United States Department of Labor
Employees' Compensation Appeals Board

C.D., Appellant	)	
and	)	**Docket No. 17-0292**
	)	**Issued: June 19, 2018**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRATION, Cleveland, OH, 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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On November 21, 2016 appellant filed a timely appeal from an October 31, 2016 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 this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish that she was totally disabled from work for intermittent periods March 11, 2015 forward causally related to her accepted employment injuries.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted that appellant, then a 51-year-old training technician, sustained left hand and wrist tenosynovitis as a result of computer use while in the performance of duty. She did not stop work. OWCP paid appellant wage-loss compensation for medical appointments she attended related to her accepted injuries.

In a March 10, 2015 report, Dr. Jeffrey Kirschman, a Board-certified occupational medicine specialist, diagnosed tenosynovitis of the hand and wrist and indicated that appellant requested a refill on her hydrocodone-acetaminophen. On March 17, 2015 he released her to modified duty with the following restrictions: frequent hand/wrist work, grasping, pushing, pulling, and fine manipulation; occasional reaching above the shoulder; kneeling; squatting; climbing stairs; and lifting up to 10 pounds. Dr. Kirschman advised that appellant should use a splint at work and projected that she would be capable of returning to unrestricted duties as of June 4, 2015.

Appellant filed claims for compensation (Form CA-7) for intermittent periods commencing March 6, 2015.

On March 27, 2015 appellant accepted a modified job offer as a training technician based on Dr. Kirschman's work restrictions.

In an April 21, 2015 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 inquiries.

Appellant subsequently submitted a May 4, 2015 report from Dr. Kirschman who diagnosed right hand tenosynovitis and opined that the condition was causally related to her repetitive use of her right hand in the performance of her federal duties.

By decision dated June 3, 2015, OWCP expanded appellant's claim to include the additional condition of right hand and wrist tenosynovitis.

By decision dated June 3, 2015, OWCP denied appellant's claim for intermittent periods of disability from work commencing March 11, 2015 as the medical evidence submitted was insufficient to support disability due to the employment injury. It noted that the March 24, 2015 Form CA-7 sought wage-loss compensation for 1.5 hours on March 6, 2015; 3 hours on March 10, 2015; and March 11, 2015 and continuing. OWCP noted that the evidence of record indicated that appellant stopped work on March 11, 2015 and had not returned. It found that the evidence was sufficient to authorize payment of benefits for the hours claimed on March 6 and 10, 2015, but denied compensation commencing March 11, 2015 and continuing.

Appellant requested an oral hearing before OWCP's Branch of Hearings and Review. She also submitted physical therapy reports and x-rays of her right wrist dated March 11 and May 11, 2015.

In progress reports dated January 8, 2015 through January 28, 2016, Dr. Kirschman reiterated his diagnoses and indicated that appellant's complaints and pain patterns remained

unchanged. He also noted that appellant continued to work at computers and took hydrocodone-acetaminophen as medication for her conditions. On June 15, 2015 Dr. Kirschman related that appellant was taken off work from March 11 to 20, 2015 to allow her conditions to subside and restart medication for hyperuricemia, including presdnisone and allopurionol, to decrease the inflammatory process, along with the use of hydrocodone-acetaminophen for pain control. He noted that the use of hydrocodone-acetaminophen, a narcotic, prevented appellant from participating safely in the work environment as it affected her cognitive abilities and balance. Dr. Kirschman advised that, by her follow-up appointment on March 17, 2015, appellant had responded to treatment and was judged able to return to work with restrictions after March 20, 2015. In a November 3, 2015 work restriction report, he advised that appellant was capable of occasional hand/wrist work, grasping, pushing, pulling, fine manipulation, reaching above the shoulder, bending, twisting, kneeling, squatting, climbing stairs, and lifting up to 10 pounds. Dr. Kirschman noted that appellant's braces may be removed as needed.

In reports dated June 15 and August 5, 2015, Dr. Laurel Beverley, a Board-certified orthopedic surgeon, diagnosed right wrist de Quervain's tenosynovitis, status post-cervical surgery for stenosis, and asymptomatic basal joint osteoarthritis. She reported that appellant underwent a work-related right trigger thumb release surgery in 2013. Appellant complained of three months of significant pain and swelling and indicated that she had missed some work with the symptoms.

On January 25, 2016 Dr. Kevin Malone, a Board-certified orthopedic hand surgeon, diagnosed de Quervain's tenosynovitis.

A telephonic hearing was held before an OWCP hearing representative on February 18, 2016. Appellant provided testimony and the hearing representative held the case record open for 30 days for the submission of additional evidence.

By decision dated May 3, 2016, OWCP's hearing representative affirmed the prior decision.

On August 25, 2016 appellant requested reconsideration and submitted an April 18, 2016 x-ray of her right hand which revealed mild degenerative changes.

In an April 18, 2016 report, Dr. Malone diagnosed right wrist first dorsal compartment tenosynovitis and advised that appellant was currently taking hydrocodone-acetaminophen.

On August 15, 2016 Dr. Kirschman checked a box marked "yes" indicating his opinion that appellant was totally disabled for work. He also advised that prescription medication "may" impair her ability to perform any duty, and bed rest was advised. Dr. Kirschman further advised that appellant had not yet reached maximum medical improvement.

In an August 16, 2016 report, Dr. Kirschman reiterated his opinion that appellant represented an immediate and significant risk for harm to self or others, due to the use of the pain medication hydrocodone-acetaminophen for her acute pain, which posed a risk for cognitive and balance issues, along with operating heavy equipment, such as cars.

By decision dated October 31, 2016, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

Section 8102(a) of FECA[2] 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 from work.[4] For each period of disability claimed, the employee has the burden of proving that he or she was disabled from work as a result of the accepted employment injury.[5] 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 reliable, probative, and substantial medical evidence.[6]

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 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.[7]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that she was totally disabled from work for the period commencing March 11, 2015 causally related to her accepted employment injuries. The Board finds that she has not submitted rationalized medical evidence explaining how her employment injuries materially worsened or aggravated her bilateral hand and wrist condition and caused her to be disabled from work for the period commencing March 11, 2015.

In his reports, Dr. Kirschman diagnosed bilateral hand and wrist tenosynovitis and asserted that appellant's complaints and pain patterns remained unchanged. He also noted that appellant continued to work on computers and took hydrocodone-acetaminophen as medication for her conditions. Dr. Kirschman indicated that appellant was taken off work from March 11 to 20, 2015 to allow her conditions to subside and restart medication, including hydrocodone-acetaminophen

[2] *Id*. at § 8102(a).

[3] 20 C.F.R. § 10.5(f); s*ee also William H. Kong*, 53 ECAB 394 (2002).

[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] *Id*.

for pain control. He noted that the use of hydrocodone-acetaminophen, a narcotic, prevented appellant from participating safely in the work environment as it affected cognitive abilities and balance. Dr. Kirschman further opined that appellant represented an immediate and significant risk for harm to self or others, along with the use of the pain medication hydrocodone-acetaminophen for her acute pain, which posed a risk for operating heavy equipment, such as cars. On August 15, 2016 he checked a box marked "yes" indicating his opinion that appellant was totally disabled for work, prescription medication "may" impair her ability to perform any duty, and bed rest was advised. Although the "yes" checkmark indicates support for causal relationship, the Board has held that when a physician's opinion on causal relationship consists only of a checkmark on a form, without more by way of medical rationale, the opinion is of diminished probative value.[8] Therefore, Dr. Kirschman's August 15, 2016 report is of diminished probative value. In his other reports, Dr. Kirschman opined that appellant was totally disabled for work, however, his opinions are conclusory in nature, and fail to explain in detail how the accepted medical conditions were responsible for appellant's disability and why she could not perform her federal employment.[9] Consequently, the Board finds that Dr. Kirschman's reports are insufficient to establish appellant's claim that she was totally disabled for intermittent periods commencing March 11, 2015 causally related to her accepted bilateral tenosynovitis condition.

In her reports, Dr. Beverley diagnosed right wrist de Quervain's tenosynovitis, status post-cervical surgery for stenosis, and asymptomatic basal joint osteoarthritis and indicated that she had missed some work with the symptoms. In his reports, Dr. Malone diagnosed de Quervain's tenosynovitis and right wrist first dorsal compartment tenosynovitis and advised that appellant was currently taking hydrocodone-acetaminophen. The Board finds that this medical evidence failed to provide a probative medical opinion on whether appellant was disabled on the dates at issue due to her accepted conditions.[10] Therefore, this evidence is insufficient to establish appellant's claim.

Appellant also submitted evidence from physical therapists. These documents do not constitute competent medical evidence because physical therapists are not considered "physicians" as defined under FECA.[11] As such, this evidence is also insufficient to meet appellant's burden of proof.

[8] *See Gary J. Watling*, 52 ECAB 278 (2001).

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

[10] *See Amelia S. Jefferson*, 57 ECAB 183 (2005).

[11] *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).

Other medical evidence of record, including diagnostic test reports, are of limited probative value. Diagnostic studies are of limited probative value as they do not address whether the employment injuries caused any of the claimed periods of disability.[12]

The Board finds that appellant has not provided sufficiently rationalized medical opinion evidence establishing that she was totally disabled during intermittent periods commencing March 11, 2015 causally related to the employment injuries. Thus, appellant has not met her burden of proof to establish that she is entitled to compensation for total disability.

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 that she was totally disabled for intermittent periods commencing March 11, 2015 causally related to her employment injuries.

ORDER

IT IS HEREBY ORDERED THAT the October 31, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 19, 2018
Washington, DC

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

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

[12] *See J.S.*, Docket No. 17-1039 (issued October 6, 2017).