United States Department of Labor
Employees' Compensation Appeals Board

V.J., Appellant	)	
and	)	**Docket No. 19-1225**
	)	**Issued: December 17, 2019**
SOCIAL SECURITY ADMINISTRATION, Atlanta, GA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 13, 2019 appellant, through counsel, filed a timely appeal from a March 26, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

[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.*

[3] The Board notes that following the March 26, 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 evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to establish that she was disabled for 5.25 hours on May 29, 2018, causally related to her accepted February 3, 2016 employment injury.

FACTUAL HISTORY

On February 8, 2016 appellant, then a 56-year-old social insurance specialist, filed a traumatic injury claim (Form CA-1) alleging that on February 3, 2016 she fell while in the performance of duty. On the reverse side of the claim form, the employing establishment indicated that she stopped working on February 4, 2016. Appellant returned to work on February 10, 2016.[4] OWCP accepted her claim for lower back contusion and sacroiliac joint dysfunction. It paid appellant compensation on the supplemental rolls for periods of both intermittent wage loss and temporary total disability. Appellant last received payment on the periodic compensation rolls from February 4 through March 31, 2018.[5] Effective April 3, 2018, she resumed work in a full-time, limited-duty capacity, with no loss in wages.

On June 11, 2018 appellant filed a claim for compensation (Form CA-7) for intermittent wage loss during the period May 28 through June 5, 2018. She claimed a total of 8.5 hours of lost wages which included 5.25 hours on May 29, 2018, 2.25 hours on May 31, 2018, and 1 hour on June 5, 2018.[6]

OWCP received physical therapy treatment records for May 22 and 31, and June 5, 2018. It subsequently paid appellant wage-loss compensation for a total of 3.25 hours claimed for medical treatment received on May 31 and June 5, 2018.

In a June 29, 2018 claim development letter, OWCP informed appellant that the evidence of record was insufficient to support her recent Form CA-7 claiming compensation for May 29, 2018 (5.25 hours). It explained that additional evidence was necessary to establish disability for work and/or lost time from work due to medical appointments or physical therapy sessions. OWCP afforded appellant 30 days to submit the requested information.

A July 11, 2018 Form CA-110 note of a telephone conversation indicated that OWCP spoke with appellant's physical therapy provider in an attempt to verify if she attended physical therapy on May 29, 2018. The representative advised that although appellant was scheduled for therapy on May 29, 2018, she was a "No Show."

[4] Appellant resumed work on a part-time (4 hours), modified-duty basis.

[5] OWCP paid wage-loss compensation for a period of temporary total disability following appellant's authorized January 30, 2018 surgery for left sacroiliac joint fusion.

[6] The accompanying time analysis form (Form CA-7a) identified various reasons for appellant's absence(s), which include physical therapy (PT), occupational therapy (OT), and increased pain.

In a July 12, 2018 note, Dr. Mark L. Dumonski, an orthopedic surgeon,[7] indicated that appellant would be out of work May 28 to 29, 2018 secondary to sacroiliac joint dysfunction.[8]

By decision dated September 4, 2018, OWCP denied appellant's claim for 5.25 hours of lost wages on May 29, 2018 as the medical evidence of record did not establish "that the time was lost to obtain medical care" for her accepted employment-related conditions.

On September 14, 2018 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. The hearing was held on February 1, 2019. During the hearing appellant testified that she did not recall each and every day in the period of time between May 28, 2018 and June 5, 2018, but that there were days when she was in too much pain to go to physical therapy and did not work the entire day, but rather went home. Counsel then asked her if she was referring to May 29, 2018 and she responded "yes." He then asked appellant if she worked at all on that day and she said "she may have," but she did not recall. Appellant noted at that time she was experiencing pain down her groin and into her legs and back, and she could not sit or stand in one place. Counsel requested for OWCP to hold the record open for 30 days. No evidence was received.

By decision dated March 26, 2019, OWCP's hearing representative affirmed the September 4, 2018 decision finding that appellant failed to establish that her claimed 5.25 hours of disability on May 29, 2018 were causally related to her accepted February 3, 2016 employment injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA[9] has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.[10] 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.[11] Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by the weight of the probative and reliable medical opinion evidence.[12]

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.[13] Rationalized medical evidence is medical evidence which includes a physician's detailed medical opinion on the issue of whether there is a causal 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

[7] Dr. Dumonski performed appellant's January 30, 2018 left sacroiliac joint fusion. *Id.*

[8] Dr. Dumonski also excused appellant for work on April 17 to 19, 2018.

[9] *Supra* note 2.

[10] *See B.O.*, Docket No. 19-0392 (issued July 12, 2019); *D.W.*, Docket No. 18-0644 (issued November 15, 2018).

[11] *Id.*

[12] 20 C.F.R. § 10.5(f); *B.O.*, *supra* note 10; *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

[13] *J.M.*, Docket No. 19-0478 (issued August 9, 2019).

be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the claimed period of disability.[14]

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 their disability and entitlement to compensation.[15]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that she was disabled for 5.25 hours on May 29, 2018, causally related to her accepted February 3, 2016 employment injury.

Although appellant was scheduled for physical therapy on May 29, 2018, she did not attend her appointment. Appellant's physical therapy provider indicated she was a "No Show" that day. As such, appellant is not entitled to compensation for lost wages due to attending medical treatment.[16]

In a July 12, 2018 note, Dr. Dumonski, appellant's physician, excused her from work May 28 to 29, 2018 secondary to sacroiliac joint dysfunction. He did not, however, provide medical rationale explaining why appellant's sacroiliac joint dysfunction disabled her from performing her modified duties on May 29, 2018.[17] Dr. Dumonski's July 12, 2018 note, therefore, is of diminished probative value and is insufficient to establish appellant's claim for wage loss.[18]

The issue of whether a claimant's disability from work is related to an accepted condition must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability was causally related to the employment injury and supports that conclusion with sound medical reasoning.[19] As appellant has not submitted such evidence in this claim, the Board finds that she has not met her burden of proof.[20]

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.

[14] *Id.*

[15] *A.W.*, Docket No. 18-0589 (issued May 14, 2019).

[16] *See B.O., supra* note 10.

[17] *Id.*

[18] *Id.*

[19] *J.A.*, Docket No. 19-0776 (issued September 25, 2019).

[20] *Id.*

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she was disabled for 5.25 hours on May 29, 2018, causally related to her accepted February 3, 2016 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the March 26, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 17, 2019
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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