United States Department of Labor
Employees' Compensation Appeals Board

J.T., Appellant	)	
and	)	**Docket No. 19-1813**
	)	**Issued: April 14, 2020**
U.S. POSTAL SERVICE, POST OFFICE, Lawrenceville, GA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On August 28, 2019 appellant, through counsel, filed a timely appeal from a May 23, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). 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.

[1] 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.

[2] 5 U.S.C. § 8101 *et seq*.

ISSUE

The issue is whether appellant has met her burden of proof to establish disability during the period June 26 through August 31, 2018, causally related to her accepted July 7, 2016 employment injury.

FACTUAL HISTORY

On July 7, 2016 appellant, then a 61-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained a thumb injury when the contents of a package shifted and jammed her thumb while in the performance of duty. On the reverse side of the claim form, the employing establishment indicated that she did not stop work.

On September 14, 2016 OWCP accepted appellant's claim for sprain of the interphalangeal joint of the right thumb. On November 1, 2016 appellant underwent authorized carpometacarpal arthroplasty with tendon transfer and reconstruction of the first metacarpocarpal (MCP) joint of the right hand, which was performed by Dr. Neil J. Negrin, an attending Board-certified orthopedic surgeon.[3]

Appellant returned to full-time modified-duty work on January 23, 2017.

OWCP subsequently received additional medical evidence from Dr. Negrin. In a May 15, 2018 letter, a May 21, 2018 follow-up visit note, and a May 21, 2018 duty status report (Form CA-17), Dr. Negrin indicated that when appellant returned to work following a two-to-three-week vacation, her work activities caused recurrent discomfort. He advised that she had reached maximum medical improvement (MMI). Additionally, Dr. Negrin noted that appellant had permanent restrictions which included no lifting, pushing, or pulling more than five pounds, and no repetitive work. He discharged her from his care.

In July 2018 appellant filed wage-loss compensation claims (Form CA-7) seeking compensation for leave without pay (LWOP) from June 26 through July 6 and July 9 through 20, 2018. No medical evidence accompanied her claims.

On July 19, 2018 the employing establishment offered appellant a full-time modified rural carrier position based on the work restrictions set forth by Dr. Negrin. The duties of the position involved bin verification, issuing scanners weighing less than five pounds, scanning labels for inbound/outbound dispatch, and printing assigned mail transport equipment placards. The physical requirements of the mostly sedentary position included sitting and standing as needed, using handheld scanners weighing less than five pounds, and no lifting, pulling, or pushing more than five pounds, and no simple grasping and fine manipulation. Appellant did not perform the offered job.

[3] The Board notes that, it appears Dr. Negrin inadvertently indicated in his November 1, 2016 operative report, that he performed arthroplasty surgery on the first MCP joint on appellant's left hand rather than her right hand as the remainder of his reports only referenced her right thumb conditions.

OWCP, in an August 3, 2018 development letter, requested that appellant submit medical evidence to establish that she was unable to perform the offered light-/limited-duty assignment during the periods June 26 through July 6, 2018 and July 9 through 20, 2018. It afforded her 30 days to submit the necessary evidence. No additional evidence was received.

In an August 6, 2018 letter, the employing establishment informed OWCP that appellant had rejected its July 19, 2018 job offer asserting that medical documentation placed her off work permanently and that she did not have transportation to the duty location. It countered that the position was well within her restrictions and less than 50 miles from her duty station. The employing establishment contended that appellant returned to her physician to change her restrictions to avoid performing the duties of the offered position. It requested that OWCP determine the suitability of the offered employment position.

The employing establishment submitted an August 1, 2018 attending physician's report (Form CA-20) from Dr. Negrin who diagnosed a fractured right thumb and opined that the diagnosed condition was directly caused by the accepted July 7, 2016 employment incident. Dr. Negrin noted that appellant was totally disabled from work from October 20, 2016 through April 10, 2017. He further noted that she was partially disabled from work commencing April 10, 2017 and that she could return to light-duty work on that same date with permanent restrictions of no lifting more than five pounds, pushing or pulling, and no grasping or use of a handheld scanner.

In August and September 2018, appellant filed several additional Form CA-7 claims for compensation for LWOP from July 23 through August 3, August 6 through 17, and August 20 through 31, 2018. Again, she did not submit any medical evidence along with her claims.

In an undated letter and note, appellant advised OWCP that she was unable to perform the offered position given swelling in her hands, pain shooting up her arm, and inflammation caused by her work injury. She noted that she had filed for retirement.

By decision dated October 5, 2018, OWCP denied appellant's claims for compensation for the periods June 26 through July 6 and July 9 through 20, 2018. It noted that she had not responded to its August 3, 2018 development letter.

On October 22, 2018 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

OWCP, in development letters dated November 9, 2018, requested that appellant submit medical evidence to establish that she was unable to perform the offered light-/limited-duty assignment during the periods August 6 through 17 and August 20 through 31, 2018. It afforded her 30 days to submit the necessary evidence. No additional evidence was submitted.

OWCP thereafter received an additional follow-up visit note dated December 3, 2018 from Dr. Negrin where he reported that appellant had apparently retired or used sick leave as she was unable to perform duties that exceeded her restrictions. He discussed findings on physical examination and noted that she should continue her restrictions of lifting, pushing, and pulling no more than five pounds.

By decision dated December 12, 2018, OWCP denied appellant's claims for LWOP compensation for the periods August 6 through 17 and August 20 through 31, 2018. It noted that she had not responded to its November 9, 2018 development letters.

On December 21, 2018 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative, which was held on March 19, 2019.

By decision dated May 23, 2019, an OWCP hearing representative affirmed the October 5 and December 18, 2018 decisions.

LEGAL PRECEDENT

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.[4] 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.[5]

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.[6] 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.[7]

To establish causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such causal relationship.[8] The opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[9]

[4] *See L.F.*, Docket No. 19-0324 (issued January 2, 2020); *T.L.*, Docket No. 18-0934 (issued May 8, 2019); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

[5] *See* 20 C.F.R. § 10.5(f); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

[6] *Id.* at § 10.5(f); *see e.g.*, *G.T.*, Docket No. 18-1369 (issued March 13, 2019); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

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

[8] *See S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

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

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish intermittent disability during the period June 26 through August 31, 2018, causally related to her accepted July 7, 2016 employment injury.

In support of her claims for compensation, appellant submitted reports from Dr. Negrin who determined that she reached MMI and provided permanent work restrictions. However, he did not provide an opinion on whether appellant was disabled from work during the claimed period due to her accepted employment condition. Accordingly, Dr. Negrin's reports are of no probative value and are insufficient to establish appellant's claim for compensation.[10]

For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work during the claimed period as a result of the accepted employment injury.[11] Because appellant has not submitted rationalized medical opinion evidence to establish employment-related intermittent total disability during the period June 26 through August 31, 2018 as a result of her accepted right thumb condition, the Board finds that she has not met her burden of proof to establish her claim for disability compensation.

On appeal counsel contends that OWCP's May 23, 2019 decision is contrary to fact and law. He has not, however, provided any evidence to support his argument. As explained above, appellant has not submitted rationalized medical evidence to establish causal relationship between her claimed disability and the accepted July 7, 2016 employment injury. As such, she has not met her burden of proof.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish intermittent disability during the period June 26 through August 31, 2018, causally related to her accepted July 7, 2016 employment injury.

[10] *See M.J.*, Docket No. 19-1287 (issued January 13, 2020); *M.M.*, Docket No. 18-0817 (issued May 17, 2019); *M.C.*, Docket No. 16-1238 (issued January 26, 2017).

[11] *Supra* note 4.

ORDER

IT IS HEREBY ORDERED THAT the May 23, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 14, 2020
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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