

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

_____)	
T.J., Appellant)	
)	
and)	Docket No. 18-1196
)	Issued: January 18, 2019
U.S. POSTAL SERVICE, ATLANTA)	
PROCESSING & DISTRIBUTION CENTER,)	
Atlanta, GA, Employer)	
_____)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
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 May 24, 2018 appellant, through counsel, filed a timely appeal from an April 3, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the

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.

Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.³

ISSUE

The issue is whether appellant has met her burden of proof to establish total disability during the period February 25 through March 22, 2017 due to her accepted January 4, 2009 employment injury.

FACTUAL HISTORY

This case has previously been before the Board.⁴ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference.⁵ The relevant facts pertaining to the claimed disability period February 25 through March 22, 2017 are as follows.

On January 4, 2009 appellant, then a 42-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that she was sweeping mail at work when she felt a pain in her right arm near her elbow. On February 17, 2009 OWCP accepted her claim for right lateral epicondylitis. On March 20, 2012 and February 17, 2014 appellant underwent authorized right lateral epicondyle surgical releases. Appellant returned to light-duty work following these surgeries.

In December 28, 2016 reports, Dr. Duncan Wells, a Board-certified orthopedic surgeon, indicated that appellant was seen for a right elbow condition and that she would be unable to return to work until she underwent surgery.

In a report dated March 6, 2017, Dr. Tedman L. Vance, an orthopedic hand surgeon, related that appellant's right elbow pain due to a January 4, 2009 employment injury was worsening. He explained that the pain was aggravated by bending, lifting, and movement. Dr. Vance noted

² 5 U.S.C. § 8101 *et seq.*

³ Appellant's AB-1 form notes that she is only appealing from the April 3, 2018 OWCP merit decision. The Board notes that following the April 3, 2018 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.*

⁴ Docket No. 18-0619 (issued October 22, 2018).

⁵ By decision dated April 10, 2017, OWCP denied appellant's claimed periods of disability from work from August 13 through 25, 2016 and December 7, 2016 through January 14, 2017. On April 17, 2017 counsel requested a telephonic hearing before an OWCP hearing representative. By decision dated December 12, 2017, OWCP's hearing representative found that appellant had not established that she was disabled from work for the periods August 13 through 25, 2016 and December 7, 2016 through January 14, 2017 due to her accepted employment injuries. Appellant appealed the December 21, 2017 decision to the Board on January 30, 2018. By decision dated October 22, 2018, the Board affirmed the December 12, 2017 OWCP decision. Docket No. 18-0619 (issued October 22, 2018). At the time of the October 22, 2018 decision, the Board reviewed the medical evidence of record received through December 12, 2017.

appellant's past medical history and diagnosed lateral epicondylitis, loose body, and primary osteoarthritis of the right elbow and discussed the need for further surgery with appellant.

On March 23, 2017 appellant underwent right elbow loose body removal, osteochondral synovial mass excision, and right elbow irrigation and lavage.

Appellant filed a claim for wage-loss compensation (Form CA-7) claiming total disability from work for the period February 25 through March 31, 2017.

In a development letter dated April 27, 2017, OWCP requested medical evidence in support of appellant's claimed disability for the period February 25 through March 31, 2017. It afforded her 30 days for a response.

In a report dated April 5, 2017, Dr. Wells related that appellant had been out of work for intermittent dates from August 13, 2016, and from February 25, 2017 to the present. He diagnosed chronic right lateral epicondylitis, documented by a magnetic resonance imaging (MRI) scan and visualized during surgery. Dr. Wells related that appellant was unable to work because she continued to have severe right elbow pain, which required pain medication, and which prevented her from driving safely or fully performing her job. He explained that even in a sedentary position, she had use of her dominant arm, and that was the injured extremity. Dr. Wells concluded that appellant's inability to work was directly related to her right elbow injury sustained at the employing establishment in 2011.

OWCP authorized wage-loss compensation beginning March 23, 2017. By decision dated June 8, 2017, it denied appellant's claim for wage-loss compensation for the period February 25, 2017 through March 22, 2017. On June 15, 2017 counsel requested a telephonic hearing before an OWCP hearing representative.⁶

On October 31, 2017 OWCP expanded acceptance of appellant's claim to include the additional conditions of primary osteoarthritis of the right elbow and loose body in the right elbow.

On November 8, 2017 appellant testified at the oral hearing regarding the June 8, 2017 OWCP denial of her claim for wage-loss compensation for total disability from work for the period February 25 through March 22, 2017. She noted that she stopped work entirely from February 25 through March 22, 2017 based on Dr. Well's directions.

By decision dated December 22, 2017, OWCP's hearing representative found that neither Dr. Wells nor Dr. Vance provided rationalized medical opinion evidence explaining how the

⁶ Appellant filed claims for compensation (Form CA-7) and requested wage-loss compensation for total disability from work for the period May 13 through November 10, 2017. OWCP authorized wage-loss compensation benefits from March 23 through May 12, 2017 and June 10 through November 10, 2017.

accepted employment injuries caused temporary total disability from work for the period February 25 through March 22, 2017.⁷

OWCP continued to receive medical evidence pertaining to appellant's medical treatment and status after March 23, 2017.

On January 16, 2018 appellant, through counsel, requested reconsideration of the December 22, 2017 decision.⁸

On February 8, 2018 appellant returned to work at the employing establishment in a limited-duty position.

By decision dated April 3, 2018, OWCP denied modification of the December 22, 2017 decision finding that appellant had not established that her accepted employment injury caused total disability from work for the period February 25 through March 22, 2017.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁹ has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.¹⁰ 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 a preponderance of probative and reliable medical opinion evidence.¹¹

Under FECA the term "disability" is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury.¹² Disability is thus not synonymous with 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 wages he or she was receiving at the time of injury, has

⁷ On November 29, 2017 appellant filed a claim for compensation (Form CA-7) and requested wage-loss compensation for total disability from work for the period November 11 through 24, 2017. By decision dated January 9, 2018, OWCP denied her claim for wage-loss compensation for total disability from work for the period November 11 to 24, 2017. On January 22, 2018 appellant, through counsel requested an oral hearing before an OWCP hearing representative.

⁸ By decision dated March 16, 2018, OWCP denied appellant's request to expand acceptance of her claim to include an additional emotional condition. On March 21, 2018 counsel requested a hearing before an OWCP hearing representative.

⁹ *Supra* note 2.

¹⁰ *S.J.*, Docket No. 17-0828 (issued December 20, 2017); *G.T.*, Docket No. 07-1345 (issued April 11, 2008); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹¹ *B.K.*, Docket No. 18-0386 (issued September 14, 2018).

¹² 20 C.F.R. § 10.5(f); *see, e.g., Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury, but no loss of wage-earning capacity).

no disability as that term is used in FECA.¹³ Furthermore, whether a particular injury causes an employee to be disabled from employment and the duration of that disability are medical issues which must be proved by the preponderance of the reliable, probative, and substantial medical evidence.¹⁴

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.¹⁵ 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.¹⁶

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.¹⁷ Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.¹⁸ 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.¹⁹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that she was totally disabled from work for the period February 25 through March 22, 2017 due to her accepted January 4, 2009 employment injury.

OWCP accepted appellant's claim for right lateral epicondylitis, primary osteoarthritis right elbow, and loose body in the right elbow.

In support of her claim for disability for the periods February 25 through March 22, 2017 due to her accepted January 4, 2009 employment injury, appellant provided several reports from her treating physician, Dr. Wells. In reports dated December 28, 2016, Dr. Wells found that appellant would be totally disabled until after she underwent surgery. However, he provided no medical reasoning supporting his opinion. A medical report must include rationale explaining how

¹³ *O.C.*, Docket No. 18-0192 (issued September 7, 2018).

¹⁴ *Id.*

¹⁵ *See S.J., supra* note 10; *Amelia S. Jefferson*, 57 ECAB 183 (2005).

¹⁶ *See S.J., supra* note 10; *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹⁷ *See S.J., supra* note 10; *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

¹⁸ *See S.J., supra* note 10; *Elizabeth Stanislaw*, 49 ECAB 540 (1998).

¹⁹ *Id.*

the physician reached his conclusion regarding disability.²⁰ As these reports lack the requisite medical rationale, they are insufficient to meet appellant's burden of proof.

In his April 5, 2017 report, Dr. Wells found that appellant was unable to work beginning August 13, 2016 due to severe right elbow pain that required taking significant pain medication. He related that appellant had sustained a right elbow injury in 2011. Dr. Wells opined that appellant's prescribed medications prevented her from driving safely or fully performing her light-duty job duties. He noted that even a sedentary job required appellant to use her injured dominant right hand, which she could not do. Although Dr. Wells opined that appellant was totally disabled from work, his opinion is conclusory in nature and fails to explain in detail how the accepted medical conditions were responsible for appellant's total disability for work and why she could not perform her light-duty federal employment during the period claimed.²¹

OWCP also received a March 6, 2017 report from Dr. Vance. Dr. Vance continued to note appellant's right elbow symptoms and diagnoses, but he offered no opinion regarding appellant's disability status. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.²² This report, therefore, is insufficient to establish appellant's claim.

The Board finds that appellant has not provided sufficient rationalized medical opinion evidence to establish that she was totally disabled for the period February 25 through March 22, 2017 causally related to her accepted January 4, 2009 employment injury. Thus, appellant has not met her burden of proof to establish that she is entitled to compensation for total disability.

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 that she was disabled for the period February 25 through March 22, 2017 due to her accepted January 4, 2009 employment injury.

²⁰ *R.C.*, Docket No. 17-0748 (issued July 20, 2018); *J.I.*, Docket No. 17-0485 (issued June 22, 2017).

²¹ *D.H.*, Docket No. 17-0565 (issued July 2, 2018).

²² *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

ORDER

IT IS HEREBY ORDERED THAT the April 3, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 18, 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