United States Department of Labor
Employees' Compensation Appeals Board

L.S., Appellant	)	
and	)	**Docket No. 19-0222**
	)	**Issued: July 18, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Seaford, NY, 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:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 18, 2018 appellant, through counsel, filed a timely appeal from a September 21, 2018 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 to consider the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish total disability for the period November 24, 2015 through May 10, 2016 causally related to her accepted October 9, 2015 employment injury.

[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.*

FACTUAL HISTORY

On October 9, 2015 appellant, then a 47-year-old city carrier associate, filed a traumatic injury claim (Form CA-1) alleging that, on that date, she tripped and fell on stairs, injuring her back, twisting her left foot, and bending back the fingers of her right hand while in the performance of duty. She stopped work on October 9, 2015.[3]

OWCP initially denied the claim by decision dated November 30, 2015, finding that causal relationship had not been established.

OWCP subsequently received an October 10, 2015 report by Dr. Audrey Rochester, a physician Board-certified in internal medicine and emergency medicine, who diagnosed left foot and right hand contusions related to the October 9, 2015 employment incident. X-rays of the left foot and right hand were negative for fracture or dislocation. Dr. Rochester released appellant to return to work effective October 14, 2015.

In reports dated October 14, 2015, Dr. Samuel H. Kelman, an attending osteopathic physician Board-certified in physiatry, noted the October 9, 2015 employment incident. On examination, he observed swelling of the left foot and right hand. Dr. Kelman diagnosed left plantar fasciitis and a right hand contusion. He held appellant off work through November 9, 2015.[4] In periodic reports through December 14, 2015, Dr. Kelman observed tenderness, bruising, and restricted motion of the left foot and right hand. He diagnosed left plantar fasciitis, traumatic arthritis of the left foot, and post-traumatic arthritis of the right hand. Dr. Kelman continued to hold appellant off work.

On December 22, 2015 appellant, through counsel requested a telephonic hearing, which was held before an OWCP hearing representative on August 10, 2016.

Dr. Kelman released appellant to return to full-duty work, effective May 6, 2016. Appellant returned to work on May 10, 2016. She then resigned from federal employment effective June 4, 2016.

By decision dated September 27, 2016, an OWCP hearing representative modified the November 30, 2015 decision finding that appellant had established left foot and right hand contusions as causally related to the October 9, 2015 employment incident. However, he denied any additional diagnoses as employment related.

On September 18, 2017 appellant, through counsel, requested reconsideration. In support thereof, counsel provided a September 11, 2017 report by Dr. Neil Allen, a Board-certified internist and neurologist, who reviewed medical records at counsel's request. Dr. Allen opined that the October 9, 2015 employment injury had also caused right wrist and left foot sprains.

[3] The record contains an authorization for examination and/or medical treatment (Form CA-16) signed by an employing establishment official on October 9, 2015.

[4] October 15, 2015 x-rays of the left foot demonstrated chronic changes and no fracture. October 15, 2015 x-rays of the right hand demonstrated no fracture. November 25, 2015 magnetic resonance imaging scans demonstrated distal peroneal tenosynovitis of the left foot and no osseous or soft tissue injury to the right hand.

By decision dated October 27, 2017, OWCP accepted the claim for contusions of the left foot and right hand.

On December 13, 2017 appellant filed a claim for compensation (Form CA-7) for total disability from work for the period November 24, 2015 through May 10, 2016.

By decision dated December 15, 2017, OWCP found that appellant had established right wrist and left foot sprains as causally related to the accepted October 9, 2015 employment injury. However, it continued to deny any additional diagnosed conditions.[5]

By development letter dated December 20, 2017, OWCP informed appellant that the evidence submitted in support of her claim for wage-loss compensation was deficient. It advised her of deficiencies in the claim and the factual and medical evidence needed. OWCP afforded appellant 30 days to respond.

In response, appellant submitted her January 4, 2018 statement explaining that she did not expect to be compensated for the period May 6 to 10, 2016 as she had voluntarily delayed returning to work to assist an ill relative.

Appellant also provided additional medical evidence. In a January 2, 2018 letter, Dr. Kelman opined that she had attained maximum medical improvement. In a February 14, 2018 report, he diagnosed plantar fasciitis and traumatic arthritis of the left foot and post-traumatic arthritis of the right hand caused by the accepted October 9, 2015 employment injury. Dr. Kelman reported that appellant had been disabled from work from October 9, 2015 through May 10, 2016 as she was unable to stand on her left foot, walk even short distances, or climb stairs. He also observed that her right hand was unusable as she could not grasp, pinch, or make a fist.

By decision dated March 14, 2018, OWCP denied appellant's claim for compensation as the medical evidence of record was insufficient to establish disability for the period November 24, 2015 through May 10, 2016.

On March 29, 2018 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative and submitted additional evidence.

In a report dated February 19, 2018, Dr. Farhana Ahmed, a treating osteopathic physician Board-certified in physiatry, opined that the October 9, 2015 employment incident adversely affected appellant's right hand, left foot, and back. She diagnosed right hand and left foot pain.

Following a telephonic hearing held July 30, 2018, by decision dated September 21, 2018, an OWCP hearing representative affirmed OWCP's March 14, 2018 decision. He found that the medical evidence of record did not establish that appellant had been totally disabled from work for the period November 24, 2015 through May 10, 2016 due to the accepted employment injuries.

[5] By separate decision dated December 15, 2017, OWCP formally expanded its acceptance of the claim to include right wrist sprain and left foot sprain.

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.[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 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.[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 a 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 causal relationship between the claimant's 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 claimed disability and the accepted employment injury.[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 their disability and entitlement to compensation.[12]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish total disability for the period November 24, 2015 through May 10, 2016 causally related to her accepted October 9, 2015 employment injury.

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[6] *See D.W.*, Docket No. 18-0644 (issued November 15, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

[7] *Id.*

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

[9] *Id.*

[10] *R.H.*, Docket No. 18-1382 (issued February 14, 2019); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[11] *See C.B.*, Docket No. 18-0633 (issued November 16, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[12] *M.B.*, Docket No. 18-1455 (issued March 11, 2019); *see B.K.*, Docket No. 18-0386 (issued September 14, 2018).

In support of her claim for total disability, appellant submitted a series of treatment reports from her attending physician, Dr. Kelman. In reports dated from October 14, 2015 through February 14, 2018, Dr. Kelman opined that the accepted October 9, 2015 employment incident had caused left plantar fasciitis, arthritis of the left foot, and arthritis of the right hand. In his February 14, 2018 report, he asserted that appellant had been totally disabled from work for the period October 9, 2015 through May 10, 2016 due to the effects of left plantar fasciitis, and arthritis of the left foot and right hand.

Dr. Kelman failed to provide a rationalized medical opinion that appellant's inability to work from November 24, 2015 through May 10, 2016 resulted from the accepted conditions in the claim. Rather, he merely provided his conclusion that the October 9, 2015 employment injury had also caused left plantar fasciitis as well as arthritis of the left foot and right hand. While Dr. Kelman opined that appellant was totally disabled from work, he did not explain how the accepted conditions of left foot contusion, left foot sprain, right hand contusion, and right wrist sprain caused or contributed to the claimed period of disability. The Board has held that a report is of limited probative value if it does not contain medical rationale explaining how a given period of disability was related to the accepted employment injury.[13] Without a specific opinion explaining how the October 9, 2015 employment injury had caused the claimed period of disability, the Board finds that the opinions of Dr. Kelman are insufficient to establish the claim for total disability.[14]

Appellant also submitted an October 10, 2015 report by Dr. Rochester, who returned appellant to work effective October 14, 2015. As this report indicates that she was no longer disabled from work as of October 14, 2015, Dr. Rochester's opinion negates her claim for total disability after that date.

Additionally, appellant provided a February 19, 2018 report by Dr. Ahmed, who diagnosed right hand and left foot pain. However, Dr. Ahmed did not provide an opinion on disability. As such, her opinion is of no probative value on the issue.[15]

As none of the medical evidence of record provides rationale explaining how appellant's accepted injuries caused total disability during the claimed period, the Board finds that she has not met her burden of proof.[16]

On appeal, counsel contends that OWCP should have expanded acceptance of the claim as requested and should have paid appellant compensation for the claimed period. However, the issue of expansion of the acceptance of appellant's claim to include additional conditions is not currently

[13] *See M.B., id; see Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

[14] *Id.*

[15] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018). (Medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship).

[16] *M.B.*, *supra* note 12.

before the Board and, therefore, will not be addressed.[17] Furthermore, for the reasons set forth herein, she has not met her burden of proof to establish her claim 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 total disability for the period November 24, 2015 through May 10, 2016, causally related to her accepted October 9, 2015 employment injury.[18]

ORDER

IT IS HEREBY ORDERED THAT the September 21, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 18, 2019
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

[17] *See* 20 C.F.R. § 501.2(c).

[18] The Board notes that, where an employing establishment properly executes a Form CA-16 authorizing medical treatment related to a claim for a work injury, the form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination/treatment regardless of the action taken on the claim. *See Tracy P. Spillane*, 54 ECAB 608 (2003). The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* 20 C.F.R. § 10.300(c).