

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

L.G., Appellant)	
)	
and)	Docket No. 18-0140
)	Issued: August 6, 2019
DEPARTMENT OF HOMELAND SECURITY,)	
TRANSPORTATION SECURITY)	
ADMINISTRATION, Ronkonkoma, NY,)	
Employer)	
)	

Appearances:
Thomas S. Harkins, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
JANICE B. ASKIN, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On October 24, 2017 appellant, through counsel, filed a timely appeal from a May 2, 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.

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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish total disability for the period from February 22 to May 16, 2015 causally related to her December 24, 2014 employment injury.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On December 31, 2014 appellant, then a 57-year-old supervisory transportation security officer, filed a traumatic injury claim (Form CA-1) alleging that on December 24, 2014 she was working with checked baggage and caught a bag that was rolling off of an explosive detection machine, injuring her neck, right shoulder, and right arm while in the performance of duty.

Following her report of injury, OWCP received claims for compensation (Form CA-7) for wage-loss compensation benefits for periods from February 22 to 19, 2015, from April 5 to 18, 2015, from April 19 to May 2, 2015, and from May 3 to 16, 2015.

On December 29, 2016 OWCP accepted the claim for cervical sprain, resolved; right shoulder strain, resolved; and temporary aggravation of cervical spondylosis without myelopathy, resolved.

In a separate letter of even date, OWCP notified appellant and her counsel that they had received her wage-loss compensation claims covering the period February 22 through May 16, 2015. It explained that, while it had accepted her employment-related injury, there was no narrative medical report which included a rationalized medical opinion to explain why she was totally disabled from work for the period from February 22 through May 16, 2015.

In a letter dated January 23, 2017, counsel noted receipt of the December 29, 2016 letter seeking medical information. He indicated that he had previously submitted a request for reconsideration of the denial of appellant's claim on September 30, 2015 and stated that he had attached rationalized medical evidence in support of the claimed periods of disability. Counsel also indicated that the medical evidence noted within the request for reconsideration satisfied their request of December 29, 2016. He did not submit additional evidence in support of the claimed period of total disability.

The reports noted within appellant's September 30, 2015 request for reconsideration include the following reports. In a May 28, 2015 narrative report Dr. Luis Alejo, a Board-certified physiatrist, diagnosed cervical radiculopathy (brachial neuritis or radiculitis). He

³ Docket No. 16-1065 (issued October 13, 2016).

noted that diagnostic studies noted herniated discs at C5-6 and C6-7 with multiple bulges. In a separate state of New York workers' compensation report also dated May 28, 2015, Dr. Alejo checked a box marked "yes" in response to whether the incident appellant described was the competent cause of the injury or illness and in response to whether appellant's complaints were consistent with the history of the injury/illness and indicated that she was 100 percent totally disabled. He saw appellant again on August 18, 2015 and repeated the history of injury, but did not address a period of disability.

In a June 29, 2015 report, Dr. Stuart Horowitz, an osteopath Board-certified in family medicine, opined that appellant's December 24, 2014 employment incident had caused her diagnosed cervical conditions and that she had a good, but guarded recovery and that she remained on temporary total disability.

In a July 9, 2015 report Dr. Aristide Burducea, Board-certified in anesthesiology and pain medicine, diagnosed cervical radiculopathy.

By decision dated May 2, 2017, OWCP denied appellant's claim for compensation for the period from February 22 to May 16, 2015. It indicated that, despite their request for additional information on December 29, 2016, they had not received a response and the medical evidence of record was insufficient to establish disability during the period claimed.

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 she was disabled for work as a result of the accepted employment injury.⁵ 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.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 she was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning

⁴ See *D.W.*, Docket No. 18-0644 (issued November 15, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Nathaniel Milton*, 37 ECAB 712 (1986).

⁵ *Id.*

⁶ See 20 C.F.R. § 10.5(f); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

⁷ *Id.*

⁸ *T.O.*, Docket No. 17-1177 (issued November 2, 2018); *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

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 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.¹⁰

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish total disability for the period from February 22 to May 16, 2015 causally related to her December 24, 2014 employment injury. In a May 28, 2015 narrative report, Dr. Alejo noted appellant's history of injury, reviewed her medical history, and provided diagnoses following diagnostic testing. However, this report does not contain an opinion as to whether appellant was disabled for the period from February 22 to May 16, 2015, or for any other period of time. Accordingly, Dr. Alejo's September 30, 2015 narrative report is insufficient to establish disability during the claimed period due to appellant's accepted December 24, 2014 employment injury.¹¹

In a separate New York state workers' compensation report, also dated May 28, 2015, Dr. Alejo checked a box marked "yes" in response to whether the incident appellant described was the competent cause of the injury or illness and in response to whether appellant's complaints were consistent with the history of the injury/illness and indicated that she was 100 percent totally disabled. While he indicated that appellant was totally disabled on that date, his opinion is insufficient to support the claimed period of disability. The Board has held that when a physician's opinion consists only of checking "yes" to a form question, without explanation or rationale, that opinion has little probative value and is insufficient to establish a claim.¹²

In a June 29, 2015 report, Dr. Horowitz opined that appellant was to remain off work on total disability. He did not, however, provide an explanation or refer to objective examination findings to support his opinion that appellant was totally disabled. Dr. Horowitz' opinion is, therefore, of diminished probative value and is insufficient to establish appellant's claim.¹³

Finally, OWCP also received a July 9, 2015 report from Dr. Burducea who diagnosed cervical radiculopathy, but did not address whether appellant had sustained a period of disability. An opinion which does not address the relevant issue is of no probative value.

⁹ *T.K.*, Docket No. 18-1239 (issued May 29, 2019); *Merle J. Marceau*, 53 ECAB 197 (2001).

¹⁰ *C.J.*, Docket No. 18-1181 (issued May 20, 2019); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹¹ *See M.C.*, Docket No. 16-1238 (issued January 26, 2017).

¹² *See M.O.*, Docket No. 18-1056 (issued November 6, 2018); *Deborah L. Beatty*, 54 ECAB 3234 (2003).

¹³ *M.M.*, Docket No. 18-0817 (issued May 17, 2019); *S.B.*, Docket No. 13-1162 (issued December 12, 2013).

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.¹⁴ The Board finds that appellant failed to submit sufficient medical evidence to establish employment-related disability for the period claimed due to her accepted injury.¹⁵

On appeal counsel for appellant argues a conflict remains and that the Board has not found a conflict in the case. He did not, however, identify the medical opinions which he considers sufficient to establish such conflict. As the Board finds that the record does not contain a rationalized medical report which supports the claimed period of total disability, the evidence is also insufficient to establish a conflict.

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 from February 22 to May 16, 2015 causally related to her December 24, 2014 employment injury.

¹⁴ See *J.S.*, Docket No. 16-1014 (issued October 27, 2016).

¹⁵ See *Alfredo Rodriguez*, 47 ECAB 437 (1996).

ORDER

IT IS HEREBY ORDERED THAT the May 2, 2017 decision of the Office of Workers' Compensation Programs' is affirmed.

Issued: August 6, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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