United States Department of Labor
Employees' Compensation Appeals Board

B.F., Appellant	)	
and	)	**Docket No. 19-0740**
	)	**Issued: December 5, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Memphis, TN, 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 February 11, 2019 appellant filed a timely appeal from a January 29, 2019 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.[2]

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that following the January 29, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met his burden of proof to establish disability from work for the period August 4 to 16, 2018 causally related to his accepted January 17, 2018 employment injury.

FACTUAL HISTORY

This case has previously been before the Board.[3] The facts and circumstances as presented in the prior decision are incorporated herein by reference. The relevant facts are as follows.

On January 17, 2018 appellant, then a 52-year-old postal police officer, filed a traumatic injury claim (Form CA-1) alleging that on that date he slipped and fell on icy pavement and sustained a contusion of his left hip while in the performance of duty. On the reverse side of the claim form the employing establishment indicated that he stopped work on January 17, 2018 and returned to work on January 18, 2018. The record indicates that the claim has been accepted for lower back strain of muscle, fascia, and tendon, as well as left hip contusion.[4]

In a report dated July 30, 2018, Dr. Gregory D. Dabov, a Board-certified orthopedic surgeon, diagnosed unrelenting low back strain. He indicated that appellant had a history of low back pain, but it had worsened since his previous visit. Dr. Dabov instructed that appellant was not to return to work. He completed a duty status report (Form CA-17) of even date noting the aforementioned diagnosis and return to work status.

In a lumbar spine magnetic resonance imaging (MRI) scan report dated August 14, 2018, Dr. Andy Ellzey, a Board-certified diagnostic radiologist, noted the presence of mild facet arthropathy and mildly narrowed foramina at L3-4, a disc bulge, facet arthropathy, and mildly narrowed foramina at L4-5, and a small right intraforaminal disc protrusion with mild right foraminal stenosis at L5-S1.

On August 20, 2018 appellant filed a claim for compensation (Form CA-7) for leave without pay for the period August 4 to 16, 2018.

In a report dated September 11, 2018, Dr. Dabov noted an impression of resolving psoas strain. He indicated that appellant still had some residual discomfort from his previously diagnosed psoas strain and preexisting arthritis in his knees. Dr. Dabov related that he had been tolerating his regular duties at work.

In a report dated October 9, 2018, Dr. Dabov indicated that appellant had a bad flare-up of his hip and back injury in July. He noted that on July 30, 2018 he took appellant off work due to this flare-up, and allowed him to return to work on August 17, 2018. Dr. Dabov noted an

[3] Docket No. 19-0123 (issued May 13, 2019). The Board notes that appellant had also filed a claim for compensation (Form CA-7) for leave pay back for the period July 31 through August 3, 2018, which OWCP denied on October 12, 2018. Appellant appealed to the Board on October 22, 2018 and the appeal was assigned Docket No. 19-0123. By decision dated May 13, 2019, the Board affirmed OWCP's October 12, 2018 decision.

[4] A formal acceptance letter is not of record.

assessment of resolved psoas and low back strain. He related that appellant's conditions were likely to flare-up again going forward. Dr. Dabov also indicated that a lumbar spine MRI scan revealed a herniated disc, which was little more than a bulging disc, and was likely due to his previous injury. He also related that his opinion might change based upon review of prior MRI scans. Dr. Dabov concluded that appellant would continue with his regular duties at work.

In a development letter dated October 12, 2018, OWCP informed appellant that it had not received evidence to support his claim for disability for the period August 4 to 16, 2018. It advised him of the type of evidence needed to establish his disability claim and afforded him 30 days to submit the necessary evidence.

In response to OWCP's October 12, 2018 development letter, appellant resubmitted medical evidence previously of record, as well as continuing progress reports from Dr. Dabov.

By decision dated January 29, 2019, OWCP denied appellant's claim for compensation for the period August 4 to 16, 2018.

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] has the burden proof to establish the essential elements of his or her claim by the preponderance of the evidence.[6] 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.[7] Whether a particular injury caused an employee to 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.[8]

Under FECA the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus 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 a federal employment injury, but who nevertheless 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 in FECA.[9]

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.[10] Rationalized medical evidence is medical evidence which includes a physician's detailed medical opinion on the issue of whether there is a causal

[5] *Supra* note 1.

[6] *M.D.*, Docket No. 18-10474 (issued October 3, 2018); *see Amelia S. Jefferson*, 57 ECAB 183 (2005); *see also Nathaniel Milton*, 37 ECAB 712 (1986).

[7] *Id.*

[8] *M.D.*, *supra* note 6; *see also Edward H. Horton*, 41 ECAB 301 (1989).

[9] *J.D.*, Docket No. 19-0774 (issued September 25, 2019); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

[10] *See J.D., id.*; *J.M.*, Docket No. 19-0478 (issued August 9, 2019).

relationship between the claimed disability and the accepted employment injury. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the accepted condition and the claimed period of disability.[11]

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.[12]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish disability from work for the period August 4 to 16, 2018 causally related to his accepted January 17, 2018 employment injury.

In his July 30, September 11, and October 9, 2018 reports, Dr. Dabov noted that appellant still had some residual discomfort from his previously diagnosed psoas back strain and preexisting arthritis in his knees. In addressing the claimed period of disability, August 4 to 16, 2018, in his October 9, 2018 report, Dr. Dabov explained that appellant had a bad flare-up of his "hip and back" in July, and noted that, on July 30, 2018, he took appellant off work due to this flare-up, and allowed him to return to work on August 17, 2018. However, Dr. Dabov did not provide medical rationale which explained how or why the worsening of appellant's accepted employment conditions caused his disability. Subjective complaints of pain are insufficient, in and of themselves, to support payment of compensation.[13] Dr. Dabov did not specifically provide objective findings to demonstrate how appellant's accepted employment conditions had worsened to the point of disability. Rather, he merely attributed his inability to work to subjective complaints of pain. When a physician's statements regarding an employee's ability to work consist only of recitation of the employee's complaints that he/she was in too much pain to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability.[14] A mere conclusion without the necessary rationale is insufficient to meet a claimant's burden of proof.[15] Thus, Dr. Dabov's July 30, September 11, and October 9, 2018 reports are insufficient to establish appellant's claim.

[11] *See supra* note 9; *R.H.*, Docket No. 18-1382 (issued February 14, 2019).

[12] *V.B.*, Docket No. 18-1273 (issued March 4, 2019); *see William A. Archer*, 55 ECAB 674 (2004); *see also Fereidoon Kharabi*, 52 ECAB 291 (2001).

[13] *B.F.*, Docket No. 19-0123 (issued May 13, 2019); *M.D.*, Docket No. 18-0474 (issued October 3, 2018); *see Amelia S. Jefferson*, 57 ECAB 183 (2005); *see also Nathaniel Milton*, 37 ECAB 712 (1986).

[14] *J.M.*, Docket No. 19-0478 (issued August 9, 2019); *P.D.*, Docket No. 14-0744 (issued August 6, 2014); *G.T.*, 59 ECAB 447 (2008).

[15] *See D.M.*, Docket No. 17-1052 (issued January 24, 2019); *see also D.P.*, Docket No. 17-0148 (issued May 18, 2017).

Furthermore, while in his October 9, 2018 report, Dr. Dabov referenced an August 14, 2018 MRI scan indicating that appellant also sustained a herniated disc, the Board notes that herniated disc is not an accepted condition.[16] Dr. Dabov's clarification that he had not reviewed prior MRI scans to determine whether the condition was present prior to the employment injury is equivocal and speculative in nature. The Board has held that medical opinions which are equivocal or speculative are of diminished probative value.[17] Without medical rationale supporting disability during the period August 4 to 16, 2018, Dr. Dabov's reports are insufficient to meet appellant's burden of proof.[18] His reports, therefore, do not establish that appellant was disabled from work during the claimed period due to his accepted back and hip conditions.

The diagnostic studies do not address appellant's claimed disability during the period in question.[19] As such this evidence is insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish that appellant was disabled from work for the period August 4 to16, 2018 due to his accepted back and hip conditions, the Board finds that appellant has not met his 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(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish disability from work for the period August 4 to 16, 2018 causally related to his accepted January 17, 2018 employment injury.

[16] If an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he/she bears the burden of proof to establish that the condition is causally related to the employment injury. *R.J.*, Docket No. 17-1365 (issued May 8, 2019); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

[17] *R.B.*, Docket No. 19-0204 (issued September 6, 2019); *see N.B.*, Docket No. 19-0221 (issued July 15, 2019).

[18] *S.H.*, Docket No. 18-1398 (issued March 12, 2019).

[19] *Supra* note 12; *see also L.A.*, Docket No. 18-1570 (issued May 23, 2019). The Board has held that diagnostic studies lack probative value as they do not address whether the employment injury caused any of the diagnosed conditions.

ORDER

IT IS HEREBY ORDERED THAT the January 29, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 5, 2019
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