United States Department of Labor
Employees' Compensation Appeals Board

R.N., Appellant	)	
and	)	**Docket No. 19-1004**
	)	**Issued: October 18, 2019**
U.S. POSTAL SERVICE, POST OFFICE, El Monte, CA, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 8, 2019 appellant filed a timely appeal from a March 19, 2019 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 to consider the merits of this case.[2]

ISSUE

The issue is whether appellant has met his burden of proof to establish total disability commencing March 14, 2018, causally related to his accepted March 14, 2018 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* provide: 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 March 20, 2018 appellant, then a 57-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on March 14, 2018 he tripped and slid down a flight of stairs and sustained a left knee injury while in the performance of duty. He stopped work on March 14, 2018 and did not return. Appellant's attending physician, Dr. Ying-Feng Huang, a family practitioner, found appellant totally disabled from work commencing March 20, 2018 due to an acute left knee sprain superimposed on degenerative joint disease.

In a development letter dated April 11, 2018, OWCP informed appellant that the evidence submitted was insufficient to establish his traumatic injury claim. It advised him of deficiencies in the claim and the factual and medical evidence needed. OWCP afforded appellant 30 days to respond.[3]

In response, appellant submitted a May 6, 2018 statement noting that he delayed seeking medical treatment until Monday, March 19, 2018 as he initially thought the injury was minor and would resolve on its own. Also, his physician's office had been closed for the weekend on March 17 and 18, 2019. Appellant also submitted medical evidence.

An April 2, 2018 magnetic resonance imaging (MRI) scan of appellant's left knee demonstrated a medial meniscal tear, effusion, a tiny Baker's cyst, and osteoarthritic changes at the patellofemoral and medial femoral compartments.

In an April 17, 2018 report, Dr. Huang diagnosed a torn left medial meniscus and left knee pain. He held appellant off work through May 1, 2018.

In a report dated April 19, 2018, Dr. Anthony P. Yang, a Board-certified orthopedic surgeon, prescribed physical therapy.

In April 30 and May 17, 2018 reports, Dr. Huang held appellant off work from March 16 to 20, 2018, and from May 17 to 26, 2018.

By decision dated May 22, 2018, OWCP denied appellant's traumatic injury claim, finding that he had not submitted sufficient factual evidence to establish his claim. It concluded, therefore, that the requirements had not been met to establish that he sustained an injury as defined by FECA.

Appellant retired from the employing establishment effective May 31, 2018.

On June 11, 2018 appellant requested reconsideration. He submitted a May 29, 2018 report from Dr. Yang attributing the torn left medial meniscus and left knee pain to the claimed March 2018 employment incident.

[3] On May 5, 2018 appellant filed a claim for compensation (Form CA-7) for wage-loss compensation for the period May 2 through 26, 2018. The employing establishment indicated that he used leave without pay (LWOP) from May 2 to 11, 2018. OWCP did not develop the claim for compensation as it had not accepted the traumatic injury claim at that time.

By decision dated September 6, 2018, OWCP vacated the May 22, 2018 decision and accepted the claim for an acute posterior horn medial meniscus tear.

On December 6, 2018 appellant filed a claim for compensation (Form CA-7) for wage-loss for the period March 14 through May 31, 2018. The employing establishment indicated that he used sick and annual leave from March 26 to 31, 2018, and LWOP from April 3 to May 29, 2018. Appellant submitted timekeeping and personnel forms documenting his leave use and his retirement on May 31 2018.

In a development letter dated December 19, 2018, OWCP informed appellant that the evidence submitted was insufficient to establish his claim for wage-loss compensation commencing March 14, 2018. It advised him of deficiencies in the claim and the factual and medical evidence needed. OWCP afforded appellant 30 days to respond.[4]

In response, appellant submitted a December 27, 2018 report by Dr. Huang, finding him totally disabled from work for the period March 14 through May 31, 2018 due to left knee pain caused by the accepted meniscal tear. The accepted injury required continuing physical therapy after May 31, 2018, provided by a chiropractor. In a January 2, 2019 report, Dr. Gary Chu, a chiropractor, noted providing chiropractic manipulation to appellant's left knee from May 1 through August 3, 2018.

By decision dated March 19, 2019, OWCP denied appellant's claim for wage-loss compensation for the period commencing March 14, 2018 and continuing finding that the medical evidence of record did not establish the accepted left knee injury had disabled him for work for the claimed period. It found that appellant's physicians had not provided a well-reasoned opinion as to why the accepted left meniscal tear would have totally disabled him for work as alleged.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,[5] that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related

[4] Additionally, OWCP noted that appellant was eligible for continuation of pay (COP) for the 45-day period March 15 to April 28, 2018 and that he may wish to contact the employing establishment. There is no indication of record as to whether he received COP following the accepted March 15, 2018 injury.

[5] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

to the employment injury.[6] These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[7]

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."[8] The question of whether an employee is disabled from work is an issue that must be resolved by competent medical evidence.[9] The employee is responsible for providing sufficient medical evidence to justify payment of any compensation sought.[10]

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.[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 his or her disability and entitlement to compensation.[12]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish total disability commencing March 14, 2018 causally related to his accepted March 14, 2018 employment injury.

In support of his claim for total disability, appellant submitted a series of reports from Dr. Huang, who found appellant totally disabled from work from March 14 through May 31, 2018 due to the work injury that occurred on March 14, 2018. Dr. Huang opined in his December 27, 2018 report that the accepted left medial meniscus tear led to left knee pain that disabled appellant for work commencing March 14, 2018. However, he did not specifically explain how the accepted injury 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

[6] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[7] *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[8] 20 C.F.R. § 10.5(f).

[9] *S.A.*, Docket No. 18-0399 (issued October 16, 2018); *see also R.C.*, 59 ECAB 546, 551 (2008).

[10] *Id.*; *see T.A.*, Docket No. 18-0431 (issued November 7, 2018); *see also Amelia S. Jefferson*, 57 ECAB 183 (2005).

[11] *See S.M.*, Docket No. 17-1557 (issued September 4, 2018); *William A. Archer*, 55 ECAB 674, 679 (2004); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

[12] *A.T.*, Docket No. 19-0410 (issued August 13, 2019); *T.L.*, Docket No. 18-0934 (issued May 8, 2019); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

of disability was related to employment factors.[13] As such, appellant has not met his burden of proof.

In his May 29, 2018 report, Dr. Yang assessed acute left medial meniscal tear causally related to the accepted employment injury without reference to appellant's ability to return to work or note a period of disability. As he did not provide an opinion or specify that appellant was unable to return to work as a result of his employment injury, his report fails to establish disability from work for the claimed period.[14] The Board also notes that Dr. Yang diagnosed left knee pain, however, the Board has consistently held that a diagnosis of pain does not constitute a basis for payment of compensation, as pain is a symptom rather than a specific diagnosis.[15] Therefore, Dr. Yang's repot is also insufficient to establish appellant's claim for total disability.

With respect to Dr. Chu's report, chiropractors are only considered physicians under FECA, and their reports considered medical evidence, to the extent that they treat spinal subluxations as demonstrated by x-ray to exist, 5 U.S.C. § 8101(2).[16] This submitted report is of no probative value because Dr. Chu did not treat spinal subluxations as demonstrated by x-ray to exist.

The issue of disability from work can only be resolved by competent medical evidence.[17] Drs. Huang and Yang failed to provide a rationalized medical opinion that appellant's inability to work from March 14, 2018 onward was a result of the accepted employment injury. As none of the medical evidence of record provided a discussion of how appellant's accepted injury caused total disability during the period in question, he has not met his burden of proof.[18]

On appeal appellant contends that he submitted sufficient medical evidence to establish that the accepted employment injury had disabled him from work for the claimed period. For the reasons set forth herein, he has not met his burden of proof to establish his claim for a period of total disability.

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

[14] *See A.W.*, Docket No. 19-0400 (issued July 8, 2019); *M.C.*, Docket No. 16-1238 (issued January 26, 2017).

[15] *A.T., supra* note 12; *Robert Broome*, 57 ECAB 339, 342 (2004).

[16] Section 8101(2) of FECA provides that medical opinion, in general, can only be given by a qualified physician. This section 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. 5 U.S.C. § 8101(2). Section 8101(3) of FECA, which defines services and supplies, limits reimbursable chiropractic services to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary. 5 U.S.C. § 8101(3). *See L.G.*, Docket No. 19-0142 (issued August 8, 2019); *A.M.*, Docket No. 16-1875 (issued August 23, 2017); *George E. Williams*, 44 ECAB 530 (1993).

[17] *A.T., supra* note 12; *R.C.*, 59 ECAB 546 (2008).

[18] *A.T., supra* note 12.

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 commencing March 14, 2018, causally related to his accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the March 19, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 18, 2019
Washington, DC

Christopher J. Godfrey, 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