United States Department of Labor
Employees' Compensation Appeals Board

K.A., Appellant	)	
and	)	**Docket No. 17-1718**
	)	**Issued: February 12, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Trinity, TX, Employer	)	

Appearances:
Appellant, pro se
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 August 3, 2017 appellant filed a timely appeal from a March 15, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.[2]

ISSUE

The issue is whether appellant met her burden of proof to establish total disability commencing December 13, 2016 causally related to her accepted June 19, 2014 employment injury.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence after OWCP rendered its March 15, 2017 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore the Board is precluded from considering this new evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).

FACTUAL HISTORY

On June 24, 2014 appellant, then a 49-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on June 19, 2014 she was unloading the back of her vehicle when her foot missed the sidewalk and slipped from the curb, causing her to fall and land on her buttocks. She experienced right buttocks and lower back pain. Appellant returned to work the next day. OWCP accepted her claim for intervertebral disc disorders with radiculopathy, lumbar region, muscle spasm of back, sacroiliitis, not elsewhere classified, and sprain of the lumbar region of the back. It paid appellant wage-loss compensation on the supplemental rolls for attendance at medical appointments.

On December 30, 2016 appellant filed a claim for wage-loss compensation (Form CA-7) for the period December 13 through 23, 2016. She subsequently filed Form CA-7 claims for compensation for subsequent periods of disability.

On January 9, 2017 OWCP requested that appellant submit medical evidence establishing her claim of disability. Appellant was afforded 30 days to submit the necessary evidence. OWCP thereafter received additional medical evidence.

In a December 14, 2016 report, Dr. Neilesh N. Kotecha, a Board-certified neurosurgeon, related that appellant had a history of a work-related fall on June 19, 2014. He noted that appellant had undergone several rounds of lumbar epidural steroid injections, and had relief with the first one, but not the second. Dr. Kotecha suggested a repeat magnetic resonance imaging (MRI) scan, and noted that he believed appellant had L5 radiculopathy secondary to L4-5 disc herniation affecting the traversing nerve root. He indicated that, given the marked weakness in appellant's left lower extremity, he did not believe that it was safe for appellant to return to work. Dr. Kotecha recommended that appellant be placed in ankle/foot orthosis. In a December 14, 2016 work excuse note, he certified that appellant was under his professional care on that date, and indicated that she should be off work until evaluation on January 11, 2017.

In a letter dated January 23, 2017, appellant's then counsel argued that appellant sustained severe low back and left-sided leg injuries while performing her job duties and that OWCP accepted her conditions of intervertebral lumbar disc disorders with radiculopathy, and sprain of the lumbar back. She argued that, due to these accepted conditions, appellant required back surgery. Counsel contended that the submitted medical evidence by Dr. Kotecha established a causal connection between appellant's accepted work-related conditions, and the surgery being requested by Dr. Kotecha. She requested that appellant's surgery be authorized and all wage-loss compensation and other benefits she was entitled to under FECA be provided immediately. Counsel submitted medical evidence in support of her argument.

In a January 26, 2016 report, Dr. Nicholas W. Flippin, a radiologist, interpreted x-rays of appellant's spine as showing no significant subluxation or translational motion of the lumbar spine, and multiple degenerative changes.

In a June 1, 2016 report, Dr. Kotecha opined that, based on his knowledge and experience, the cause of injury to appellant's low back and left lower extremity, within a reasonable degree of medical certainty, was appellant's work-related injury of June 19, 2014. He

noted that the 2014 work injury resulted in significant lower back pain and left L5 symptoms, that for 18 months she had suffered, and that as a result of her ongoing pain due to her accepted work-related conditions and failure of conservative therapy, he recommended decompression of the left L5 root with lami/facetectomy and necessitating a transforaminal lumbar interbody fusion as a result of complete facetectomy.

In a July 1, 2016 report, Dr. Cabe Owens, a clinical neurophysiologist, noted that his electrodiagnostic impression was consistent with subacute left L5 radiculopathy. He further noted that appellant's clinical symptom complex of a patient with persistent lower back pain that radiated to the left leg was consistent with this examination and a left L5 radiculopathy, and that the lesion was consistent with her physical examination.

In a December 23, 2016 work excuse note, Dr. Kotecha opined that appellant should be off work and that he did not believe that it was safe for her to return to work. Appellant also submitted Dr. Kotecha's results from his muscle strength examination taken on January 11, 2017. In a report of the same date, Dr. Kotecha noted that appellant had a history of a work-related injury on June 9, 2014 that resulted in significant low back pain and left-sided leg symptoms related to the L5-S1 root. He noted that appellant had lumbago and left-sided lumbar radiculopathy as well as pretty significant left-sided L5-S1 foraminal stenosis with subarticular narrowing. Dr. Kotecha noted that appellant had undergone an electromyogram/nerve conduction study on July 5, 2015 that was felt to be consistent with a subacute to acute L5 radiculopathy, and had undergone conservative care with ongoing pain. He noted that appellant had injured herself at work when her left foot slipped, causing her to miss the sidewalk and fall. Dr. Kotecha believed that appellant would require a complete facetectomy of L5-S1 on the left to adequately decompress the L5 nerve root.

On December 24, 2016 appellant had a lumbar spine MRI scan of the left lower back. Dr. Henry Lee, a Board-certified radiologist, interpreted the MRI scan as showing: (1) lateral recesses at L2-3, L3-4, L4-5, and L5-S1 are borderline stenotic, but no central canal stenosis and no stenosis at L1-2; (2) multilevel neural foraminal encroachment, most severe at L5-S1 on left, and left foraminal/far lateral discosteophyte complex contracting the exiting left L5 nerve root sheath; and (3) grade 1 degenerative retrolisthesis at L2-3, L3-4, and L5-S1.

In a January 11, 2017 report, Dr. Kotecha noted that appellant had a history of work-related injury on June 9, 2014 that resulted in significant low back pain and left-sided leg symptoms related to the L5-S1 nerve root. He noted that appellant had pretty significant left-sided L5-S1 foraminal stenosis with subarticular narrowing. Dr. Kotecha noted that appellant did injure herself at work when she fell at work. He believed that appellant would require a complete facetectomy of L5-S1 on the left to adequately decompress the L5 root.

By letter decision dated January 26, 2017, OWCP denied appellant's request for authorization for surgery.

In a March 3, 2017 report, OWCP's medical adviser opined that the proposed lumbar spine fusion was not causally related to the accepted medical conditions and was not medically necessary. He noted that appellant's stenosis could be managed with a simple decompression alone as there was no need for a complete facetectomy and there was no underlying inability or

mention of recurrent disc herniation, pseudoarthrosis, unstable fracture, or surgery for tumor, infection or abscess.

By decision dated March 15, 2017, OWCP denied appellant's claim for compensation, finding that she had not established total disability from work commencing December 13, 2016 due to an accepted June 19, 2014 employment injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of proof to establish essential elements of his or her claim by the weight of the evidence.[4] For each period of disability claimed, the employee has the burden of proof to establish that he was disabled for work as a result of the accepted employment injury.[5] Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.[6]

Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work.[7] When the physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that he or she hurt too much to work, without objective findings or disability being shown, the physician has not presented a medical opinion, supported by medical rationale, on the issue of disability or a basis for payment of compensation.[8]

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 an employee to self-certify his or her disability and entitlement to compensation.[9]

ANALYSIS

OWCP accepted appellant's claim for intervertebral disc disorders with radiculopathy, lumbar region; muscle spasm of the back; sacroiliitis; and sprain of the lumbar region of the back. Appellant returned to work the day after the June 19, 2014 employment incident. However, she requested wage-loss compensation for total disability commencing

[3] *Supra* note 1.

[4] *See Ameleia S. Jefferson,* 57 ECAB 183 (2005).

[5] *Id.*

[6] *See Edward H. Horton,* 41 ECAB 301 (1989).

[7] *Dean E. Pierce,* 40 ECAB 1249 (1989).

[8] *William A. Archer,* 55 ECAB 674, 679 (2004).

[9] *See id.*; *Fereidoon Kharabi,* 52 ECAB 291 (2001).

December 13, 2016. OWCP denied appellant's claim for wage-loss compensation as of December 13, 2016.

Appellant has the burden of proof to establish by the weight of the substantial, reliable, and probative evidence causal relationship between her claimed disability and the accepted conditions.[10] The Board finds that she has failed to submit sufficient medical evidence to establish employment-related disability for the period claimed due to her accepted medical conditions.[11]

Dr. Kotecha, appellant's treating physician, concluded that appellant was excused from work commencing December 13, 2016. Although he indicated that she should remain off work, he did not provide any rationalized medical explanation for why her employment injury caused any period of disability or otherwise provide medical reasoning explaining why any current condition or disability was due to the June 19, 2014 employment injury.[12] Dr. Kotecha related that it was unsafe for appellant to return to work. The Board has long held that prophylactic work restrictions do not establish a basis for wage-loss compensation.[13] A fear of future injury is not compensable under FECA.[14] Because Dr. Kotecha failed to provide any medical rationale for his conclusion, his opinion is of diminished probative value.[15]

Although Dr. Kotecha related that appellant had significant left-sided L5-S1 foraminal stenosis with subarticular narrowing, which would require a complete facectomy of L5-S1 on the left to decompress the L5 root, he did not explain how this condition was causally related to the accepted employment injury. The Board notes in this regard that appellant's L5-S1 foraminal stenosis is not an accepted condition. Although Dr. Kotecha's opinion is generally supportive of causal relationship between appellant's employment and her diagnosed conditions, he did not explain the process by which appellant's employment injury of June 19, 2014 caused this condition.[16] The Board also finds that he failed to provide adequate medical rationale explaining why appellant was disabled from work. Dr. Kotecha did not explain which employment duties appellant was unable to perform as of December 13, 2016. Accordingly, his report is insufficient to meet appellant's burden of proof as he did not provide adequate medical rationale explaining the basis of his conclusion.[17]

Appellant also submitted the results of diagnostic studies interpreted by Drs. Lee, Flippin, and Owen. However, these studies do not address whether the 2014 work injury caused total

[10] *Id.*

[11] *Alfredo Rodriguez*, 47 ECAB 437 (1996).

[12] *See G.W.*, Docket No. 17-1290 (November 21, 2017).

[13] *D.N.*, Docket No. 14-0657 (issued June 26, 2014).

[14] *Manuel Gill*, 52 ECAB 282 (2001).

[15] *Supra* note 11.

[16] *G.G.*, Docket No. 17-0504 (issued August 8, 2017).

[17] *Id.*

disability as of December 13, 2016.[18] These reports, therefore, do not support that appellant was disabled due to the accepted employment injury during the claimed period.[19] The Board has found that the issue of whether a claimant's disability from work is related to an accepted condition is a medical question, which must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to the employment injury and supports that conclusion with sound medical reasoning.[20]

As appellant has not provided rationalized medical evidence to establish her claim for total disability due to her July 19, 2014 employment injury, the Board finds that she has failed to meet 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 met her burden of proof to establish total disability commencing December 13, 2016 causally related to her accepted July 19, 2014 employment injury.

[18] *See P.T.*, Docket No. 16-0491 (issued September 27, 2017).

[19] *See Fereidoon Kharabi, supra* note 9.

[20] *See G.B.*, Docket No. 16-1003 (issued December 5, 2016).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 15, 2017 is affirmed.

Issued: February 12, 2018
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