United States Department of Labor
Employees' Compensation Appeals Board

C.B., Appellant	)	
and	)	**Docket No. 18-0040**
	)	**Issued: May 7, 2019**
U.S. POSTAL SERVICE, POST OFFICE, North Metro, GA, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 5, 2017 appellant filed a timely appeal from a May 31, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that following the May 31, 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*.

ISSUE

The issue is whether appellant has met her burden of proof to establish total disability for the period September 17 to December 16, 2016 due to her accepted December 6, 2012 employment injury.

FACTUAL HISTORY

On December 10, 2012 appellant, then a 56-year-old city letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 6, 2012 she sprained her left shoulder when she tripped over a delivery point sequence while in the performance of duty. The record reveals that she was working modified duty due to another work-related injury.

By decision dated December 18, 2012, OWCP accepted appellant's claim for right ankle contusion, right foot contusion, right hip contusion, and left shoulder contusion.

On February 3, 2014 appellant underwent authorized lumbar surgery for a previously accepted claim and stopped work.[3]

Appellant submitted an April 29, 2016 report by Dr. Jon Hyman, a Board-certified orthopedic surgeon, specializing in sports medicine. Dr. Hyman indicated that she was employed as a mail carrier, but was currently not working. He related appellant's complaints of discomfort and pain with prolonged walking and unbearable pain and weakness in the bilateral hips. Dr. Hyman described her December 6, 2012 employment injury and noted that she was also receiving medical treatment for her back under a separate claim. He noted that, after appellant underwent lumbar surgery in February 2014, she experienced more significant bilateral hip pain. Upon examination of her bilateral hips, Dr. Hyman observed no tenderness or swelling. Range of motion was limited at flexion due to pain. Dr. Hyman diagnosed bilateral hip pain; possible intra-articular synovitis; altered gait, status postsurgery in February 2014; and diminished quad strength/decreased motor nerve innervation. He provided a work status form and indicated that appellant could work with restrictions of no squatting, kneeling, bending, stooping, use of the affected body parts, climbing, running, jumping, pivoting, or twisting and limited lifting, pushing, or pulling.

In a May 10, 2016 work status form, Matthew Guffey, a certified physician assistant, indicated that appellant had reached maximum medical improvement for her back, but needed treatment for her hip. He noted that she should have "no activity" from May 10 to November 8, 2016.

[3] Under OWCP File No. xxxxxx907, OWCP accepted that on September 19, 2012 appellant sustained a low back strain, left index finger sprain, and aggravation of degenerative disc disease as a result of lifting heavy restoration books throughout her route in the performance of duty. Appellant stopped work on September 20, 2012 and returned to full-time limited duty on September 21, 2012. She underwent surgery and stopped work on February 3, 2014. OWCP paid wage-loss compensation benefits. By decision dated September 17, 2016, it terminated appellant's wage-loss compensation and medical benefits, effective September 13, 2016, because she no longer had residuals or disability causally related to her September 19, 2012 employment injury.

OWCP received an October 12, 2016 letter from appellant to J.H., her manager. Appellant informed him that she was appealing her case before OWCP and requesting 320 hours of leave with pay. She explained that her physician referred her to Dr. Hyman for evaluation of her hip and instructed her to remain on the same work restrictions. Appellant indicated that she was enclosing forms requesting leave without pay (LWOP) for the required time including a request for or notification of absence forms dated October 12, 2016, which requested LWOP from September 19 to December 16, 2016 and several time analysis forms (Forms CA-7a) requesting wage-loss compensation for total disability for the period September 19 to December 16, 2016. She noted that the reason for using leave was "per [physician's] orders."

In a November 3, 2016 work status form, Dr. Hyman noted a left hip injury. He indicated that appellant could work with restrictions of no squatting, kneeling, bending, stooping, climbing, running, jumping, pivoting, or twisting and limited use of the affected body part.

Dr. Plas T. James, a Board-certified orthopedic surgeon specializing in spine surgery, also treated appellant. In a November 8, 2016 work status form, he noted a date of injury of September 19, 2012 and indicated that she should not work for the period November 8, 2016 until her next visit in eight weeks on January 3, 2017.

On December 6, 2016 appellant filed a claim for wage-loss compensation (Form CA-7) for LWOP for the period September 17 to November 11, 2016 and for leave buy back for the period November 14 to December 16, 2016. On the reverse side of the claim form the employing establishment confirmed that she was on LWOP status for the period September 19 to November 25, 2016. In an attached Form CA-7a, appellant again indicated that the reason for using leave was "per [physician's] orders" or "per [physician's] restriction."

In a development letter dated December 12, 2016, OWCP informed appellant that it received her claim for wage-loss compensation for the period September 17 through December 16, 2016. It advised her that the evidence submitted was insufficient to establish her claim and requested that she submit additional evidence to establish that she was unable to work modified duty during the period claimed as a result of her December 6, 2012 employment injury. Appellant was afforded 30 days to provide the requested information.

In a December 16, 2016 work status form, Dr. Hyman noted an injured body part of left hip. He indicated: "no work until next office visit."

By decision dated January 24, 2017, OWCP denied appellant's claim for wage-loss compensation benefits for the period September 17 to December 16, 2016. It found that the medical evidence of record failed to establish that she was disabled from work or entitled to wage-loss compensation during the claimed period as a result of her work injury. OWCP noted that the medical records which had been submitted referred to treatment for appellant's left hip and back, which were not accepted conditions under her current claim.

On March 13, 2017 OWCP received appellant's request for reconsideration. Appellant explained that she disagreed with OWCP's decision that her December 6, 2012 employment injury had resolved and that she was no longer disabled. She noted that Dr. Hyman believed that she needed further evaluation and should be on "no work" status. Appellant related that she was

currently receiving medical treatment for her feet and shoulder injuries. She noted that she was authorized to return to work with restrictions, but the employing establishment could not accommodate her restrictions.

Appellant continued to receive medical treatment from Dr. Hyman. In reports dated November 8 and December 16, 2016, Dr. Hyman related that she was two years post status L4-5 fusion surgery and began to experience back pain, bilateral hip pain, and groin pain approximately two months prior. Upon physical examination of appellant's lumbar spine, he observed paraspinous muscle spasm and minimal range of motion of the spine. Straight leg raise testing was negative. Dr. Hyman reported that pinprick sensation was normal in the bilateral lower extremities. Examination of appellant's hip also showed positive Patrick test with groin and anterior thigh pain. Dr. Hyman indicated that internal and external rotation of her hip caused pain in the groin and anterior thigh. He diagnosed status post L4-5 fusion, L3-4 spinal stenosis, and bilateral plantar fasciitis. In the December 16, 2016 report, Dr. Hyman noted that no new restrictions were made with respect to appellant's work status. He recommended that she avoid actions that caused her pain directly.

Dr. Hyman continued to treat appellant for her bilateral hip pain. Appellant submitted several medical reports and letters dated January 20 to March 1, 2017. She also provided diagnostic medical reports dated February 9, 2017 of her pelvis and bilateral hips.

OWCP received a March 6, 2017 letter by Y.G., a customer services manager at the employing establishment. Y.G. informed appellant that the employing establishment did not have work available for her within her current work restrictions.

By decision dated May 31, 2017, OWCP denied modification of the January 24, 2017 decision. It found that the medical evidence of record was insufficient to establish that appellant was unable to work for the period September 17 to December 16, 2016 as a result of her December 6, 2012 employment injury. OWCP noted that the evidence submitted indicated that her current symptoms and inability to work were related to her nonwork-related left hip and back conditions.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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.[5] 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.[6]

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 a preponderance of the

[4] *Supra* note 1.

[5] *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[6] 20 C.F.R. § 10.5(f); *see e.g., Cheryl L. Decavitch*, 50 ECAB 397 (1999).

reliable, probative, and substantial medical evidence.[7] Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work.[8]

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden of proof to establish by the weight of reliable, probative, and substantial evidence a recurrence of total disability. As part of this burden of proof, the employee must establish either a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the light-duty requirements.[9]

The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.[10]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish total disability for the period September 17 through December 16, 2016 due to the December 6, 2012 employment injury.

During appellant's claimed period of disability, she received medical treatment from Dr. Hyman. In a November 3, 2016 work status form, Dr. Hyman noted a left hip injury and indicated that she could work with restrictions of no squatting, kneeling, bending, stooping, climbing, running, jumping, pivoting, or twisting and limited use of the affected body part. The Board finds that this work status form does not establish total disability for the period September 17 to December 16, 2016. Rather, Dr. Hyman's report provided appellant with work restrictions and did not indicate that she was totally disabled from work due to her December 6, 2012 employment injury. Accordingly, his November 3, 2016 work status form fails to establish disability from work on the claimed dates due to her accepted injuries.[11]

In reports dated November 8 and December 16, 2016, Dr. Hyman further related that appellant began to experience back pain, bilateral hip pain, and groin pain approximately two months prior. He provided physical examination of her lumbar spine and bilateral hips. Dr. Hyman diagnosed status post L4-5 fusion, L3-4 spinal stenosis, and bilateral plantar fasciitis. He reported that no new restrictions were made with respect to her work status. In a December 16, 2016 work status form, Dr. Hyman reported: "no work until next office visit." Although he

[7] *Amelia S. Jefferson*, 57 ECAB 183 (2005); *William A. Archer*, 55 ECAB 674 (2004).

[8] *Dean E. Pierce*, 40 ECAB 1249 (1989).

[9] *C.G.*, Docket No. 16-1503 (issued May 17, 2017).

[10] *Amelia S. Jefferson, supra* note 7.

[11] *See M.C.*, Docket No. 16-1238 (issued January 26, 2017). *See also Jaja K. Asaramo*, 55 ECAB 200 (2004) (the Board found that for conditions not accepted or approved by OWCP as due to an employment injury, the claimant bears the burden of proof to establish that the condition is causally related to the employment injury).

indicated that appellant should remain off work, he did not provide a medical explanation explaining why her December 6, 2012 employment injury caused a period of total disability or otherwise provide medical rationale why any current condition or disability was due to the December 6, 2012 employment injury.[12] In addition, Dr. Hyman did not identify the specific dates that she was disabled from work nor did he explain how she was no longer able to work due to her accepted employment injury. 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.[13] To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.[14] Because Dr. Hyman failed to provide medical rationale for his conclusion, his opinion is of diminished probative value.[15] His additional reports are of limited probative value on the issue of total disability as they do not address the claimed period of disability.

Appellant also submitted a November 8, 2016 work status from by Dr. James. Dr. James noted a date of injury of September 19, 2012 and indicated that she should not work for the period November 8, 2016 to January 3, 2017. Although he reported that appellant should not work during the claimed period, he did not indicate that she was disabled from work due to her accepted December 6, 2012 employment injury. Rather, Dr. James noted a date of injury of September 19, 2012, which was the date of injury under a previously accepted claim. The issue of whether a claimant's disability from work is related to an accepted condition is a medical question, which must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to the employment injury and supports that conclusion with sound medical reasoning.[16] As Dr. James did not attribute appellant's inability to work to her December 6, 2012 employment injury, his opinion is of limited probative value.

In addition, the May 10, 2016 work status form by Mr. Guffey, a physician assistant, indicating that appellant have "no activity" for the period May 10 to November 8, 2016, is of no probative value to establish her disability compensation claim because physician assistants are not considered physicians as defined under FECA.[17]

[12] *See William A. Archer,* 55 ECAB 674 (2004).

[13] *Sandra D. Pruitt,* 57ECAB 126 (2005).

[14] *J.S.,* Docket No. 16-1014 (issued October 27, 2014).

[15] *S.B.,* Docket No. 13-1162 (issued December 12, 2013).

[16] *See G.B.,* Docket No. 16-1003 (issued December 5, 2016).

[17] 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law); 20 C.F.R. § 10.5(t). *See also David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *K.S.*, Docket No. 18-0954 (issued February 26, 2019); *K.W.*, 59 ECAB 271, 279 (2007).

As the medical evidence of record does not contain sufficient rationale to establish disability during the claimed period, the Board finds that appellant has not met her burden of proof.

On appeal, appellant argues that, if she had been allowed to work, she could have reduced the amount of debt that she owes. She explained that, beginning in late June 2017, she was not receiving financial support and could not pay her debts. As explained above, however, appellant has not provided rationalized medical evidence to establish her claim for total disability for the period September 17 to December 16, 2016 due to her December 6, 2012 employment injury. Accordingly, the Board finds that she has not established her claim for wage-loss compensation for the claimed period.

The Board further finds, however, that the case is not in posture for decision regarding whether appellant is entitled to wage-loss compensation for receiving medical treatment for her accepted injury on November 3 and 8, and December 16, 2016.

The record contains evidence that appellant was treated by Dr. Hyman on November 3 and 8, and December 16, 2016. OWCP's procedures provide that wages lost for compensable medical examination or treatment may be reimbursed.[18] It notes that a claimant who has returned to work following an accepted injury or illness may need to undergo examination or treatment and such employee may be paid compensation for wage loss while obtaining medical services and for a reasonable time spent traveling to and from the medical provider's location.[19] As a rule, no more than four hours of compensation or continuation of pay should be allowed for routine medical appointments. Longer periods of time may be allowed when required by the nature of the medical procedure and/or the need to travel a substantial distance to obtain the medical care.[20] The case will be remanded for payment of up to four hours of wage-loss compensation for each of these medical appointments and travel time.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish total disability for the period September 17 to December 16, 2016 as a result of the December 6, 2012 employment injury. The Board also finds that this case is not in posture for decision regarding her reimbursement for medical appointments on November 3 and 8, and December 16, 2016.

[18] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computing Compensation*, Chapter 2.901.19 (February 2013).

[19] *Daniel Hollars*, 51 ECAB 355 (2000); *Jeffrey R. Davis*, 35 ECAB 950 (1984).

[20] *Supra* note 18 at Part 3 -- Medical, *Administrative Matters*, Chapter 3.900.8 (November 1998).

ORDER

IT IS HEREBY ORDERED THAT the May 31, 2017 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for further development consistent with this decision of the Board.[21]

Issued: May 7, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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

[21] On remand, OWCP should consider combining the case records for OWCP File Nos. xxxxxx242 and xxxxxx907.