

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

D.M., Appellant	)	
	)	
and	)	Docket No. 19-0947
	)	Issued: October 9, 2019
U.S. POSTAL SERVICE, POST OFFICE,	)	
St. Louis, MO, Employer	)	
	)	

*Appearances:*  
Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
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 April 1, 2019 appellant, through counsel, filed a timely appeal from a February 27, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

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<sup>1</sup> 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.

<sup>2</sup> 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 March 26 to July 6, 2018 causally related to his accepted June 8, 2017 employment injury.

## FACTUAL HISTORY

On June 26, 2017 appellant, then a 52-year-old computer program analyst, filed a traumatic injury claim (Form CA-1) alleging that on June 8, 2017 he tripped over the caster of his chair as he stood up from his desk, causing him to fall to the floor on his right hip while in the performance of duty. He noted that preexisting multiple sclerosis made him prone to falling. Appellant did not stop work at the time of injury. OWCP accepted that he sustained trochanteric bursitis of the right hip.

Dr. Ha Minh Hoang, an attending orthopedic surgeon, administered a series of corticosteroid injections to the right hip in November 2017. In an attending physician's report (Form OWCP-20) dated December 8, 2017, she diagnosed right trochanteric bursitis and a flare-up of right hip osteoarthritis due to the June 8, 2017 employment injury. Dr. Hoang subsequently submitted follow-up reports diagnosing right hip pain.

Appellant stopped work on February 2, 2018.

In a report dated March 6, 2018, Dr. Robert A. Morgan, a Board-certified orthopedic surgeon, diagnosed right hip arthritis, left-sided sciatica, cervical stenosis, and unspecified dysphagia. He held appellant off work.

On March 29, 2018 appellant claimed wage-loss compensation (Form CA-7) for the period March 26 to 30, 2018. He thereafter filed additional claims for ongoing wage-loss compensation.

In an April 12, 2018 report, Dr. Morgan opined that the accepted right trochanteric bursitis "led to posture and gait alterations causing [appellant's] lumbar spine to become symptomatic." As appellant was no longer symptomatic, Dr. Morgan did not recommend lumbar surgery. He prescribed physical therapy.

In a development letter dated May 11, 2018, OWCP informed appellant that the evidence submitted was insufficient to establish his claim for wage-loss compensation commencing March 26, 2018. It advised him of deficiencies in the claim and the factual and medical evidence needed. OWCP afforded appellant 30 days to respond.

In a June 21, 2018 report, Dr. Hoang held appellant off work due to right hip pain and tendinopathy of the right gluteus medius, related to the accepted employment injury.

Appellant continued to file claims for wage-loss compensation (Form CA-7) through July 6, 2018.

By decision dated July 11, 2018, OWCP denied appellant's claim for wage-loss compensation for the period March 26 through July 6, 2018 as the medical evidence of record was

insufficient to establish disability from work for the claimed period due to his accepted employment injury.

On July 16, 2018 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. During the hearing held on December 13, 2018 appellant asserted that his cervical and lumbar conditions were asymptomatic prior to the June 8, 2017 employment injury. He submitted additional evidence.

In a July 13, 2018 report, Dr. Hoang noted that appellant had been unable to work due to lumbar issues unrelated to the June 8, 2017 employment injury. In an August 2, 2018 report, she returned him to full-duty work.

By decision dated February 27, 2019, an OWCP hearing representative affirmed the July 11, 2018 decision, finding that the medical evidence of record was insufficient to establish disability from work for the claimed period due to the accepted June 8, 2017 employment injury.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup>

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>8</sup> Rationalized medical evidence is medical evidence which includes a physician's detailed medical opinion on the issue of causal relationship. The opinion of the physician must be based on a complete factual and medical background of the

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<sup>3</sup> *Id.*

<sup>4</sup> *See D.W.*, Docket No. 18-0644 (issued November 15, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

<sup>5</sup> *Id.*

<sup>6</sup> *See* 20 C.F.R. § 10.5(f); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

<sup>7</sup> *Id.*

<sup>8</sup> *R.H.*, Docket No. 18-1382 (issued February 14, 2019); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

claimant, must be one of reasonable medical certainty, and must be supported by medical rationale.<sup>9</sup>

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.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish total disability for the period March 26 through July 6, 2018 causally related to his accepted employment injury.

In support of his claim for total disability, appellant submitted a series of reports from Dr. Morgan, who held appellant off work beginning March 6, 2018. Dr. Morgan opined in his April 12, 2018 report that the accepted right trochanteric bursitis led to gait alteration that aggravated appellant's lumbar condition. However, he did not specifically address how the accepted condition caused or contributed to the claimed period of disability. The Board has held that 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.<sup>11</sup> Without a specific opinion as to how the June 8, 2017 employment injury had caused the claimed period of disability, the opinions expressed by Dr. Morgan are insufficient to establish the claim for total disability.<sup>12</sup>

Similarly, Dr. Hoang held appellant off work as of June 21, 2018 due to right hip pain and tendinopathy of the right gluteus medius which she attributed to the accepted employment injury. She also opined in a July 13, 2018 report that he had been disabled from work due to nonoccupational lumbar conditions. As Dr. Hoang did not relate appellant's disability to the accepted right trochanteric bursitis, her reports are insufficient to meet his burden of proof.<sup>13</sup>

The issue of disability from work can only be resolved by competent medical evidence.<sup>14</sup> Drs. Morgan and Hoang failed to provide a rationalized medical opinion explaining how appellant's inability to work from March 26 to July 6, 2018 resulted from the accepted employment injury. As such, the Board finds that appellant has not met his burden of proof.<sup>15</sup>

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<sup>9</sup> *C.B.*, Docket No. 18-0633 (issued November 16, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>10</sup> *A.T.*, Docket No. 19-0410 (issued August 2019); *see B.K.*, Docket No. 18-0386 (issued September 14, 2018).

<sup>11</sup> *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>12</sup> *Id.*

<sup>13</sup> *J.D.*, Docket No. 18-1533 (issued February 27, 2019).

<sup>14</sup> *A.T.*, *supra* note 10; *R.C.*, 59 ECAB 546 (2008).

<sup>15</sup> *A.T.*, *id.*

On appeal counsel contends that OWCP did not accord due deference to appellant's attending physicians and applied an improper standard of causation. For the reasons set forth herein, appellant has not met his burden of proof to establish total disability for the claimed period as causally related to the accepted June 8, 2017 employment injury.

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 his burden of proof to establish total disability for the period March 26 to July 6, 2018, causally related to his accepted June 8, 2017 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 27, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 9, 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