidence supporting disability for the period claimed. The Board finds that appellant failed to submit rationalized medical evidence establishing a causal relationship between the specific period of claimed disability and the accepted conditions.

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.

⁸ See *D.R.*, Docket No. 16-0528 (issued August 24, 2016).

⁹ *Id.*

¹⁰ See *C.P.*, Docket No. 17-0042 (issued December 27, 2016). 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law).

CONCLUSION

The Board finds that appellant has failed to establish total disability for the period beginning January 29 to April 15, 2016 causally related to the accepted January 21, 2016 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the June 24, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 10, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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