United States Department of Labor
Employees' Compensation Appeals Board

M.N., Appellant	)	
	)	
and	)	**Docket No. 18-0741**
	)	**Issued: April 2, 2020**
U.S. POSTAL SERVICE, POST OFFICE, San Antonio, TX, 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 February 22, 2018 appellant filed a timely appeal from a January 24, 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]

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[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that following the January 24, 2018 decision, OWCP received additional evidence. Appellant also 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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish disability from work for the periods April 26, 2014 through June 28, 2016 and from July 6 through October 18, 2016 causally related to her accepted June 2, 2009 employment injury.

FACTUAL HISTORY

On June 22, 2009 appellant, then a 53-year-old distribution clerk, filed a traumatic injury claim (Form CA-1) alleging that on June 2, 2009 she sustained injury due to falling to the floor while walking on her supervisor's back in the performance of duty. She stopped work on April 26, 2014. By decision dated August 5, 2014, OWCP accepted that appellant sustained a closed fracture of a phalanx or phalanges of the right hand, and sprains of the right wrist and hand. It later expanded the acceptance of her claim to include the additional conditions of fracture of the lower end of the right radius and traumatic arthropathy of the right wrist.

Appellant submitted a September 26, 2014 narrative report from Dr. Paul D. Pace, a Board-certified orthopedic surgeon, who advised that his physical examination of appellant revealed tenderness of the radiocarpal joint of the right wrist. Dr. Pace diagnosed right hand and carpal joint sprains, and he indicated that he was concerned about a possible scapholunate ligament injury of the right wrist.[3]

In a November 7, 2014 report, Dr. Pace noted that a recent magnetic resonance imaging (MRI) scan of appellant's right wrist did not show a tear of the right scapholunate ligament, but did show a sprain or strain of that ligament.[4] He diagnosed right carpal joint sprain and performed a steroid injection to the right scapholunate joint. Dr. Pace indicated that appellant could engage in light activity. He performed follow-up examinations on December 19, 2014 and January 30 and February 27, 2015, and noted that she had a right carpal joint/scapholunate joint sprain. During the January 30, 2015 visit, appellant's right arm was casted. In a January 30, 2015 duty status report (Form CA-17), Dr. Pace listed a June 2, 2009 date of injury and advised that she was capable of performing light-duty work beginning February 21, 2015 with restrictions of no lifting more than 20 pounds with her right hand and "wearing the cast."

In a March 5, 2015 report, Dr. Pace requested that an unidentified individual "consider including the diagnosis of carpal tunnel syndrome" because this condition best described appellant's current symptoms "as they relate to the injury [appellant] sustained while on the job." He advised that she suffered a fracture of her right distal radius which was treated with casting. Dr. Pace opined that a delay in appellant's treatment, because of OWCP's initial denial of her

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[3] With respect to the September 26, 2014 visit, Dr. Pace also produced an abbreviated September 26, 2014 report which primarily contained the discussion and assessment/plan sections of the above-described September 26, 2014 report.

[4] Appellant submitted a November 3, 2014 MRI scan containing an impression of low to intermediate grade sprain of the scapholunate ligament with no full-thickness tear, sprain of the ulnar insertion of the triangular fibrocartilage complex (TFCC) with possible partial-thickness tear, small effusion in the distal radioulnar joint, and extensor carpi ulnaris tendinosis with partial-thickness longitudinal tear, and small radiocarpal joint effusion.

claim, "caused [appellant] to have additional symptoms due to the inflammation caused by this injury."

In a report dated August 7, 2015, Dr. Pace diagnosed carpal joint sprain and advised that an electromyography and nerve conduction velocity (EMG/NCV) study was needed to determine whether the source of appellant's right hand/wrist problems stemmed from her neck. In an August 7, 2015 Form CA-17 report, he advised that she could perform light-duty work with no lifting, pushing, or pulling of more than 10 pounds. An August 25, 2015 EMG/NCV study of the upper extremities revealed mild neuropathy in the left wrist-palm segment, consistent with carpal tunnel syndrome.

In September 2 and 23, 2015 reports, Dr. Pace diagnosed several right-sided conditions, including ulnar impaction syndrome, TFCC tear, and fracture of the distal end of the radius. In his September 23, 2015 report, he indicated that appellant's "original injury" was a fracture of the distal end of the radius, a condition which had been successfully treated. Dr. Pace opined that the ulnar impaction syndrome and TFCC tear were a result of the "original injury." On March 23 and June 27, 2016 he diagnosed ulnar impaction syndrome and TFCC tear.

On June 30, 2016 Dr. Pace performed OWCP-authorized right wrist/hand surgery, including arthroscopic debridement of the TFCC, ulnar shortening of Rayback osteotomy system, and excision of distal posterior interosseous nerve. Appellant submitted progress reports dated July 8 and 20, August 10 and 24, and October 12, 2016 from Dr. Pace who discussed her progress after the June 30, 2016 surgery.

On October 18, 2016 appellant filed a claim wage-loss compensation (Form CA-7) for total disability during the period April 26 through May 10, 2014 due to her accepted June 2, 2009 employment injury. She thereafter filed additional Form CA-7 claims for wage-loss compensation for disability through June 28, 2016, and continuing.

In an October 31, 2016 development letter, OWCP requested that appellant submit additional factual and medical evidence in support of her disability claim, including medical evidence establishing disability from work during the claimed period commencing April 26, 2014. It afforded her 30 days to submit such evidence.[5]

In response, appellant submitted October 28 and November 1, 5, and 16, 2016 reports from Dr. Pace who further discussed her postsurgery progress.

OWCP also received a November 7, 2016 letter in which Dr. Pace indicated that appellant's June 2, 2009 right hand/wrist injury due to a fall at work was initially treated with a cast and therapy. Dr. Pace advised that, prior to September 26, 2014, he had last treated her on August 31, 2009, at which time she could only perform light-duty work with restrictions from lifting, pushing, or pulling more than 20 pounds. He indicated that appellant was unable to receive treatment thereafter due to denial of her compensation claim and a lack of health insurance, but that when he next treated her on September 26, 2014 she had a scapholunate ligament injury and ulna

[5] In a separate development letter also dated October 31, 2016, OWCP requested that the employing establishment submit additional information within 30 days.

abutment syndrome which were "consistent with the injury as it was reported and could have progressed due to the lapse in treatment." Dr. Pace advised that she had surgery for these conditions on June 30, 2016 and noted that she was "on off work status" from June 30 to July 8, 2016 due to postsurgery recovery. He indicated, "During the time period when [appellant] was unable to receive treatment, due to her ongoing symptoms, I would have only expected her to be able to work a light-duty status with a 20[-pound] weight restriction and wearing a splint/cast while at work. That light-duty status continues to present."

By decision dated December 7, 2016, OWCP denied appellant's claims for compensation for the period April 26, 2014 through June 28, 2016 and July 6 through October 18, 2016 causally related to the accepted June 2, 2009 employment injury.[6]

On April 20, 2017 appellant requested reconsideration of the December 7, 2016 decision. She submitted a December 16, 2016 report from Dr. Pace who opined that she was capable of performing light-duty work. In a January 27, 2017 report, Dr. Pace indicated that appellant could return to full work from the standpoint of her right-hand condition. Appellant also submitted copies of several previously submitted medical reports.

By decision dated June 29, 2017, OWCP denied modification of its December 7, 2016 decision.

On August 24, 2017 appellant requested reconsideration of the June 29, 2017 decision. She submitted Form CA-17 reports dated August 23 and December 16, 2016 from Dr. Pace who advised that she could perform light-duty work. In a January 27, 2017 Form CA-17 report, Dr. Pace indicated that appellant could perform full-duty work.

By decision dated January 24, 2018, OWCP denied modification of its June 29, 2017 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.[7] 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.[8] 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.[9]

[6] OWCP found that appellant had established entitlement to wage-loss compensation for the period June 30 through July 8, 2016 and noted that it had processed a payment for this period.

[7] *Id.*

[8] *B.O.,* Docket No. 19-0392 (issued July 12, 2019); *D.W.*, Docket No. 18-0644 (issued November 15, 2018); *Kathryn Haggerty,* 45 ECAB 383 (1994); *Elaine Pendleton,* 40 ECAB 1143 (1989).

[9] 20 C.F.R. § 10.5(f); *B.O., id.*; *N.M.,* Docket No. 18-0939 (issued December 6, 2018); *R.C.,* 59 ECAB 546, 551 (2008).

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.[10] The question of whether an employee is disabled from work is an issue that must be resolved by competent medical evidence.[11] The employee is responsible for providing sufficient medical evidence to justify payment of any compensation sought.[12] 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.[13] 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.[14]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work for the periods April 26, 2014 through June 28, 2016 and from July 6 through October 18, 2016 causally related to her accepted June 2, 2009 employment injury.

Appellant submitted a November 7, 2016 letter from Dr. Pace who discussed the June 2, 2009 injury and advised that, prior to September 26, 2014, he last treated her on August 31, 2009 at which time she could only perform light-duty work with restrictions from lifting, pushing, or pulling more than 20 pounds. Dr. Pace noted that when he next treated her, on September 26, 2014, she had a scapholunate ligament injury and ulna abutment syndrome which were "consistent with the injury as it was reported and could have progressed due to the lapse in treatment." He discussed appellant's June 30, 2016 surgery and indicated, "During the time period when [appellant] was unable to receive treatment, due to her ongoing symptoms, I would have only expected her to be able to work a light-duty status with a 20[-pound] weight restriction and wearing a splint/cast while at work."

The Board notes that, in this letter, Dr. Pace suggested that appellant's June 2, 2009 employment injury required her to perform light-duty work between September 26, 2014 and June 30, 2016. Although this period overlaps appellant's claimed periods of disability, the Board finds that his letter lacks sufficient probative value to establish employment-related disability during these periods. Dr. Pace did not discuss the accepted employment injury in detail or adequately explain how it was competent to cause disability during the claimed periods. The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.[15]

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

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

[12] *Supra* note 10.

[13] *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).

[14] *T.L.,* Docket No. 18-0934 (issued May 8, 2019); *Sandra D. Pruitt,* 57 ECAB 126 (2005).

[15] *L.G.*, Docket No. 19-0142 (issued August 8, 2019); *C.M.,* Docket No. 14-0088 (issued April 18, 2014).

Dr. Pace's letter contains a mere conclusory opinion without the necessary rationale explaining how and why the employment injury caused disability for work.[16] Therefore, this letter is insufficient to establish appellant's claim.

Appellant also submitted a September 26, 2014 report from Dr. Pace in which he diagnosed right hand and carpal joint sprains and indicated that he was concerned about a possible scapholunate ligament injury of the right wrist. In November 7 and December 19, 2014 and January 30 and February 27, 2015 reports, Dr. Pace collectively diagnosed right scapholunate joint and carpal joint sprains. On March 5, 2015 he opined that consideration should be given to designating carpal tunnel syndrome as a work injury. In an August 7, 2015 report, Dr. Pace again diagnosed right carpal joint sprain. In September 2 and 23, 2015 and March 23 and June 27, 2016 reports, he collectively diagnosed ulnar impaction syndrome, TFCC tear, and fracture of the distal end of the right radius. However, the Board finds that these reports are of no probative value on the underlying issue of this case because they do not provide an opinion that appellant was disabled from work during the claimed periods causally related to her accepted June 2, 2009 employment injury. 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.[17] Therefore, these reports are insufficient to establish appellant's claim.

In a January 30, 2015 Form CA-17 report, Dr. Pace listed a date of injury June 2, 2009 and advised that appellant was only capable of performing light-duty work beginning February 21, 2015 with restrictions of no lifting more than 20 pounds with her right hand and "wearing the cast." In an August 7, 2015 Form CA-17 report, he advised that she could only perform light-duty work with no lifting, pushing, or pulling of more than 10 pounds. However, these Form CA-17 reports are mere form reports and do not contain an opinion as to whether the accepted employment injury caused disability from employment during the claimed periods. Therefore, as such, they are of no probative value on the issue of causal relationship between the accepted employment conditions and the periods of claimed disability.[18]

Appellant also submitted reports from Dr. Pace dated July 8 and 20, August 10, 23, and 24, October 12 and 28, November 1, 5, and 16, December 16, 2015, and January 27, 2016. In these reports, Dr. Pace discussed her medical condition after the claimed periods of disability. Therefore, these reports also contain no opinion on the underlying issue of the case and have no probative value.[19]

Appellant submitted a November 3, 2014 MRI scan of the right wrist and an August 25, 2015 EMG/NCV study of the upper extremities. However, diagnostic studies lack probative value

[16] *C.E.,* Docket No. 19-0192 (issued July 16, 2019).

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

[18] *A.A.,* Docket No. 19-0957 (issued October 22, 2019); *L.D.,* Docket No. 19-0263 (issued June 19, 2019).

[19] *See id.*

as they do not address whether the accepted employment injury caused appellant to be disabled from work during the claimed periods.[20]

As the medical evidence of record does not contain a rationalized opinion establishing causal relationship between appellant's claimed periods of disability and her accepted June 2, 2009 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.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish disability from work for the periods April 26, 2014 through June 28, 2016 and from July 6 through October 18, 2016 causally related to her accepted June 2, 2009 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the January 24, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 2, 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

[20] *C.S.,* Docket No. 19-1279 (issued December 30, 2019).