

FACTUAL HISTORY

OWCP accepted that appellant, a 26-year-old rural carrier associate, sustained a lumbar spine and pelvis sprain and lumbar radiculopathy on November 12, 2015 due to an employment-related motor vehicle accident. Appellant was turning left when she was hit on the driver's side of her postal vehicle. She returned to work on November 14, 2015.

Appellant filed claims for compensation (Form CA-7s) for the period January 9 through March 4, 2016.

On January 28, 2016 Dr. Edward King, a Board-certified urologist, diagnosed dizziness and vertigo.

In reports dated February 3 and 20, 2016, Dr. William L. Mills, a Board-certified orthopedic surgeon, diagnosed lower back pain with bilateral thigh pain and advised that appellant was unable to work.

In a March 11, 2016 letter, OWCP requested additional medical evidence establishing appellant's disability from work during the period claimed and afforded her 30 days to respond to its inquires.

Subsequently, appellant submitted physical therapy reports dated February 1 through March 4, 2016.

By decision dated April 15, 2016, OWCP denied appellant's claim for disability compensation for the period January 9 through March 4, 2016 as the medical evidence submitted was insufficient to support disability due to the employment injury.

On April 25, 2016 appellant requested reconsideration and submitted medical evidence dated November 28 and December 19, 2015 from Dr. Ruta Rimkiene, Board certified in family practice, as well as a December 12, 2015 report from a physician with an illegible signature. She also submitted a June 16, 2016 report from Dr. Erin Watson, Board-certified in physical medicine and rehabilitation, indicating that she received an epidural steroid injection for her lumbar radiculopathy condition.

In an April 6, 2016 report, Dr. Mills diagnosed spondylosis with right herniation L5-S1 with lower back pain and lumbar radiculopathy. He reported that appellant had been in physical therapy for six to eight weeks. On June 22, 2016 Dr. Mills asserted that the lumbar epidural steroid injection had made her pain worse and the physical therapy was not helping. He opined that appellant continued to have pain from her November 12, 2015 employment injury and reiterated his diagnosis. Dr. Mills advised that she was unable to work.

By decision dated July 12, 2016, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

Section 8102(a) of FECA³ 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.”⁴ This meaning, for brevity, is expressed as disability from work.⁵ For each period of disability claimed, an employee has the burden of proving that he or she was disabled for work as a result of the accepted employment injury.⁶ Whether a particular injury caused an employee to be disabled from employment and the duration of that disability are medical issues, which must be proven by the preponderance of the reliable probative and substantial medical evidence.⁷

Disability is not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. 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 he or she was receiving at the time of injury, has no disability as that term is used under FECA, and is not entitled to compensation for loss of wage-earning capacity. The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the particular period of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.⁸

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish total disability for the period January 9 through March 4, 2016 causally related to her employment injuries. While OWCP accepted that appellant sustained a lumbar spine and pelvis sprain and lumbar radiculopathy, she bears the burden of proof to establish through medical evidence that she was disabled from work during the claimed period and that her disability was causally related to the accepted injury.⁹ The Board finds that she has not submitted rationalized medical evidence explaining how the employment injuries materially worsened or aggravated her accepted lumbar and pelvis conditions such that they caused her to be disabled from work for the period January 9 through March 4, 2016.

³ 5 U.S.C. § 8102(a).

⁴ 20 C.F.R. § 10.5(f); *see also* *William H. Kong*, 53 ECAB 394 (2002).

⁵ *See Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

⁶ *See William A. Archer*, 55 ECAB 674 (2004).

⁷ *See Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

⁸ *Id.*

⁹ *See supra* notes 7 and 8. *See also V.P.*, Docket No. 09-0337 (issued August 4, 2009).

In his reports, Dr. Mills diagnosed lower back pain with bilateral thigh pain and spondylosis with right herniation L5-S1 with lower back pain and lumbar radiculopathy. He reported that appellant had been in physical therapy for six to eight weeks. On June 22, 2016 Dr. Mills reported that a lumbar epidural steroid injection had made her pain worse and the physical therapy was not helping. He opined that appellant continued to have pain from her November 12, 2015 employment injury and advised that appellant was unable to work. Although Dr. Mills opined that she was totally disabled from work, his opinion is conclusory in nature, and fails to explain in detail how the accepted medical conditions were responsible for appellant's disability and why she could not perform her federal employment during the period claimed.¹⁰ Consequently, the Board finds that his reports are insufficient to establish appellant's claim that she was totally disabled for the period January 9 through March 4, 2016 causally related to her accepted employment injuries.

In a January 28, 2016 report, Dr. King diagnosed dizziness and vertigo. The Board finds that this medical evidence failed to provide a probative medical opinion on whether appellant was disabled on the dates claimed due to her accepted conditions. Therefore, this evidence is insufficient to establish appellant's claim.¹¹

Appellant also submitted a June 16, 2016 report from Dr. Watson and medical evidence dated November 28 through December 19, 2015 from Dr. Rimkiene and a physician with an illegible signature. The Board finds that this medical evidence fails to address the period claimed and, therefore, lacks probative value to establish appellant's claim.¹²

Appellant further submitted evidence from physical therapists. These documents do not constitute competent medical evidence because a physical therapist is not considered a "physician" as defined under FECA.¹³ As such, this evidence is also insufficient to meet appellant's burden of proof.

The Board finds appellant's treating physicians have not provided sufficiently rationalized medical opinion evidence establishing that she was disabled from work during the period January 9 through March 4, 2016 causally related to her accepted employment injuries. Thus, appellant has not met her burden of proof.

¹⁰ See *J.J.*, Docket No. 15-1329 (issued December 18, 2015).

¹¹ *Supra* note 8

¹² *Id.*

¹³ See *M.M.*, Docket No. 17-1641 (issued February 15, 2018); *K.J.*, Docket No. 16-1805 (issued February 23, 2018); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 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).

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 for the period January 9 through March 4, 2016, causally related to her employment injuries.

ORDER

IT IS HEREBY ORDERED THAT the July 12, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 14, 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