

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

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G.H., Appellant)	
)	
and)	Docket No. 18-0288
)	Issued: June 8, 2018
)	
DEPARTMENT OF VETERANS AFFAIRS,)	
VETERANS ADMINISTRATION MEDICAL)	
CENTER, Houston, 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 November 22, 2017 appellant filed a timely appeal from an October 18, 2017 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 over the merits of this case.²

ISSUE

The issue is whether appellant met her burden of proof to establish total disability from July 18 to August 13, 2017 causally related to her accepted January 27, 2017 employment injuries.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the issuance of OWCP's October 18, 2017 decision and on appeal, appellant submitted new evidence. The Board is precluded from reviewing evidence that was not before OWCP at the time of its final decision. Thus, the Board will not review this new evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c)(1).

On appeal appellant contends that she developed spinal stenosis as a consequence of her accepted employment injury. She notes that she received two injections, which provided no pain relief. Appellant further contends that a medical report she submitted on appeal establishes the need to undergo surgery to treat her back condition.

FACTUAL HISTORY

On January 30, 2017 appellant, then a 56-year-old medical support assistant, filed a traumatic injury claim (Form CA-1) alleging that on January 27, 2017 she experienced pain and swelling in her right ankle, left knee, and lower/upper back, and radiating pain from her neck to right arm as a result of slipping on a wet floor as she walked down a hallway at work.

On February 22, 2017 OWCP accepted the claim for sprain of ligaments of the lumbar spine and cervical spine, sprain of other ligament of the right ankle, and sprain of the medial collateral ligament of the left knee.

On June 30, 2017 appellant filed a claim for compensation (Form CA-7), requesting compensation for leave without pay (LWOP) from July 18 to August 13, 2017. In an attached time analysis form (Form CA-7a) dated June 30, 2017, she attributed her lost time for work to doctor visits and physical therapy. On the reverse side of the Form CA-7, the employing establishment indicated that appellant received intermittent continuation of pay from January 30 to March 2, 2017. It noted that she stopped work on June 26, 2017.

OWCP, by development letter dated August 11, 2017, advised appellant that it had not received any medical evidence to support her claim and afforded her 30 days to submit additional evidence to establish disability for work during the claimed period.

Appellant submitted hospital records, including a June 12, 2017 radiology order and June 13, 2017 laboratory requisition from Dr. William H. Hadnott, III, and a Board-certified orthopedic surgeon. Dr. Hadnott diagnosed low back and lumbar radicular pain and ordered a lumbar spine magnetic resonance imaging (MRI) scan. In a June 25, 2017 lumbar spine MRI scan report, Dr. Stephen G. Parven, a Board-certified radiologist, provided an impression of spinal stenosis greatest at L2-L3, L3-L4, and L4-L5 that was less pronounced at L5-S1 and multi-level foraminal stenosis.

Appellant submitted additional medical records from Dr. Hadnott. In a Texas Workers' Compensation Work Status Report form dated August 8, 2017, Dr. Hadnott indicated a history of injury that appellant fell down on January 20, 2017. He diagnosed lumbar radiculopathy and advised that appellant's medical condition prevented her from returning to work as of July 24 through August 23, 2017. In reports dated July 24 and August 21, 2017, Dr. Hadnott examined appellant and again diagnosed lumbar radicular pain. In a prescription dated August 22, 2017, he ordered physical therapy, twice a week, for eight weeks and reiterated his diagnosis of lumbar radiculopathy.

On September 12, 2017 Dr. Nitesh A. Banker, a Board-certified radiologist, reported that appellant had a clinical history of lumbar radiculopathy and back pain. He treated her with a lumbar epidural therapeutic injection.

On October 16, 2017 OWCP accepted appellant's recurrence claim for additional medical care.

By decision dated October 18, 2017, OWCP denied appellant's claim for total disability compensation for the period July 18 to August 13, 2017. It found that the medical evidence of record failed to establish that the claimed disability was related to the accepted January 27, 2017 employment injury.

LEGAL PRECEDENT

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

Under FECA the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁶ Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.⁷ 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 that he or she was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.⁸ 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 any loss of wages.

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

³ See *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *Nathaniel Milton*, 37 ECAB 712 (1986).

⁴ See *Amelia S. Jefferson*, *id.*

⁵ See *Edward H. Horton*, 41 ECAB 301 (1989).

⁶ *S.M.*, 58 ECAB 166 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); 20 C.F.R. § 10.5(f).

⁷ *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

⁸ *Merle J. Marceau*, 53 ECAB 197 (2001).

⁹ See *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

ANALYSIS

The Board finds that appellant has failed to establish that she was totally disabled from work from July 18 to August 13, 2017 due to her accepted January 27, 2017 employment injuries.

OWCP accepted appellant's claim for sprain of ligaments of the lumbar spine and cervical spine, sprain of other ligament of the right ankle, and sprain of the medial collateral ligament of the left knee. It denied her claim for total disability compensation for the period July 18 to August 13, 2017, finding that she failed to submit sufficient medical evidence to establish a causal relationship between her claimed total disability for that period and the accepted conditions. Appellant has the burden of proof to establish by the weight of the substantial, reliable, and probative evidence, a causal relationship between her claimed disability for that period and the accepted conditions.¹⁰

Appellant submitted Dr. Hadnott's August 8, 2017 Texas Workers' Compensation Work Status Report form in which he found that appellant was totally disabled from work from July 24 to August 23, 2017 due to lumbar radiculopathy, an additional condition not accepted as work related by OWCP. Where an employee claims conditions not accepted or approved by OWCP were due to an employment injury, appellant bears the burden of proof to establish that the condition is causally related to the work injury.¹¹ Dr. Hadnott did not explain his reasoning for why he believed that appellant was totally disabled due to her accepted conditions. Further, he did not explain how and why the additional condition was causally related to the accepted employment injuries. A physician's opinion on causal relationship between a claimant's employment injury and additional conditions or disability is not conclusive simply because it is rendered by a physician. To be of probative value, the physician must provide rationale for the opinion reached. Where no such rationale is present, the medical opinion is of diminished probative value.¹²

Dr. Hadnott also failed to provide an accurate history of injury. He reported that appellant fell down on January 20, 2017. However, appellant explained that she fell down at work on January 27, 2017. It is well established that medical reports must be based on a complete and accurate factual and medical background, and medical opinions based on an incomplete or inaccurate history are of little probative value.¹³

In a radiology order dated June 12, 2017, a laboratory requisition dated June 13, 2017, and reports dated July 24 and August 21, 2017, Dr. Hadnott diagnosed lumbar radicular pain. The Board notes that he failed to provide a firm medical diagnosis as he only diagnosed lumbar radicular pain. The Board has consistently held that pain is a symptom, rather than a compensable medical diagnosis.¹⁴ Furthermore, Dr. Hadnott did not offer a specific medical opinion addressing

¹⁰ *Amelia S. Jefferson, supra* note 3.

¹¹ *L.N.*, Docket No. 16-0137 (issued October 14, 2016); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

¹² *L.N., id.*

¹³ *Douglas M. McQuaid*, 52 ECAB 382 (2001).

¹⁴ *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

whether appellant had any total disability during the claimed period causally related to the accepted January 27, 2017 work injuries. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁵ Likewise, Dr. Hadnott's August 22, 2017 prescription is of limited probative value on the issue of causal relationship. He reiterated his diagnosis of lumbar radiculopathy, but failed to offer a medical opinion addressing whether the diagnosed condition and any resultant total disability during the claimed period were causally related to the accepted employment injuries.¹⁶ Therefore, for these reasons, Dr. Hadnott's reports are insufficient to meet appellant's burden of proof.

Appellant also submitted Dr. Banker's September 12, 2017 report in which he noted appellant's clinical history of lumbar radiculopathy and back pain and treated her with a lumbar epidural therapeutic injection. Dr. Banker did not explain how the diagnosed conditions and any resultant total disability during the claimed period were causally related to the accepted conditions.¹⁷ Thus, his report is insufficient to meet appellant's burden of proof.

On appeal appellant contends that she developed spinal stenosis as a consequence of her accepted employment injuries. She notes that she received two injections, which provided no pain relief. Appellant has not submitted rationalized medical evidence to establish a causal relationship between the claimed total disability from July 18 to August 13, 2017 and the accepted employment injuries. Thus, she has not met her burden of proof to establish that she is entitled to compensation for the claimed disability.

Appellant further contends on appeal that a medical report she submitted on appeal establishes the need to undergo surgery to treat her back condition. As previously noted, the Board lacks the jurisdiction to review new evidence for the first time on appeal.¹⁸

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 failed to meet her burden of proof to establish total disability from July 18 to August 13, 2017 causally related to her accepted January 27, 2017 employment injuries.

¹⁵ See *M.S.*, Docket No. 17-0105 (issued December 7, 2017); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ See *supra* note 2.

ORDER

IT IS HEREBY ORDERED THAT the October 18, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 8, 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