United States Department of Labor
Employees' Compensation Appeals Board

E.M., Appellant	)	
and	)	**Docket No. 18-0454**
	)	**Issued: February 20, 2020**
U.S. POSTAL SERVICE, ROGERS PARK POST OFFICE, Chicago, IL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On January 2, 2018 appellant filed a timely appeal from July 21 and December 21, 2017 merit decisions 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.

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish eligibility for continuation of pay; and (2) whether appellant has met his burden of proof to establish total disability from work for the period March 8 to July 7, 2017 causally related to his accepted employment injury.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 7, 2017 appellant, then a 27-year-old mail carrier,[2] filed a traumatic injury claim (Form CA-1) alleging that he injured his lower back on March 8, 2017 as a result of blacking out and stumbling while in the performance of duty. He stopped work on the date of injury. The employing establishment advised that notice of the injury was first received on June 7, 2017.

In a March 16, 2017 report, Dr. Lise S. Weisberger, a Board-certified family practitioner, recounted that appellant reported that he had reinjured his lower back when leaving work on March 8, 2017 and had missed work from March 10 to 16, 2017. She found increased lumbar paraspinal spasm and decreased range of motion of the low back. Dr. Weisberger released appellant to return to work with his usual restrictions of working five hours a day, when his vacation ended on March 27, 2017.

On July 12, 2017 appellant filed a wage-loss compensation claim (Form CA-7) for the period March 8 through July 7, 2017.

By decision dated July 21, 2017, OWCP accepted appellant's claim for the condition of lumbar strain.

By separate decision of even date, OWCP denied appellant's claim for continuation of pay for the period March 8 to April 21, 2017 finding that he had failed to report the March 8, 2017 employment injury on a form approved by OWCP within 30 days, as required.

In a development letter dated July 21, 2017, OWCP requested additional medical evidence establishing appellant's disability for work during the claimed period. Appellant was afforded 30 days to respond. He did not submit additional evidence.

By decision dated September 1, 2017, OWCP denied appellant's wage-loss compensation claim finding that the medical evidence of record failed to establish total disability due to the accepted employment injury.

On September 18, 2017 appellant requested reconsideration.

In support of his claim appellant submitted reports dated May 4 and June 9 and 29, 2017 from Dr. Weisberger who continued to diagnose lumbar muscle spasm. In the June 29, 2017 report, Dr. Weisberger indicated that he had missed work since June 16, 2017 "due to back pain and stiffness" and was planning to return to work on July 3, 2017.

In a September 8, 2017 report, Dr. Weisberger noted that appellant initially sustained a work-related injury on May 10, 2014 when he was lifting a heavy pallet of mail from a gurney and was diagnosed with acute lumbar strain on May 16, 2014. Appellant had sustained his new injury on March 8, 2017 and requested paperwork "to document his ability to return to work with

[2] On March 7, 2017 appellant had accepted a limited-duty job offer as a city carrier. The duties included emptying trash at carrier cases, cleaning, mopping, and answering telephones. The physical requirements included lifting, carrying, pushing, and pulling up to 13 pounds for up to six hours per day, walking up to three hours per day, simple grasping and fine manipulation up to six hours per day, and sitting one hour at a time for up to six hours per day.

restrictions following episodes of missed work due to exacerbations of his back pain." Dr. Weisberger diagnosed a lumbar back strain and opined that he was disabled for the period claimed.

Appellant submitted progress reports dated March 16 and September 8, 2017 by Dr. Weisberger who continued to diagnose lumbar spasm.

In an April 11, 2017 report, Dr. Lauren M. Burke, a Board-certified radiologist, reviewed x-rays of appellant's cervical and lumbar spine and found intact cervical and lumbar lordosis with maintained alignment and no evidence of fracture or listhesis. She also reviewed a magnetic resonance imaging (MRI) scan of the lumbar spine and found mild multilevel degenerative changes, most pronounced at L5-S1. Dr. Burke found no significant stenosis. She diagnosed a reaggravation of cervical and lumbar back strains.

By decision dated December 21, 2017, OWCP affirmed its prior decision with modification finding that the medical evidence of record failed to establish appellant's disability for the entire claimed period. It further found that he had established entitlement to wage-loss compensation for attending medical appointments on March 16, April 11, May 4, June 9 and 29, and September 8, 2017.

LEGAL PRECEDENT -- ISSUE 1

Section 8118 of FECA[3] provides for payment of continuation of pay, not to exceed 45 days, to an employee who has filed a claim for a period of wage loss due to traumatic injury with his or her immediate supervisor on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title. Section 8122(a)(2) provides that written notice of injury must be given as specified in section 8119. The latter section provides in part that notice of injury shall be given in writing within 30 days after the injury.[4] Claims that are timely under section 8122 are not necessarily timely under section 8118(a). FECA authorizes continuation of pay for an employee who has filed a valid claim for traumatic injury.[5] Section 8118(a) makes continuation of pay contingent on the filing of a written claim within 30 days of the injury. When an injured employee makes no written claim for a period of wage loss within 30 days, he or she is not entitled to continuation of pay, notwithstanding prompt notice of injury.[6]

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish eligibility for continuation of pay.

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[3] *Supra* note 1.

[4] *Id.* at § 8119(a), (c). *See also Gwen Cohen-Wise*, 54 ECAB 732 (2003).

[5] *Id.* at § 8118(a).

[6] *L.S.*, Docket No. 16-0088 (issued June 10, 2016); *P.R.*, Docket No. 08-2239 (issued June 2, 2009). *See also W.W.*, 59 ECAB 533 (2008).

On June 7, 2017 appellant filed a claim for a March 8, 2017 traumatic injury. Because he did not file a claim within 30 days from the date of injury, the time specified in sections 8118(a) and 8122(a)(2) of FECA,[7] he is not entitled to continuation of pay. When an injured employee makes no written claim for a period of wage loss within 30 days, he is not entitled to continuation of pay, notwithstanding prompt notice of injury. Moreover, oral notice is not determinative of as to whether appellant is entitled to continuation of pay under section 8118(a).[8] Because FECA makes no provision for an exception to the time limitation in section 8118(a), no exceptional or mitigating circumstance, including error by the employing establishment, can entitle a claimant to continuation of pay who has not filed a written claim within 30 days of the date of injury.[9]

Appellant did not submit written notice of injury on an approved form until June 7, 2017, more than 30 days after the March 8, 2017 employment injury, when he submitted Form CA-1.[10] Therefore, the Board finds that he is not entitled to continuation of pay.

LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under FECA[11] has the burden of proof to establish the essential elements of his or her claim.[12] Under FECA the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.[13] 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.[14] Whether a particular injury caused an employee to be disabled from employment and the duration of that disability are medical issues which must be proven by the preponderance of the reliable probative and substantial medical evidence.[15]

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

[7] 5 U.S.C. §§ 8118(a), 8122(a)(2).

[8] *See J.M.,* Docket No. 09-1563 (issued February 26, 2010).

[9] *See Laura L. Harrison*, 52 ECAB 515 (2001). *See also S.C.*, Docket No. 10-0460 (issued January 26, 2011).

[10] *See Robert E. Kimzey,* 40 ECAB 762 (1989).

[11] *Supra* note 1.

[12] *M.C.,* Docket No. 18-0919 (issued October 18, 2018); *Amelia S. Jefferson,* 57 ECAB 183 (2005); *Nathaniel Milton,* 37 ECAB 712 (1986).

[13] *A.S.,* Docket No. 17-2010 (issued October 12, 2018); *S.M.,* 58 ECAB 166 (2006); *Bobbie F. Cowart,* 55 ECAB 746 (2004); 20 C.F.R. § 10.5(f).

[14] *K.C.,* Docket No. 17-1612 (issued October 16, 2018); *William A. Archer,* 55 ECAB 674 (2004).

[15] *S.G.,* Docket No. 18-1076 (issued April 11, 2019); *Fereidoon Kharabi,* 52 ECAB 291, 292 (2001).

claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.[16]

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met his burden of proof to establish total disability from work for the period March 8 through July 7, 2017 causally related to his accepted employment injury.

While OWCP accepted that appellant sustained a lumbar strain, he bears the burden proof to establish through medical evidence that he was disabled during the claimed time period and that his disability was causally related to the accepted injury.[17] The Board finds that he did not submit rationalized medical evidence explaining how the employment injury materially worsened or aggravated his lumbar condition and caused him to be disabled for work for the period March 8 to July 7, 2017.

Appellant submitted an April 11, 2017 report from Dr. Burke. The report fails to provide a probative medical opinion on whether he was disabled on the dates at issue due to his accepted lumbar condition. Dr. Burke did not provide an opinion supporting appellant's disability for work during the period in question and failed to provide rationale explaining how or why he was disabled for work.[18] Consequently, her report is insufficient to satisfy his burden of proof.

In her reports, Dr. Weisberger diagnosed lumbar spasm and lumbar back strain and opined that appellant was disabled for the period claimed. She indicated that he had reported to her that he reinjured his lower back when leaving work on March 8, 2017 and then missed work from March 10 to 16, 2017. Upon examination, Dr. Weisberger found increased lumbar paraspinal spasm and decreased range of motion of the lower back. She released appellant "to return to work with [appellant's] usual restrictions, five hours a day, when his vacation end[ed], on March 27." In a June 29, 2017 report, Dr. Weisberger indicated that he had missed work since June 16, 2017 "due to back pain and stiffness" and was planning to return to work on July 3, 2017. Although she opined that appellant was totally disabled for work, her opinion is conclusory in nature and fails to explain, with detail, how the accepted medical condition of lumbar strain was responsible for his disability and why he could not perform his federal employment during the claimed period.[19] Consequently, the Board finds that Dr. Weisberger's reports are insufficient to establish his claim that he was totally disabled for the period March 8 to July 7, 2017 causally related to his accepted employment injury.

The Board finds that appellant has not provided sufficiently rationalized medical opinion evidence to establish that he was disabled for the period March 8 through July 7, 2017 causally

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[16] *J.B.,* Docket No. 19-0715 (issued September 12, 2019).

[17] *See supra* notes 14 and 15. *See also V.P.*, Docket No. 09-337 (issued August 4, 2009).

[18] *See J.M.,* Docket No. 16-0306 (issued May 5, 2016).

[19] *See J.J.*, Docket No. 15-1329 (issued December 18, 2015).

related to the accepted employment injury. Thus, appellant has not met his burden of proof to establish that he is entitled to compensation for the claimed period.

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 his burden of proof to establish eligibility for continuation of pay. The Board further finds that he has not met his burden of proof to establish that total disability from work for the period March 8 through July 7, 2017 was causally related to his accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the December 21 and July 21, 2017 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 20, 2020
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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