

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

J.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Cincinnati, OH, Employer**

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**Docket No. 17-1121
Issued: April 17, 2019**

Appearances:

*Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 1, 2017 appellant, through counsel, filed a timely appeal from a March 16, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (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 established disability for the period April 26, 2016 and continuing causally related to her February 1, 2009 employment injury.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 25, 2009 appellant, then a 36-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that, on February 1, 2009, she slipped on ice three times, causing a muscle strain of the pelvic area and possible ligament damage of the pelvic area.³ She stopped work on February 2, 2009 and returned on February 6, 2009. On April 17, 2009 OWCP accepted the claim for bilateral pelvic and groin strain. Appellant thereafter returned to work, but was off work intermittently, for which periods OWCP paid wage-loss compensation.

On May 3, 2016 appellant filed a claim for compensation (Form CA-7) for intermittent wage loss from April 16 to 29, 2016. In support of her claim, she submitted medical evidence from Dr. Hungchih Lee, a pain management specialist. Dr. Lee noted in a January 13, 2016 report that appellant related working long hours and that the combination of standing, “picking,” and bending were making her pain significantly worse. Additionally, appellant related having more bad days since her workload had increased.

In reports of March 9 and April 6, 2016, Dr. Lee again noted that appellant related working harder, with longer hours. He recounted her shooting pain complaints in her groin area and legs when standing, and incidents of pain when she engaged in heavy lifting and pushing and pulling.

OWCP also received an April 6, 2016 duty status report (Form CA-17) from Dr. Lee, who diagnosed pelvis strain and groin injury. Dr. Lee checked a box marked “yes” indicating that the diagnosis was due to the injury and recommended part-time work of four hours per day.

By development letter dated May 9, 2016, OWCP requested additional information in support of the claimed period of disability. It afforded appellant 30 days to submit the requested information.

OWCP subsequently received reports dated May 4 and 12, 2016, wherein Dr. Lee diagnosed knee pain and sprain of the pelvis.

In a June 1, 2016 report, Dr. Lee noted that appellant had returned for routine follow-up treatments due to pain. Appellant indicated that the pain on the right side of her pelvis had increased and that even driving in the car caused more pain. Dr. Lee also related that appellant believed that her back pain was related to her pelvic issue. He diagnosed knee pain and sprain of the pelvis.

By decision dated July 7, 2016, OWCP authorized payment of compensation for four hours of wage loss on April 26, 2016, but denied appellant compensation for the remaining hours claimed for that date.

By separate decision dated July 7, 2016, OWCP denied appellant compensation for wage loss commencing April 27, 2016 and continuing, finding that Dr. Lee did not provide sufficient medical rationale in support of his opinion that appellant was disabled from work.

³ Appellant was five and a half months pregnant at the time.

On July 15, 2016 appellant, through counsel, requested a hearing before an OWCP hearing representative and continued to submit additional medical evidence.

In reports dated July 27, August 23, and October 19, 2016, Dr. Lee noted his follow-up examination of appellant for groin pain, vaginal pain, and left knee pain. He indicated that she related working part time and that her pain had worsened. Dr. Lee further related that standing on her feet worsened appellant's pain and that sitting, squatting, bending, and walking were painful. He continued treatment for her chronic pain, including a restriction of working no more than four hours a day.

In a November 11, 2016 report, Dr. Lee opined that appellant's diagnosed aggravation of cervical disc displacement, aggravation of lumbar disc displacement, aggravation of degenerative disease of the knees, aggravation of degenerative disease of the hips, and neurogenic bladder were causally related to the accepted work-related injury. He noted that appellant had been treated since January 10, 2012 for her pelvic pain, and that she was complaining of neck, back, hip, and knee pain with urine retention which had gone untreated. Dr. Lee explained that she worked at the employing establishment and her condition had gradually worsened. He noted evaluating appellant for her symptoms on August 26, 2016. Dr. Lee noted that the lumbar MRI scan from May 20, 2016, revealed disc protrusion with bilateral neuroforamen annular tear and compression on the left L3-nerve root, L4-5 disc bulge with bilateral narrowing neuroforamen, L5-S1 disc bulge with bilateral foraminal narrowing. Additionally, he advised that the right shoulder MRI scan of May 15, 2016 revealed osteoarthritis on the right acromioclavicular (AC) joint with degenerative osteolysis. Dr. Lee also noted that appellant's left knee MRI scan of July 28, 2016 revealed severe patellofemoral compartment chondral loss with reactive bone marrow edema, of the right knee. He also noted that the MRI scan of July 28, 2016 revealed a disc bulge at C3-4 and C4-5. It also revealed degenerative disc disease at C3-4, C4-5, C5-6, and C6-7. Dr. Lee opined that he believed that, with a reasonable amount of medical certainty, the "diagnoses listed are causally and directly to the work injury." The MRI scans discussed by Dr. Lee were received by OWCP on February 17, 2017.

In a November 11, 2016 attending physician's report, Form CA-20, Dr. Lee noted a history of neck, shoulder, lower back, and knee pain. He specified the date of injury as August 15, 2016 and diagnosed, cervical and lumbar disc displacement, "degenerative knee," and "degenerative shoulder."

Dr. Lee, in November 16 and December 14, 2016 reports, noted his follow up of appellant for groin pain, vaginal pain, and left knee pain. He noted that she was no longer working due to her conditions. Dr. Lee diagnosed knee pain and sprain of the pelvis, and continued the treatment for appellant's chronic pain, including pain medication and a four-hour-a-day work restriction.

In a January 11, 2017 report, Dr. Lee advised that appellant had not worked since October 31, 2016 and that she had related that she was not planning to return to work because her pain prevented her from physically performing the required repetitive tasks or sitting for too long. He diagnosed knee pain and sprain of pelvis and continued treatment for her chronic pain. Dr. Lee noted that appellant was "not working now (continue work restriction: 4 hours per day)."

A hearing was held before an OWCP hearing representative on February 14, 2017.

OWCP subsequently received treatment notes from Dr. Marc Wahlquist, a Board-certified orthopedic surgeon. In a November 20, 2015 treatment note, Dr. Wahlquist related that appellant was a new patient visiting for left knee pain. He explained that she had occasional aches and pains in her knee for years and that, on November 14, 2015, she started having sudden worsening pain and swelling in the left knee after standing for prolonged periods while at work. Dr. Wahlquist indicated that appellant “denies any known injury. [Appellant] states she works at the window in the [employing establishment] and she is on her feet for long hours. She states recently the pain was so severe she could barely walk.” Dr. Wahlquist noted that appellant experienced pain and swelling that was lateral and anterior, with no locking or catching, but the knee did grind with motion. He diagnosed knee pain on the left and chondromalacia of the patella on the left. Dr. Wahlquist also indicated that appellant had longstanding early arthritis or chondromalacia, and that her prolonged standing while at work flared up and exacerbated the problem.

In an April 15, 2016 treatment note, Dr. Wahlquist noted that appellant was seen in follow up for her left knee pain. He advised that he believed she had chondromalacia in both knees that was aggravated by her prolonged standing while at work. Dr. Wahlquist recommended physical therapy and noted that appellant was seeing another doctor for a separate workers’ compensation issue, and he would be taking care of her knees. In a July 22, 2016 treatment note, he noted that she was seen for follow up of her knee pain. Dr. Wahlquist diagnosed right and left knee pain, unspecified chronicity and chondromalacia of the right knee and left patella. He recommended an MRI scan of both knees. In a July 29, 2016 treatment note, Dr. Wahlquist noted that appellant was seen for follow up of her MRI scan results and her bilateral knee pain. He diagnosed chondromalacia of the right and left knee.

OWCP also received a February 24, 2017 treatment note from Dr. Lee, which noted that appellant was seen for chief complaints of groin, vaginal, and left knee pain. Dr. Lee examined appellant and diagnosed knee pain, and sprain of the pelvis.

By decision dated March 16, 2017, OWCP’s hearing representative affirmed the July, 7 2016 decisions, finding that the evidence of record was insufficient to establish disability from work during the claimed period causally related to the accepted February 1, 2009 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the 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 or she was disabled from work as a result of the accepted employment injury.⁵ Whether a particular injury causes an employee to

⁴ See *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *Nathaniel Milton*, 37 ECAB 712 (1986).

⁵ See *Amelia S. Jefferson*, *id.*

become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.⁶

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.⁷ Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.⁸ 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.⁹ 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.

To establish causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such causal relationship.¹⁰ The opinion of the physician must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship.¹¹

The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.¹²

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹³

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

⁷ *S.M.*, 58 ECAB 166 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); 20 C.F.R. § 10.5(f).

⁸ *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

⁹ *Merle J. Marceau*, 53 ECAB 197 (2001).

¹⁰ See *S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

¹¹ See *S.J.*, *id.*; *G.T.*, Docket No. 07-1345 (issued April 11, 2008); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹² *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

ANALYSIS

The Board finds that appellant has not established disability from April 26, 2016 and continuing causally related to her February 1, 2009 employment injury. In support of her claim, appellant submitted a November 11, 2016 report, wherein Dr. Lee explained that appellant had evidence of aggravation of cervical disc displacement, aggravation of lumbar disc displacement, aggravation of degenerative disease of knees, aggravation of degenerative disease of hips, neurogenic bladder as work-related injury. Dr. Lee noted that she was treated since January 10, 2012 for her pelvic pain. He noted that appellant was complaining of neck, back, hip, and knee pain with urine retention. Dr. Lee explained that she worked at the employing establishment and her condition gradually worsened. He noted that the lumbar MRI scan from May 20, 2016, revealed disc protrusion with bilateral neuroforamen annular tear and compression on the left L3 nerve root, L4-5 disc bulge with bilateral narrowing neuroforamen, L5-S1 disc bulge with bilateral foraminal narrowing. Additionally, Dr. Lee advised that the right shoulder MRI scan of May 15, 2016 revealed osteoarthritis on the right acromioclavicular (AC) joint with degenerative osteolysis. He also noted that appellant's left knee MRI scan of July 28, 2016 revealed severe patellofemoral compartment chondral loss with reactive bone marrow edema, of the right knee. Dr. Lee also noted that an MRI scan of July 28, 2016 revealed a disc bulge at C3-4 and C4-5. It also revealed degenerative disc disease at C3-4, C4-5, C5-6, and C6-7. Dr. Lee opined that he believed that, with a reasonable amount of medical certainty, the "diagnoses listed are causally and directly to the work injury." He did not provide rationale explaining how or why appellant's disability resulted from the accepted injury.¹⁴ This report is, therefore, insufficient to establish appellant's claim.

Appellant also submitted May 4 and 12, June 1, July 27 and August 23, and October 29, and November 11, 2016 reports from Dr. Lee. However none of these reports provide an opinion on causal relationship between the diagnosed conditions and the claimed period of disability.¹⁵ These reports, therefore, are also insufficient to establish appellant's claim.

Likewise, in a November 16, 2016 report, Dr. Lee documented that "patient states that she is not working now due to her conditions." In a December 14, 2016 report, he reported that "[appellant] states that she is not working now partly due to pain." In a January 11, 2017 report, Dr. Lee advised that appellant had not worked since October 31, 2016. In a February 24, 2017 treatment note, he noted that appellant was seen for chief complaints of groin, vaginal, and left knee pain. Dr. Lee diagnosed knee sprain and sprain of the pelvis. He continued appellant on a four-hour-a-day work restriction. These reports are also of no probative value as they do not contain an opinion from Dr. Lee regarding her ability to work beginning April 26, 2016.¹⁶

In a July 22, 2016 treatment note, Dr. Wahlquist diagnosed right and left knee pain, unspecified chronicity and chondromalacia of the right knee and left patella. He also diagnosed

¹⁴ See *J.M.*, Docket No. 16-0306 (issued May 5, 2016).

¹⁵ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁶ *Id.*

chondromalacia of the right and left knee. Dr. Wahlquist, however, provided no opinion on causal relationship.¹⁷

Appellant also submitted several reports, including an April 6, 2016 duty status report (Form CA-17) from Dr. Lee, and November 20, 2015 and April 15, 2016 treatment notes from Dr. Wahlquist that predate the period of disability claimed are of limited probative value as they do not address the claimed period.¹⁸

As the case record does not contain a rationalized opinion establishing causal relationship between the claimed period of disability and the February 1, 2009 employment injury, the Board finds that appellant has not met 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 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established disability April 26, 2016 and continuing causally related to her February 1, 2009 employment injury.

¹⁷ *Id.*

¹⁸ See *J.A.*, Docket No. 17-0119 (issued July 11, 2017); see also *M.B.*, Docket No. 17-1346 (issued September 11, 2018).

ORDER

IT IS HEREBY ORDERED THAT the March 16, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 17, 2019
Washington, DC

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

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

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