United States Department of Labor
Employees' Compensation Appeals Board

Y.D., Appellant	)	
and	)	**Docket No. 20-0097**
	)	**Issued: August 25, 2020**
U.S. POSTAL SERVICE, POST OFFICE, Evanston, WY, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On October 8, 2019 appellant filed a timely appeal from April 16 and 17, July 30, and September 3, 2019 merit decisions of the Office of Workers' Compensation Programs (OWCP).[1] Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

[1] Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from OWCPs April 16, 2019 decision was Sunday, October 13, 2019. Since this fell on a Sunday, appellant had until the next business day, Monday, to file a timely appeal to the Board, or October 14, 2019. Since using October 18, 2019, the date the appeal was received by the Clerk of the Appellate Boards would result in the loss of appeal rights, the date of the postmark is considered the date of filing. As the postmark was dated October 8, 2019 the appeal was timely filed. *See* 20 C.F.R. § 501.3(f)(1).

[2] 5 U.S.C. § 8101 *et seq.*

[3] The Board notes that, following the September 3, 2019 decisions, 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 additional evidence for the first time on appeal. *Id*.

ISSUE

The issue is whether appellant has met her burden of proof to establish disability from work for the periods January 19 through February 10 and June 8 through July 19, 2019 causally related to her accepted February 14, 2017 employment injury.

FACTUAL HISTORY

On March 1, 2017 appellant, then a 23-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on February 14, 2017 she experienced pain in the bottom of her right foot when she stepped on ice and snow while in the performance of duty. On the reverse side of the claim form the employing establishment acknowledged that appellant was injured in the performance of duty. Appellant did not initially stop work.[4]

On July 26, 2017 OWCP accepted appellant's claim for sprain of an unspecified ligament of the right ankle. It paid her intermittent wage-loss compensation on the supplemental rolls commencing June 10, 2017.

Between 2017 and 2019, appellant periodically stopped work and returned to work in limited-duty positions. She primarily complained of right foot pain during this period and engaged in extensive OWCP-authorized physical therapy treatment.

A magnetic resonance imaging (MRI) scan of appellant's right ankle, dated November 1, 2018, revealed plantar fasciitis.

In a December 14, 2018 report, Dr. Riley examined appellant and diagnosed tarsal tunnel syndrome, equinus contracture of the ankle, calcaneal spur, and pain in the right foot. He indicated that she had exhausted all conservative treatment and recommended surgical intervention.

In a January 2, 2019 report, Dr. Riley noted that he had discussed surgery with appellant. He examined her and diagnosed tarsal tunnel syndrome, equinus contracture of the ankle, and pain in the right foot.

Dr. Riley noted in a February 1, 2019 report that appellant was still experiencing numbness and tingling in the right foot. He diagnosed tarsal tunnel syndrome, equinus contracture of the ankle, and pain in the right foot. In an accompanying work excuse note, Dr. Riley indicated that appellant was scheduled for surgery on February 11, 2019 and could return to work on May 11, 2019.

On February 11, 2019 Dr. Riley performed an OWCP-authorized decompression of the tarsal tunnel, removal of a heel spur, and gastrocnemius recession.

In a February 13, 2019 letter, Dr. Riley explained his treatment of appellant since March 8, 2017. He noted that on November 8, 2018 he had discussed appellant's MRI scan results with her, which revealed a plantar calcaneal spur and increased signal intensity of the plantar fascia at its attachment on the plantar calcaneus. Dr. Riley indicated that she would likely need to

[4] On June 26, 2017 Dr. Jesse Riley, a Board-certified podiatrist, performed an OWCP-authorized decompression of the tarsal tunnel and scope plantar fasciotomy.

undergo a plantar fasciotomy release, a gastrocnemius recession, and possible revision of the tarsal tunnel release. He indicated that appellant was anticipated to heal well from the February 11, 2019 surgical procedures and opined that her conditions were related to the original injury that she sustained at work.

In a February 15, 2019 duty status report (Form CA-17), a physician with an illegible signature noted that appellant was not advised to resume work.

Appellant filed claims for compensation (Form CA-7) dated March 5 through April 13, 2019, requesting wage-loss compensation for leave without pay (LWOP) used from January 19 through April 12, 2019.

In a February 12, 2019 progress report, Dr. Riley noted that appellant's pain was well controlled and that she was compliant with postoperative instructions. In a February 20, 2019 report, he again noted that appellant's pain was well controlled. Dr. Riley indicated that she would likely begin physical therapy treatment after her next visit. In a February 28, 2019 report, he noted that appellant had been compliant with postoperative instructions. Dr. Riley removed her sutures without incident and indicated that she would begin physical therapy treatment.

Appellant submitted physical therapy treatment notes dated October 12, 2018 through March 5, 2019.

In a March 28, 2019 Form CA-17 report, a physician with an illegible signature noted that appellant was not advised to resume work.

By decision dated April 16, 2019, OWCP denied appellant's claim for compensation for disability from work for the period January 19 through February 1, 2019, finding that the medical evidence of record was insufficient to establish total disability from work causally related to the accepted employment-related medical conditions.

By decision dated April 17, 2019, OWCP denied appellant's wage-loss compensation claim for disability from work for the period February 2 through 10, 2019, finding that the medical evidence of record was insufficient to establish total disability from work causally related to the accepted employment-related medical conditions. It did, however, find that the medical evidence was sufficient to authorize payment for disability from February 11 to 15, 2019.

The record reflects that OWCP paid appellant wage-loss compensation on the supplemental rolls through June 7, 2019.

Appellant subsequently submitted a May 6, 2019 report, wherein Dr. Micah Pullins, an osteopath specializing in orthopedic surgery, noted appellant's complaints of increasing right foot pain on the heel of the foot extending up to the calf. He examined appellant and diagnosed tarsal tunnel syndrome, equinus contracture of the ankle, and pain in the right foot. Dr. Pullins advised appellant to follow up with Dr. Riley. In a May 6, 2019 Form CA-17 report, Dr. Pullins indicated that appellant was not advised to resume work. He anticipated that appellant could return to full-duty work on June 3, 2019.

On June 22, 2019 appellant filed a Form CA-7 claim for wage-loss compensation benefits for LWOP used from June 8 through 21, 2019.

In a development letter dated June 26, 2019, OWCP requested that appellant submit additional information to establish her wage-loss compensation claim including medical evidence establishing that her disability, during this period, was causally related to her accepted February 14, 2017 employment injury. It afforded her 30 days to submit the necessary evidence.

Appellant submitted physical therapy treatment notes dated May 15 and July 3, 2019.

In a July 2, 2019 Form CA-17 report, a physician with an illegible signature noted that appellant could return to full-time work without restrictions on July 20, 2019.

On July 6 and 20, 2019 appellant filed Form CA-7 claims for wage-loss compensation benefits for LWOP from June 22 through July 19, 2019.

The employing establishment indicated in a July 19, 2019 letter that appellant had been working with limited-duty restrictions as a result of the February 14, 2017 employment injury. It noted that per the July 2, 2019 Form CA-17, appellant had been released to full-time work without restrictions beginning July 20, 2019.

In development letters dated July 16 and 26, 2019, OWCP again advised appellant that the medical evidence of record was insufficient to establish disability during the claimed periods. It advised her that she should submit medical evidence which substantiated that she was disabled from work due to her accepted February 14, 2017 employment injury. OWCP afforded appellant 30 days to submit the necessary evidence. No additional evidence was received.

By decision dated July 30, 2019, OWCP denied appellant's claim for compensation for disability from work for the period June 8 through 21, 2019 finding that the medical evidence of record was insufficient to establish total disability from work causally related to the accepted employment-related medical conditions.

By decision dated September 3, 2019, OWCP denied appellant's claim for compensation for disability from work for the period June 22 through July 19, 2019, finding that the medical evidence of record was insufficient to establish total disability from work causally related to the accepted employment-related medical conditions.

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

[5] *See supra* note 2.

[6] *D.P.*, Docket No. 18-1439 (issued April 30, 2020); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

[7] *Id.; Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

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 an incapacity because of an employment injury, to earn the wages the employee was receiving at the time of the injury.[9] 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.[10]

The medical evidence required to establish causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the claimed disability and the specific employment factors identified by the claimant.[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 her burden of proof to establish disability from work for the periods January 19 through February 10, 2019 and June 8 through July 19, 2019 causally related to her accepted February 14, 2017 employment injury.

In support of her claims for wage-loss compensation, appellant submitted a series of medical reports from Dr. Riley, dated December 14, 2018 through February 28, 2019. In these reports, Dr. Riley diagnosed tarsal tunnel syndrome, equinus contracture of the ankle, calcaneal spur, and pain in the right foot. However, he did not provide an opinion in any of his reports as to whether appellant was disabled from work during the claimed periods due to the accepted employment injury. As such, Dr. Riley's reports are of no probative value and are insufficient to establish appellant's claim for compensation.[13]

Appellant also submitted a February 1, 2019 work excuse note from Dr. Riley in which he indicated that she was scheduled for surgery on February 11, 2019 and could return to work on May 11, 2019. While he supported disability as of February 11, 2019 due to appellant's surgical

[8] 20 C.F.R. § 10.5(f); *J.M.*, Docket No. 18-0763 (issued April 29, 2020).

[9] *Id.* at § 10.5(f); *see J.T.*, Docket No. 19-1813 (issued April 14, 2020); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

[10] *J.T.*, *id.*; *Merle J. Marceau*, 53 ECAB 197 (2001).

[11] *T.T.*, Docket No. 18-1054 (issued April 8, 2020).

[12] *D.P.*, *supra* note 6; *Sandra D. Pruitt*, 57 ECAB 126 (2005).

[13] *J.T.*, *supra* note 9; *see also L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

procedure, Dr. Riley failed to offer a rationalized medical opinion addressing why appellant was unable to work prior to the scheduled surgery on February 11, 2010 due to her accepted employment injury. He did not explain how objective findings on physical examination and diagnostic testing showed that appellant could not perform her regular work due to the effects of her accepted employment conditions.[14] Accordingly, this note is also insufficient to establish appellant's claim.

Appellant also submitted a May 6, 2019 report and Form CA-17 report from Dr. Pullins, in which he noted appellant's complaints of increasing right foot pain on the heel of the foot extending up to the calf. He diagnosed tarsal tunnel syndrome, equinus contracture of the ankle, and pain in the right foot and advised her to follow up with Dr. Riley. Dr. Pullins also indicated that appellant was not advised to resume work until June 3, 2019. The Board has held that medical evidence that does not provide an opinion as to whether a period of disability is due to an accepted employment condition is insufficient to meet a claimant's burden of proof.[15] Therefore these reports are insufficient to establish appellant's claim.

In support of her Form CA-7 claims for wage-loss compensation, appellant also submitted a July 2, 2019 Form CA-17 report from a physician with an illegible signature, which indicated that appellant could return to full-time work without restrictions on July 20, 2017. The Board has held that reports that are unsigned or bear an illegible signature lack proper identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.[16] Accordingly, this report is insufficient to establish appellant's claim.

The remaining medical evidence pertaining to the periods of disability in question consists of physical therapy treatment notes. The Board has held that reports signed solely by a physical therapist are of no probative value as physical therapists are not considered physicians as defined under FECA.[17] These notes are therefore insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical evidence establishing causal relationship between her claimed periods of disability and the accepted February 14, 2017 employment injury, the Board finds that she 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.

[14] *S.K.*, Docket No. 19-0272 (issued July 21, 2020).

[15] *M.A.*, Docket No. 19-1119 (issued November 25, 2019); *S.I.*, Docket No. 18-1582 (issued June 20, 2019).

[16] *M.A.*, Docket No. 19-1551 (issued April 30, 2020); *T.O.*, Docket No. 19-1291 (issued December 11, 2019).

[17] Section 8101(2) of FECA provides that physician "includes 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). *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); *J.F.*, Docket No. 19-1694 (issued March 18, 2020) (physical therapists are not considered physicians under FECA).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish disability from work for the periods January 19 through February 10, 2019 and June 8 through July 19, 2019 causally related to her accepted February 14, 2017 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the September 3, July 30, April 16 and 17, 2019 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 25, 2020
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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