

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

_____)	
V.G., Appellant)	
)	
and)	Docket No. 18-0936
)	Issued: February 6, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 3, 2018 appellant filed a timely appeal from an October 26, 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 has met her burden of proof to establish intermittent periods of disability from April 30 through August 28, 2016, causally related to her accepted employment conditions.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the October 26, 2017 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.*

FACTUAL HISTORY

On November 30, 2014 appellant, then a 54-year-old mail processing clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained an injury as a result of standing, bending, sweeping, pushing, and pulling in the performance of duty. She indicated that she became aware of her disease or illness on November 16, 2014, and related it to factors of her federal employment on November 25, 2014. Appellant did not stop work. In a supplemental statement, she related that she had worked for the employing establishment as a mail processor since 1997. Appellant had a prior accepted injury to her feet, and had returned to work with no restrictions approximately 15 months prior to her current claim. She noted that approximately six months prior to her claim she began to experience pain in her hands and elbow, as well as pain in her knees and back.

On March 20, 2015 OWCP accepted the claim for the conditions of sprain of the elbow and forearm, unspecified site, bilateral; carpal tunnel syndrome, bilateral; displacement of lumbar intervertebral disc without myelopathy; other internal derangement of the knee, bilateral.

On July 28, 2016 appellant filed several claims for wage-loss compensation (Form CA-7) for the period April 30 to July 8, 2016.

OWCP received work excuse notes dated May 11 and 18 and June 8 and 29, 2016 from Dr. Charles Reinhardt, a Board-certified family practitioner. Dr. Reinhardt related that appellant was placed off work for intermittent dates from May 1 through July 5, 2016. He indicated that appellant was unable to work “due to workers’ comp[ensation]” and advised that appellant was unable to perform her job duties because she was “incapacitated.” In the May 11, 2016 note, Dr. Reinhardt also indicated that appellant could return to full duty on May 12, 2016. In the May 18, 2016 note, he indicated that appellant could return to full-duty employment on May 19, 2016.

In a separate report dated May 18, 2016, Dr. Reinhardt related appellant’s history of injury, reviewed magnetic resonance imaging (MRI) scan and electromyography (EMG) studies, and noted his own physical examination findings. He diagnosed lumbar disc disease with radiculopathy, bilateral carpal tunnel syndrome, and probable de Quervain’s disease. Dr. Reinhardt advised that appellant could work light duty.

OWCP received several copies of May 18, 2016 Form CA-17 duty reports from Dr. Reinhardt advising that appellant could return to light-duty work on May 19, 2016.

By development letters dated August 12 and September 6, 2016, OWCP advised appellant her claims for intermittent disability had been received, but that additional evidence was needed to support her claim and informed her of the evidence needed. It explained that her physician must submit a comprehensive narrative medical report, which included a history of injury and thorough explanation with findings as to how her condition worsened such that she was no longer able to perform the duties of her position when she stopped work on April 30, 2016. OWCP explained that a medical slip disabling her from work or a Form CA-17 would not be sufficient without the necessary medical explanation and objective findings. It afforded appellant 30 days to submit the requested evidence.

OWCP received additional work excuses from Dr. Reinhardt dated August 2 to 15, 2016 excusing appellant from work during intermittent dates from July 23 through August 15, 2016. Dr. Reinhardt indicated that appellant was unable to perform her job duties because of “exacerbation of pain” from her work-related injuries.

By decision dated September 20, 2016, OWCP denied appellant’s claim for compensation for wage loss for the period April 30, 2016 and continuing. It explained that the medical evidence of record did not establish that she was disabled for work and thus she was not entitled to wage-loss compensation during the claimed periods.

On January 31, 2017 appellant requested reconsideration. She indicated that she was enclosing new medical evidence in support of her claim, which showed that her accepted conditions had worsened.

In a September 9, 2016 report, Dr. Reinhardt noted the duties appellant performed at the employing establishment. He also noted that she had a separate claim for an injury to her feet. Dr. Reinhardt explained that when appellant returned to work from her prior injury, she was required to engage in prolonged standing and repetitive use of both hands, arms, and elbows. He explained that the prolonged standing aggravated her lumbar disc displacement and her knee conditions, as appellant was required to stand, bend, and twist to perform duties on her machine. Dr. Reinhardt explained that the repetitive sweeping of the automated machine also aggravated her carpal tunnel and her elbows. He indicated that as long as appellant was performing these duties she would continue to have recurring episodes of disability, which could be viewed as a worsening of her condition. Dr. Reinhardt advised that she was temporarily totally disabled from work due to swelling, reduced range of motion, pain, and diagnoses provided in his electrodiagnostic reports. He indicated that appellant was totally disabled on intermittent dates from May 7 through August 27, 2016.

OWCP continued to receive reports from Dr. Reinhardt through February 2017 relating to appellant’s treatment from October 2016 through February 2017.³

By decision dated April 14, 2017, OWCP denied modification of the September 20, 2016 decision. It explained that appellant had not provided rationalized medical evidence to support that she was totally disabled on the dates claimed.

On July 28, 2017 appellant requested reconsideration. She indicated that her accepted conditions were worsening and were causing additional work restrictions.

In a July 10, 2017 report, Dr. Reinhardt indicated that he was providing a response to OWCP’s April 14, 2017 decision. He repeated appellant’s history of injury and his prior opinions from his September 9, 2016 and January 9, 2017 reports. Dr. Reinhardt added that during the period May 7 through August 17, 2016 “the patient’s condition was temporarily disabled, which left her incapacitated to perform any duties because it would cause further damage to her range of

³ OWCP received a narrative report from Dr. Reinhardt dated January 9, 2017 which addressed appellant’s period of alleged disability. This report, except for the date, was identical to his September 9, 2016 report.

motions, symptomology of sprain, and the diagnoses noted in the EMG report of October 28, 2016 and reevaluation report of November 26, 2016.”

OWCP also received a copies of previously submitted October 11 and 28, 2016 reports from Dr. Reinhardt.

By decision dated October 26, 2017, OWCP denied modification of the April 14, 2017 decision. It again found that the medical evidence of record did not establish that appellant was totally disabled from work during intermittent periods April 30 through August 28, 2016.

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 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, she is entitled to compensation for any loss of wages.

The claimant must submit medical evidence showing that the condition claimed is disabling.¹⁰ The evidence submitted must be reliable, probative, and substantial.¹¹ The physician’s opinion must be based on the facts of the case and the complete medical background of the employee, must be one of reasonable medical certainty, and must include objective findings in

⁴ See *B.K.*, Docket No. 18-0386 (issued September 14, 2018); see also *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *Nathaniel Milton*, 37 ECAB 712 (1986).

⁵ See *D.G.*, Docket No. 18-0597 (issued October 3, 2018); see also *Amelia S. Jefferson*, *id.*

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 *M.D.*, Docket No. 18-0474 (issued October 3, 2018); 20 C.F.R. § 10.115.

¹¹ *Id.*

support of its conclusions.¹² Subjective complaints of pain are not sufficient, in and of themselves, to support payment of continuing compensation.¹³ Likewise, medical limitations based solely on the fear of a possible future injury are also insufficient to support payment of continuing compensation.¹⁴

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.¹⁵

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish intermittent periods of disability from April 30 to August 28, 2016, causally related to her accepted employment conditions.

In support of her claim for wage-loss compensation appellant alleged that her accepted conditions had worsened and limited her ability to perform her employment duties. Appellant submitted numerous reports from her treating physician, Dr. Reinhardt. However, the Board finds that Dr. Reinhardt has not provided a rationalized opinion explaining why appellant was disabled during any specific date as a result of her accepted employment conditions.¹⁶

Dr. Reinhardt submitted multiple work excuse notes from May 11 to July 5, 2016 indicating that appellant was unable to work “due to workers’ comp[ensation]” and advised that appellant was unable to perform her job duties because she was “incapacitated.” The Board notes that this reasoning fails to offer an explanation or rationale regarding why appellant was incapacitated other than to note “due to workers’ comp[ensation].” A conclusory medical opinion without additional explanation as to how the accepted conditions caused disability is of limited probative value.¹⁷

Dr. Reinhardt noted on May 11, 2016 that appellant could return to full-duty work on May 12, 2016, and on May 18, 2016 he advised that appellant could return to full duty on May 19, 2016. In a second May 18, 2016 report, he related that appellant could return to light duty on May 18, 2016. However, in his subsequent narrative reports, including his September 9, 2016 report, he indicated that appellant was totally disabled on May 12 through 16, 2016 and from

¹² 20 C.F.R. § 10.501(a)(2).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See also *B.K.*, *supra* note 3. *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹⁶ *Id.*

¹⁷ See *R.T.*, Docket No. 15-0907 (issued August 18, 2015).

May 19 through 27, 2016. As Dr. Reinhardt provided inconsistent opinions regarding appellant's disability status on specific dates, these reports are of limited probative value.¹⁸

OWCP subsequently received additional work excuses dated from August 2 to 15, 2016 from Dr. Reinhardt in which he placed appellant off work on intermittent dates from July 23 through August 15, 2016. Dr. Reinhardt indicated that appellant was unable to perform her job duties because of "exacerbation of pain." The Board notes subjective complaints of pain are not sufficient, in and of themselves, to support payment of continuing compensation.¹⁹

In a narrative September 9, 2016 report, Dr. Reinhardt explained when appellant returned to work, she was required to engage in prolonged standing and repetitive use of both hands, arms, and elbows which aggravated her lumbar disc displacement and her knees, as appellant was required to stand, bend, and twist to perform duties on her machine. He explained that the repetitive sweeping of the automated machine also aggravated her carpal and her elbows. Dr. Reinhardt indicated that as long as appellant was performing these duties, she would continue to have recurring episodes of disability, which could be viewed as a worsening of her condition. He advised that appellant was temporarily totally disabled from work due to swelling, reduced range of motions, pain, and diagnoses provided in his electrodiagnostic reports. Dr. Reinhardt indicated that she was totally disabled on May 7, 9, 12, 13, 14, 15, 16, 19, 20, and 27, June 11, 17, 18, 27, and 30, July 1, 2, 3, 23, 24, and 25, and August 1, 4, 5, 6, 7, 8, 11, 15, 18, 25, 26 and 27, 2016. He, however, did not provide objective findings of appellant's accepted conditions on the dates in question, nor did he explain why these objective findings caused appellant total disability during the specific dates. As previously noted, subjective complaints are insufficient, in and of themselves, to support payment of continuing compensation.²⁰ Additionally, medical limitations based solely on the fear of a possible future injury are also insufficient to support payment of compensation.²¹

In a July 10, 2017 report, Dr. Reinhardt indicated that he was responding to OWCP's April 14, 2017 decision. In addition to his prior conclusions, he added that appellant was temporarily disabled during the dates in question, which left her incapacitated to perform any duties because work would cause further damage to her range of motion, symptomology of sprain, and her other diagnoses. However, again, Dr. Reinhardt offered no objective findings from the dates in question which would substantiate that appellant could not perform her employment duties.

As noted, appellant must submit reasoned medical evidence directly addressing the specific dates of disability for work for which she claims compensation.²² She did not provide medical evidence containing a rationalized opinion explaining why objective findings substantiated that

¹⁸ *Supra* note 14.

¹⁹ 20 C.F.R. § 10.501(a)(3).

²⁰ *Id.*

²¹ *Id.*

²² *See K.A.*, Docket No. 16-0592 (issued October 26, 2016).

she could not work for intermittent periods April 30 to August 25, 2016 causally related to her accepted employment conditions. Thus, 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 met her burden of proof to establish intermittent periods of disability from April 30 to August 25, 2016, causally related to her accepted employment conditions.

ORDER

IT IS HEREBY ORDERED THAT the October 26, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 6, 2019
Washington, DC

Christopher J. Godfrey, 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