

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

S.J., Appellant)	
)	Docket No. 20-1061
and)	Issued: December 22, 2020
)	
U.S. POSTAL SERVICE, POST OFFICE,)	
Troy, MI, Employer)	
)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 22, 2020 appellant, through counsel, filed a timely appeal from a March 16, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

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.*

³ The Board notes that, following the March 16, 2020 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 beginning September 19, 2019 through January 17, 2020 causally related to her accepted employment injury.

FACTUAL HISTORY

On October 7, 2019 appellant, then a 34-year-old customer care agent, filed an occupational disease claim (Form CA-2) alleging that she sustained extensor tendinitis of the wrist and lateral epicondylitis of the elbow due to factors of her federal employment, including typing. She indicated that she first became aware of her condition and its relation to her federal employment on September 16, 2019. Appellant stopped work on September 19, 2019. On October 17, 2019 OWCP accepted the claim for right wrist tendinitis and right elbow lateral epicondylitis.

Appellant filed claims for wage-loss compensation (Form CA-7) for intermittent disability for the periods September 19 through October 25, 2019 and November 9, 2019 through January 17, 2020.

Appellant submitted an x-ray of her right wrist, dated October 31, 2019, which revealed no acute fracture or dislocation.

In an October 31, 2019 report, Dr. Jonathan Douglas Carrier, an osteopath specializing in physical medicine and rehabilitation, noted that appellant experienced cramping of the hand and wrist on September 15, 2019. He indicated that she performed extensive typing at work. Dr. Carrier examined appellant and reviewed an x-ray of her right wrist. He diagnosed right hand pain, paresthesias in the right hand, and right wrist tendinitis. Dr. Carrier indicated that appellant would return for an evaluation in three weeks and remain off work in the interim.

In a November 21, 2019 work excuse note, Dr. Carrier excused appellant from work through December 12, 2019.

In a development letter dated December 10, 2019, OWCP acknowledged receipt of appellant's claims for wage-loss compensation beginning September 19, 2019 and advised that additional evidence was needed to establish disability from work during the claimed periods. It requested that she submit additional evidence in support of her claims, including a physician's opinion supported by a medical explanation as to how her accepted employment injury had caused disability since September 19, 2019. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP subsequently received occupational therapy treatment notes, dated November 7, 2019.

In a November 21, 2019 report, Dr. Carrier noted that appellant experienced pain and cramping in the right hand and wrist since September 2019. He indicated that her pain was aggravated by typing at work and that she recently started hand therapy. Dr. Carrier examined appellant and diagnosed chronic right hand, wrist, and forearm pain, lateral epicondylitis,

de Quervain's tenosynovitis, and probable coexistent carpal tunnel syndrome. He noted that she should remain off work through December 12, 2019.

Dr. Carrier noted, in a December 12, 2019 report, that appellant had been wearing a wrist brace and performing hand therapy exercises. He indicated that she started noticing weakness with her grip strength. Dr. Carrier examined appellant and diagnosed chronic right hand, wrist, and forearm pain and mild carpal tunnel syndrome. He excused her from work through January 9, 2020.

By decision dated January 14, 2020, OWCP denied appellant's claim for wage-loss compensation for the period beginning September 19, 2019. It found that the medical evidence of record was insufficient to establish a causal relationship between her accepted employment injury and the claimed disability.

Appellant subsequently submitted occupational therapy treatment notes, dated December 26, 2019.

On January 21, 2020 Dr. Carrier performed an ultrasound-guided right carpal tunnel injection procedure. In a letter of even date, he noted that he had been treating appellant since October 3, 2019. Dr. Carrier indicated that he recommended that she remain off work from October 3, 2019 through February 4, 2020. He listed diagnoses of carpal tunnel syndrome, lateral epicondylitis, and wrist tendinitis.

In a February 4, 2020 report, Dr. Carrier noted that the January 21, 2020 injection had improved appellant's hand/finger pain, but had not resolved her wrist pain. He indicated that she had not attended her occupational therapy visits throughout January. Dr. Carrier examined appellant and diagnosed chronic atraumatic right hand and wrist pain, mild carpal tunnel syndrome, and de Quervain's tenosynovitis. He noted that her conditions were related to the repetitive fine motor tasks required by her job. Dr. Carrier further indicated that appellant was partially disabled with work restrictions limiting the use of her right hand and wrist for fine motor and gross motor tasks. He recommended that she remain off work until her next evaluation.

On February 10, 2020 appellant requested reconsideration. She asserted that she did not excuse herself from work on September 19, 2019, but called into work due to the pain she was experiencing.

By decision dated March 16, 2020, OWCP denied modification of the January 14, 2020 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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.⁵

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.⁶ Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. 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.⁷

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.⁸

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.⁹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work for the period beginning September 19, 2019 through January 17, 2020 causally related to her accepted employment injury.

Appellant submitted a series of reports and notes from Dr. Carrier, dated October 31, 2019 through January 21, 2020. In an October 31, 2019 report, Dr. Carrier diagnosed right hand pain, paresthesias in the right hand, and right wrist tendinitis and recommended that she remain off work until her next evaluation. On November 21, 2019 he diagnosed chronic right hand, wrist, and

⁴ *Supra* note 2.

⁵ *S.K.*, Docket No. 19-0272 (issued July 21, 2020); *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

⁶ 20 C.F.R. § 10.5(f); *see R.B.*, Docket No. 19-1527 (issued July 16, 2020); *B.K.*, Docket No. 18-0386 (issued September 14, 2018).

⁷ *See C.E.*, Docket No. 19-1617 (issued June 3, 2020).

⁸ *See K.H.*, Docket No. 19-1635 (issued March 5, 2020).

⁹ *See K.A.*, Docket No. 19-1564 (issued June 3, 2020); *Sandra D. Pruitt*, 57 ECAB 126 (2005); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

forearm pain, lateral epicondylitis, de Quervain's tenosynovitis, and probable coexistent carpal tunnel syndrome and excused appellant from work through December 12, 2019. In a December 12, 2019 report, Dr. Carrier diagnosed chronic right hand, wrist, and forearm pain and mild carpal tunnel syndrome and excused her from work through January 9, 2020. On January 21, 2020 he noted that he excused her from work from October 3, 2019 through February 4, 2020 and listed diagnoses of carpal tunnel syndrome, lateral epicondylitis, and wrist tendinitis. Although these reports and notes address appellant's ability to work during the claimed period of disability, they are of no probative value on the underlying issue of this case because they do not contain an opinion on the cause of the reported partial or total disability. The Board has held that medical evidence that does not offer an opinion regarding the cause of her condition or disability is of no probative value on the issue of causal relationship.¹⁰ As such, these reports and notes are insufficient to establish appellant's disability claim.

In a February 4, 2020 report, Dr. Carrier diagnosed chronic atraumatic right hand and wrist pain, mild carpal tunnel syndrome, and de Quervain's tenosynovitis. He noted that appellant was partially disabled and had work restrictions limiting the use of her right hand and wrist for fine motor and gross motor tasks. Dr. Carrier opined that her conditions were related to the repetitive fine motor tasks required by her job. Although he provided an opinion that appellant was partially disabled, his opinion is of limited probative value regarding her disability claim because he did not provide a rationalized opinion on causal relationship. The Board has also held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/period of disability has an employment-related cause.¹¹ Accordingly, Dr. Carrier's February 4, 2020 report is insufficient to establish appellant's claim.

Appellant also submitted occupational therapy treatment notes, dated November 7 and December 26, 2019. However, these notes have no probative value regarding her disability claim because the Board has held that the report of an occupational therapist does not constitute probative medical evidence as an occupational therapist is not considered a physician as defined under FECA.¹²

As the medical evidence of record did not contain a rationalized medical opinion, which based on objective medical findings, related that appellant was disabled due to her accepted employment injury, the Board finds that she has not met her burden of proof to establish disability for the claimed period.¹³

¹⁰ See *S.K.*, *supra* note 5.

¹¹ *Id.*

¹² Section 8101(2) of FECA provides that a 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); 20 C.F.R. § 10.5(t). See also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *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.R.*, Docket No. 19-0812 (issued September 29, 2020) (an occupational therapist is not considered a physician under FECA).

¹³ See *K.A.*, *supra* note 9.

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 period beginning September 19, 2019 through January 17, 2020 causally related to her accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the March 16, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 22, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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