United States Department of Labor
Employees' Compensation Appeals Board

H.M., Appellant	)	
and	)	**Docket No. 18-1510**
	)	**Issued: May 2, 2019**
U.S. POSTAL SERVICE, LOCKPORT CARRIER ANNEX, Lockport, IL, 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 August 1, 2018 appellant filed a timely appeal from a May 16, 2018 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]

ISSUE

The issue is whether appellant has met her burden of proof to establish intermittent disability during the period August 24 through November 28, 2017 causally related to a November 26, 2013 employment injury.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence on appeal. 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*.

FACTUAL HISTORY

On November 26, 2013 appellant, then a 48-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that, on that date, she injured her lower back while loading mail in the performance of duty. OWCP accepted the claim for lumbar sprain. It paid appellant wage-loss compensation on the supplemental rolls beginning January 11, 2014, and on the periodic rolls as of March 8, 2015.

Dr. Suneela Harsoor, Board-certified in anesthesiology and pain medicine, began treating appellant for back pain on June 26, 2014. She initially indicated that appellant could not perform lifting. However, on October 14, 2014 Dr. Harsoor amended appellant's lifting restriction to 20 pounds. In a treatment note dated January 6, 2015, she diagnosed lumbar radiculopathy and sprain, lumbar region.

On February 5, 2015 OWCP referred appellant to Dr. Theodore J. Suchy, an osteopath who practices orthopedic surgery, for a second opinion regarding appellant's disability status. In a March 23, 2015 report, Dr. Suchy advised that appellant continued to have residuals of the accepted lumbar sprain and had also developed persistent lumbar myositis with right lower extremity radiculopathy. He advised that appellant could perform light duty and provided physical restrictions.[3]

Dr. Harsoor continued to submit duty status reports (Form CA-17) indicating that appellant could not return to her regular job duties. On June 2, 2015 she advised that appellant had a 20-pound lifting restriction, but as of August 6, 2015, lowered appellant's lifting restriction to 10 pounds.

In a duty status report (Form CA-17) dated June 13, 2017, Dr. Harsoor noted clinical findings, a diagnosis of low back pain, and that appellant had not been advised that she could return to work. She provided daily restrictions of lifting/carrying, sitting, standing, walking, and reaching above the shoulder limited to 2 hours each; bending/stooping and pushing/pulling limited to 1 hour; simple grasping and fine manipulation limited to 8 hours; driving limited to 2 to 3 hours, with no climbing, kneeling, or twisting; and a 10-pound lifting restriction. In an undated letter, received by OWCP on June 23, 2017, Dr. Harsoor advised that appellant's employment injury caused a sprain in the lumbar region, a lumbar disc herniation, and lumbar radiculopathy. She indicated that appellant had reduced lumbar spine range of motion, trigger points in the lower back, and reduced strength in the right leg with residual pain. Dr. Harsoor advised that appellant could return to light-duty work.

On June 16, 2017 the employing establishment offered appellant a limited-duty position for four hours daily. Appellant refused the position on June 19, 2017 writing "Medical Disability SSA." An attached April 7, 2017 letter from Social Security Administration (SSA) to appellant indicated that she had met the medical requirements for disability payments, but that a decision had not been made about whether she had met the nonmedical requirements.

By letter dated July 3, 2017, OWCP advised appellant that the offered limited-duty position was suitable. It notified her that if she failed to report to work, or failed to demonstrate that the

[3] Dr. Suchy also reported that he reviewed a February 23, 2015 functional capacity evaluation (FCE) that is not found in the case record.

failure to report was justified, pursuant to section 8106(c)(2) of FECA, her right to compensation for wage loss or a schedule award would be terminated. OWCP afforded appellant 30 days to respond.

Appellant again refused the offer on July 10, 2017, writing "not suitable -- job offer does not address climbing & twisting which is associated with climbing in and out, twisting into vehicle. Duty status report shows 2 to 3 hrs. Job is offered at 10 - 2 pm = 4 hours." On a duty status report (Form CA-17) dated July 20, 2017, Dr. Harsoor repeated appellant's physical restrictions.

In e-mail correspondence dated July 27, 2017, C.V., an injury compensation specialist at the employing establishment, indicated that loading a delivery vehicle did not require twisting. She noted that appellant would only be delivering Express Mail pieces and not delivering a route, so there would be no loading of trays of mail. C.V. advised that the letters appellant would carry would weigh less than appellant's maximum of 10 pounds. She further noted that appellant could sit or stand while working undeliverable bulk business mail (UBBM).

OWCP confirmed that the offered limited-duty position was still available, and by letter dated August 10, 2017, it advised appellant that her reasons for refusing the offered position were not valid. It afforded her an additional 15 days to accept the job offer.

On August 24, 2017 the employing establishment reported that appellant had returned to work on August 23, 2017.

On September 21, 2017 appellant filed a claim for compensation (Form CA-7) for intermittent use of leave without pay for the period August 19 to September 15, 2017. The attached time analysis form (Form CA-7a) indicated that appellant worked three hours on August 24, 2017 and two hours each day on August 28 and 29, 2017. She then stopped work completely.

Appellant submitted medical evidence in support of her claim for compensation. In a note dated August 24, 2017, Dr. Harsoor indicated that appellant could not work August 24 through 27, 2017. She enclosed a duty status report (Form CA-17) with new restrictions that limited sitting, standing, walking, and driving a vehicle to one hour daily.

On a disability slip dated August 29, 2017, Dr. M. Aijaz, a Board-certified internist, advised that appellant was unable to work from August 29 to September 10, 2017 due to neck and back pain.

Appellant subsequently filed another claim for compensation (Form CA-7) for leave without pay used for the period September 16 to 29, 2017.

On September 26, 2017 the employing establishment informed OWCP that the offered limited-duty position remained available. By letter dated September 26, 2017, OWCP again advised appellant that the position offered was suitable, and again notified her that if she failed to report to work or failed to demonstrate that the failure to report was justified, pursuant to section 8106(c)(2) of FECA, her right to compensation for wage loss or a schedule award would be terminated. OWCP afforded her 30 days to respond.

In correspondence dated October 4, 2017, appellant asserted that she was physically unable to meet the required hours and limitations of the offered position and that, after informing her

physician that she could not perform the duties, her duty status report (Form CA-17) was changed to two hours daily. She submitted a September 26, 2017 report from Dr. Harsoor, which indicated that appellant was held off work until October 3, 2017. An attached duty status report (Form CA-17) indicated that, due to low back pain, appellant could only work two hours per day with a 10-pound lifting restriction. Lifting, carrying, sitting, standing, walking, climbing, twisting, simple grasping, and driving a vehicle were each limited to one hour daily with no kneeling, bending, stooping, pulling, or pushing.

In an October 10, 2017 statement, appellant maintained that she had not abandoned her job, citing the change in her physical restrictions, and asserted that she had been harassed about her restrictions.

OWCP subsequently received an October 26, 2017 report, wherein Dr. Harsoor noted pain on palpation of the lumbar spine with reduced spinal range of motion. Dr. Harsoor indicated that appellant's gait was normal. Left lower extremity strength was 5/5, and right 4/5. Straight leg raising was negative. Dr. Harsoor diagnosed sprain lumbar region, herniation of lumbar disc, and lumbar radiculopathy.

On November 3, 2017 the employing establishment confirmed that the offered limited-duty position remained available. On November 7, 2017 OWCP advised appellant that her reasons for refusing the offered position were not valid and afforded her an additional 15 days to accept the position. On November 29, 2017 the employing establishment again confirmed that she had not returned to work and that the position remained available.

By decision dated November 30, 2017, OWCP terminated appellant's wage-loss compensation and entitlement to schedule award benefits pursuant to section 8106(c)(2) of FECA, effective November 29, 2017. It noted that Dr. Harsoor had not explained how the accepted lumbar sprain had progressed into other conditions or how her condition worsened following her return to work on August 23, 2017. OWCP concluded that appellant had abandoned suitable work.

OWCP subsequently received a November 30, 2017 report, wherein Dr. Harsoor reiterated her findings and conclusions.

By decision dated December 7, 2017, OWCP denied appellant's claims for compensation for intermittent disability commencing August 24, 2017. It found that the medical evidence submitted was insufficient to establish her claim because it did not explain how or why her return to work on August 23, 2017 had caused the accepted lumbar sprain to worsen.

On December 29, 2017 appellant requested a review of the written record from the December 7, 2017 decision with OWCP's Branch of Hearings and Review. OWCP continued to receive medical evidence.

In correspondence dated April 18, 2018, C.J., appellant's supervisor, asserted that the employing establishment never told appellant that she was not allowed to work. C.J. concluded that appellant had not reported for duty since she stopped work on August 29, 2017.

By decision dated May 16, 2018, an OWCP hearing representative affirmed the December 7, 2017 decision in part and reversed it in part. He found that appellant was entitled to payment of compensation for four hours per scheduled day of wage-loss compensation for the

period August 24 through November 29, 2017, but the remaining balance of each scheduled partial day remained denied.[4]

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] 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] Furthermore, whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.[10]

To establish causal relationship between the disability claimed and the accepted employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such causal relationship.[11] 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.[12]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish intermittent disability for the period August 24 through November 28, 2017 causally related to the November 26, 2013 employment injury.

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[4] The Board notes that the termination of wage-loss compensation commenced on November 29, 2017 and therefore appellant was only entitled to compensation through November 28, 2017.

[5] *Supra* note 1.

[6] *See D.W.*, Docket No. 18-0644 (issued November 15, 2018).

[7] *Id*.

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

[9] *Id.*

[10] *T.O.*, Docket No. 17-1177 (issued November 2, 2018).

[11] *G.T.*, Docket No. 18-1369 (issued March 13, 2019); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

[12] *See S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn Haggerty*, 45 ECAB 383 (1994).

In a June 13, 2017 duty status report (Form CA-17), Dr. Harsoor provided restrictions of: lifting/carrying, sitting, standing, walking, and reaching above the shoulder each limited to two hours daily; bending/stooping and pushing/pulling limited to one hour; simple grasping and fine manipulation limited to eight hours daily; and driving limited to two to three hours daily; with no climbing, kneeling, or twisting; and a 10-pound lifting restriction. Based on these restrictions, on June 16, 2017 the employing establishment offered appellant a limited-duty position for four hours daily in which she was to deliver Express Mail and work UBBM. Appellant initially refused the offered position. She briefly returned to work on August 24, 29, and 30, 2017 and then stopped work and has not returned.

Dr. Harsoor also provided an undated letter in which she indicated that, in addition to the accepted lumbar sprain, the employment injury also caused lumbar disc herniation and lumbar radiculopathy. On August 24, 2017 she advised that appellant could not work from August 24 through 27, 2017 and provided new restrictions that limited sitting, standing, walking, and driving a vehicle to one hour daily. On September 26, 2017 Dr. Harsoor indicated that appellant should not work until October 3, 2017 and attached a duty status report (Form CA-17) indicating that, due to low back pain, appellant could only work two hours per day with a 10-pound lifting restriction. Lifting, carrying, sitting, standing, walking, climbing, twisting, simple grasping, and driving a vehicle were limited to one hour daily with no kneeling, bending, stooping, pulling, or pushing.

The Board finds that the medical evidence of record is insufficient to establish intermittent disability during the claimed period. Appellant did not address causal relationship to the accepted employment injury. 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.[13] Dr. Harsoor's opinion is therefore insufficient to meet appellant's burden of proof to establish total disability for the period August 24 through November 28, 2017.[14]

As to Dr. Aijaz's August 29, 2017 disability slip, although he advised that appellant could not work from August 29 to September 10, 2017 due to neck and back pain, he did not reference the November 26, 2013 employment injury. His opinion is, therefore, insufficient to establish that appellant was disabled for that period.[15]

The Board thus finds that appellant has not established intermittent disability during the claimed period causally related to the November 26, 2013 employment injury.

Appellant asserts on appeal that the medical evidence established that she was disabled from work during the claimed period. However, as explained above, she has not submitted sufficient rationalized medical opinion evidence to establish intermittent disability for the claimed period and, therefore, 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(a) and 20 C.F.R. §§ 10.605 through 10.607.

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

[14] *K.K.*, Docket No. 17-1061 (issued July 25, 2018).

[15] *See E.G.*, Docket No. 17-1955 (issued September 10, 2018).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish intermittent disability for the period August 24 through November 28, 2017 causally related to the November 26, 2013 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the May 16, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 2, 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