

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

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F.G., Appellant)	
)	
and)	Docket No. 18-0764
)	Issued: April 6, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Houston, TX, Employer)	
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Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 26, 2018 appellant filed a timely appeal from a December 8, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the December 8, 2017 decision, 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 period May 30, 2015 through August 28, 2016 causally related to her accepted April 8, 2015 employment injury.

FACTUAL HISTORY

On April 27, 2015 appellant, a 52-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that she sustained an injury on April 8, 2015 when lifting mail while in the performance of duty. She reported that she suffered a strain of her right groin area with pain radiating into her right thigh. Appellant stopped work on April 20, 2015 and received continuation of pay beginning that date.³

In a duty status report (Form CA-17) dated May 21, 2015, Dr. Mool P. Nigam, Board-certified in neurology, listed the date of injury as April 8, 2015 and indicated that appellant was totally disabled from work. He listed “diagnoses due to injury” as lumbar sprain, lumbosacral neuritis, and muscle spasm.

By decision dated June 16, 2015, OWCP denied appellant’s claim.

Appellant subsequently requested reconsideration of the June 16, 2015 decision and submitted May 21 and August 13, 2015 reports from Dr. Nigam who diagnosed lumbosacral sprain, lumbar radiculopathy, and myalgia/myospasms, and indicated that appellant was incapacitated from work for an indefinite period.⁴ She also submitted the results of grip strength testing, muscle strength testing of the cervical/trunk areas, and range of motion testing of the cervical, thoracic, and lumbar areas of the spine dated June 10 and 25, July 16 and 22, August 13 and 26, September 24, October 7, 14, and 21, and December 30, 2015 from Dr. James A. Cain, III, Board-certified in family medicine, and Dr. Charles E. Reinhardt, an osteopath Board-certified in family medicine.

By decision dated May 9, 2016, OWCP denied modification of its June 16, 2015 denial decision.

³ On May 25, 2016 appellant also filed an occupational disease claim (Form CA-2) alleging injury due to her repetitive work duties. She claimed that she first became aware of her alleged injury on January 12, 2015 and, on July 5, 2016, OWCP accepted that claim assigned OWCP File No. xxxxx535 for intervertebral disc displacement of the lumbar region, radiculopathy of the thoracic region, and sprain of an unspecified collateral ligament of the right knee. OWCP later administratively combined OWCP File Nos. xxxxx535 and xxxxx908, with the latter designated as the master file. The present claim only involves appellant’s April 8, 2015 injury to her right hip and alleged resultant disability for the period May 30, 2015 through August 28, 2016.

⁴ On September 24, 2015 Dr. Nigam asserted that appellant’s September 16, 2015 magnetic resonance imaging (MRI) scan indicated an L5-S1 disc bulge/annular tear which warranted an upgrade of her condition to include intervertebral disc disease herniation without myelopathy. In a January 19, 2016 report, Dr. Nigam noted that appellant had two torn lumbar spine discs which were causally related to “her injury affects [sic] and the mechanism of twisting and lifting very heavy items” at work.

In a Form CA-17 report dated May 26, 2016, Dr. Nigam released appellant to work that day with restrictions of lifting no more than 15 pounds continuously and 20 pounds intermittently. In a Form CA-17 report dated June 23, 2016, he released her to work that day with the same lifting restrictions.⁵ In a June 2, 2016 report, Dr. Nigam opined that appellant sustained an acute strain injury of her right hip at the groin and upper thigh due to the excessive force she used in attempting to lift heavy boxes of mail at work on April 8, 2015. He advised that, at the time of her initial examination in April 2015,⁶ she had also complained of prior back pain, but noted “that was added into conditions when clearly they should not have been.”

On September 14, 2016 OWCP vacated its prior decisions and accepted that appellant sustained an iliofemoral ligament sprain of the right hip on April 8, 2015.

On September 26, 2016 appellant filed a claim for wage-loss compensation (Form CA-7) for the period May 30, 2015 to August 28, 2016.

In a February 14, 2017 development letter, OWCP requested that appellant submit medical evidence in support of her disability claim. It provided her 30 days to submit such evidence.

In response, appellant submitted a report dated July 16, 2015 from Dr. Nigam who diagnosed lumbosacral sprain, lumbar radiculopathy, and myalgia/myospasms, and indicated that she was incapacitated from work for an indefinite period.

By decision dated May 2, 2017, OWCP denied appellant’s claim for wage-loss compensation, finding that the medical evidence of record was insufficient to establish disability from work for the period May 30, 2015 through August 28, 2016 causally related to her accepted April 8, 2015 employment injury.

On May 23, 2017 appellant requested reconsideration of the May 2, 2017 decision and submitted Form CA-17 reports dated July 16 and August 17, 2015 from Dr. Nigam who advised that she was incapable of returning to work.⁷ In a May 18, 2017 verification of disability report, Dr. Nigam listed the date of injury as April 8, 2015 and opined that appellant was incapacitated from May 30 through August 28, 2015 due to a “work-related injury.”

By decision dated August 17, 2017, OWCP denied modification of its May 2, 2017 decision.

On September 12, 2017 appellant requested reconsideration of the August 17, 2017 decision. She submitted administrative documents regarding her receipt of benefits from the

⁵ In both these form reports, Dr. Nigam listed the date of injury as April 8, 2015. Appellant also submitted additional reports of Dr. Charles E. Reinhardt, an osteopath and pain medicine specialist, dated between August 2015 and August 2016, detailing the results of grip strength, muscle strength, and range of motion testing. In a May 26, 2016 work tolerance limitations report, Dr. Nigam noted that appellant could work for six hours per day with restrictions of lifting no more than 15 pounds continuously and 20 pounds intermittently.

⁶ Dr. Nigam inadvertently listed the date of the initial examination as April 23, 2016, rather than the actual date of April 23, 2015.

⁷ In these form reports, Dr. Nigam listed the date of injury as April 8, 2015.

Department of Veterans Affairs and an August 14, 2017 report from Dr. Oluchi Immanuel, Board-certified in internal medicine, regarding a service-related back condition.

By decision dated December 8, 2017, OWCP denied modification of its August 17, 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 including the fact that any disability or specific condition for which compensation is claimed is causally related to the employment injury.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.⁹ Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.¹⁰ 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.¹¹ When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for loss of wages.¹²

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 accepted employment injury.¹³

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work for the period May 30, 2015 through August 28, 2016 causally related to her accepted April 8, 2015 employment injury.

Appellant submitted reports dated May 21, July 16 and August 13, 2015 from Dr. Nigam who diagnosed several lumbar conditions and advised that she was incapacitated from work indefinitely. In a May 18, 2017 verification of disability report, Dr. Nigam listed the date of injury

⁸ *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

⁹ 20 C.F.R. § 10.5(f); *S.T.*, Docket No. 18-0412 (issued October 22, 2018).

¹⁰ *See L.W.*, Docket No. 17-1685 (issued October 9, 2018).

¹¹ *See D.G.*, Docket No. 18-0597 (issued October 3, 2018).

¹² *See D.R.*, Docket No. 18-0323 (issued October 2, 2018).

¹³ *See V.A.*, Docket No. 19-1123 (issued October 29, 2019).

as April 8, 2015 and opined that appellant was incapacitated from May 30, 2015 through August 28, 2016 due to a “work-related injury.” The Board finds that, although these reports reference periods of disability, they are of no probative value on the underlying issue of this case because Dr. Nigam did not provide a clear opinion that appellant had disability from work during the period May 30, 2015 to August 28, 2016 causally related to the accepted April 8, 2015 employment injury, an iliofemoral ligament sprain of the right hip. 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.¹⁴ Therefore, these reports are insufficient to establish appellant’s claim.

Appellant also submitted a Form CA-17 report dated May 21, 2015 from Dr. Nigam who indicated that she was totally disabled from work. In Form CA-17 reports dated July 16 and August 17, 2015, Dr. Nigam again advised that she was not capable of returning to work. In a Form CA-17 report dated May 26, 2016, he released appellant to work that day with restrictions of lifting no more than 15 pounds continuously and 20 pounds intermittently. In a Form CA-17 report dated June 23, 2016, he released her to work that day with the same lifting restrictions.¹⁵ However, these Form CA-17 reports are mere form reports and do not contain an opinion on whether the accepted April 8, 2015 employment injury caused disability from work during the claimed period; consequently, they are of no probative value on the issue of causal relationship and are insufficient to establish appellant’s claim.¹⁶

Appellant also submitted medical evidence which addressed her medical problems during the claimed period of disability, but did not address her ability to work. For example, in a September 24, 2015 report, Dr. Nigam advised that she had intervertebral disc disease/herniation at L5-S1 without myelopathy. On January 19, 2016 he diagnosed two torn lumbar spine discs and, on June 2, 2016, he indicated that appellant sustained an acute strain injury of her right hip at the groin/upper thigh on April 8, 2015. In reports dated between June 2015 and August 2016, Dr. Cain and Dr. Reinhardt detailed the results of grip strength testing, muscle strength testing of the cervical/trunk areas, and range of motion testing of the cervical, thoracic, and lumbar spines. However, these reports also are of no probative value on the underlying issue of this case because they do not contain an opinion that appellant was disabled from work during the period May 30, 2015 through August 28, 2016 causally related to the accepted April 8, 2015 employment injury.¹⁷

The Board finds that appellant has not submitted sufficient medical opinion evidence to establish disability during the period May 30, 2015 through August 28, 2016 causally related to

¹⁴ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁵ In these Form CA-17 reports, Dr. Nigam listed the date of injury as April 8, 2015.

¹⁶ *A.A.*, Docket No. 19-0957 (issued October 22, 2019); *L.D.*, Docket No. 19-0263 (issued June 19, 2019). In a May 26, 2016 work tolerance limitations form report, Dr. Nigam noted that appellant could work for six hours per day with restrictions of lifting no more than 15 pounds continuously and 20 pounds intermittently. However, he did not provide an opinion on the cause of this limited disability.

¹⁷ *Id.* Appellant also submitted an August 14, 2017 report from Dr. Immanuel, but this report concerns a condition related to her military service rather than her work for the employing establishment.

her accepted April 8, 2015 employment injury. Thus, she has not met her burden of proof to establish entitlement to compensation for such claimed disability.

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 for the period May 30, 2015 through August 28, 2016 causally related to her accepted April 8, 2015 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the December 8, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 6, 2020
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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