

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

_____)	
G.T., Appellant)	
)	
and)	Docket No. 18-1369
)	Issued: March 13, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Chicago, IL, Employer)	
_____)	

Appearances:
Cass T. Casper, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 2, 2018 appellant, through counsel, filed a timely appeal from a January 22, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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.*

ISSUE

The issue is whether appellant has met his burden of proof to establish total disability for the period June 30 through November 25, 2017, causally related to his accepted January 18, 2017 partial right rotator cuff tear and temporary aggravation of cervical disc degeneration.

FACTUAL HISTORY

On January 20, 2017 appellant, then a 60-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that, while in the performance of duty on January 18, 2017, he pulled downward on an overhead elevator door and injured his right upper arm, the right side of his body, right hip, and groin. He stopped work on January 20, 2017 and did not return. By decision dated September 21, 2017, OWCP accepted appellant's claim for a partial right rotator cuff tear and a temporary aggravation of cervical disc degeneration. It paid him wage-loss compensation for intermittent work absences from March 13 to 24, 2017.

On October 13, 2017 appellant filed a claim for compensation (Form CA-7) for total disability for the period March 27 through September 29, 2017. OWCP paid him wage-loss compensation for five hours from March 27 to 31, 2017; 2.36 hours on May 4, 2017; and 46 hours from May 15 to June 29, 2017.

By development letter dated October 24, 2017, OWCP notified appellant that it had authorized wage-loss compensation payments for 40 hours from March 27 to 31, 2017; 2.36 hours of May 4, 2017; and 264 hours from May 15 to June 29, 2017. However, there was no current medical evidence of record to support the claimed disability from work for the period June 30 through September 29, 2017 and continuing. OWCP advised appellant of the type of evidence needed to establish his claim, including his physician's explanation as to why the accepted injuries would totally disable him from work for the claimed period. It afforded him 30 days to submit the necessary evidence.

On October 26, 2017 appellant claimed compensation (Form CA-7) for the period October 7 to 13, 2017.

By development letter dated November 2, 2017, OWCP advised appellant of the type of evidence needed to establish his claim, including his physician's explanation as to why the accepted injuries would totally disable him from work for the claimed period. It afforded him 30 days to submit the necessary evidence.

Appellant subsequently claimed compensation (Form CA-7) for the periods October 21 to 28 and November 18 to 25, 2017.

In reports dated December 1 and 5, 2017, Dr. Seshadri held appellant off from work. He also opined that appellant could perform light-duty work with lifting limited to two pounds, no repetitive pulling or pushing, and no work above shoulder level. Dr. Seshadri administered a right subacromial injection.

In a report dated December 6, 2017, Dr. Howard Robinson, an attending physician Board-certified in physiatry and pain management, diagnosed neck and right hip pain. He prescribed medication.

By decision dated January 22, 2018, OWCP denied appellant's claim for wage-loss compensation for the period June 30 through November 25, 2017, finding that the medical evidence of record was insufficient to establish that he was totally disabled from work for the period claimed.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence.⁴ 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.⁵ 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.⁶

Under FECA, the term disability means an incapacity because of an employment injury, to earn the wages the employee was receiving at the time of the injury.⁷ Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.⁸ When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, prevent the employee from continuing in his or her employment, he or she is entitled to compensation for any loss of wages.⁹

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.¹⁰ 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.¹¹

³ *Supra* note 2.

⁴ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁵ *Dominic M. Descaled*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

⁶ *See Amelia S. Jefferson*, 57 ECAB 183 (2005); *see also Nathaniel A. Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

⁷ 20 C.F.R. § 10.5(f); *see e.g., Cheryl L. Decavitch*, 50 ECAB 397 (1999).

⁸ *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

⁹ *Merle J. Marceau*, 53 ECAB 197 (2001).

¹⁰ *See S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

¹¹ *See S.J., id.; G.T.*, Docket No. 07-1345 (issued April 11, 2008); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish total disability for the period June 30 through November 25, 2017, causally related to his accepted January 18, 2017 partial right rotator cuff tear and a temporary aggravation of cervical disc degeneration.

OWCP accepted that appellant sustained a partial right rotator cuff tear and a temporary aggravation of cervical disc degeneration. However, appellant bears the burden of proof to establish through medical evidence that he was disabled during the claimed time period and that his disability was causally related to the accepted injury.¹² The Board finds that appellant has not submitted rationalized medical evidence explaining how the January 18, 2017 employment injury disabled him from all work during the period June 30 through November 25, 2017.

In his December 1 and 5, 2017 reports, Dr. Seshadri held appellant off from work, but also provided light-duty job restrictions. Although he opined that appellant was totally disabled for work, his opinion is conclusory in nature and fails to explain in detail how the accepted medical conditions of a partial right rotator cuff tear and aggravation of cervical disc degeneration were responsible for his disability and why he could not perform her federal employment during the period claimed.¹³ Also, as Dr. Seshadri opined both that appellant could not return to work, but was capable of light duty, the contradictory nature of his conclusions further diminishes the probative value of his opinion.¹⁴ Consequently, the Board finds that Dr. Seshadri's reports are insufficient to establish appellant's claim that he was totally disabled for the period June 30 to November 25, 2017 causally related to his employment injuries.

Dr. Robinson, in his December 6, 2017 report, diagnosed neck and right hip pain, however, he did not address whether appellant was disabled from work for the claimed period. His opinion is therefore of no probative value.¹⁵

As appellant has not submitted sufficiently rationalized medical opinion evidence establishing that he was disabled from work during the period June 30 to November 25, 2017 causally related to the employment injury, the Board finds that he has not met his burden of proof.

On appeal counsel contends that neither appellant's physicians nor the employing establishment would permit appellant to return to light duty from June 30 to November 25, 2017.¹⁶

¹² *Supra* note 10.

¹³ *Id.*

¹⁴ *T.A.*, Docket No. 18-0431 (issued November 7, 2018); *D.D.*, 57 ECAB 710 (2006).

¹⁵ *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁶ Counsel cited to the Board's holding in *Miriam C. Hughes*, Docket No. 98-2101 (issued April 17, 2000) where the Board remanded a claim for recurrence of disability to OWCP for additional development regarding whether there was a change in the claimant's light-duty job requirements. The Board notes that the present case does not pertain either to a recurrence of disability or a change in light-duty job requirements.

As explained above, the medical evidence of record is insufficient to establish that appellant was totally disabled from work for the claimed period.¹⁷

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 his burden of proof to establish total disability for the period June 30 through November 25, 2017, causally related to his accepted January 18, 2017 partial right rotator cuff tear and temporary aggravation of cervical disc degeneration.

ORDER

IT IS HEREBY ORDERED THAT the January 22, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 13, 2019
Washington, DC

Patricia H. Fitzgerald, Deputy 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

¹⁷ The Board notes that the employing establishment issued appellant a signed authorization for examination and/or treatment (Form CA-16) authorizing medical treatment. The Board has held that where an employing establishment properly executes a CA-16 form, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, it creates a contractual obligation which does not involve the employee directly to pay the cost of the examination or treatment regardless of the action taken on the claim. See 20 C.F.R. §§ 10.300, 10.304; *R.W.*, Docket No. 18-0894 (issued December 4, 2018).