

ISSUE

The issue is whether appellant has met her burden of proof to establish total disability commencing May 12, 2018 causally related to her accepted March 29, 2018 employment injury.

FACTUAL HISTORY

On April 18, 2018 appellant, then a 59-year-old mail handler assistant, filed a traumatic injury claim (Form CA-1) alleging that on March 29, 2018 she injured her lower back and left leg, arm, and elbow when she fell between the dock and a truck while in the performance of duty.

In an accompanying narrative statement, appellant related that on March 29, 2018 she was on light-duty work at the dock as a result of a prior work-related injury. She noted that, as she proceeded to walk to scan a barcode inside the back of a truck, her left leg went down into a hole between the dock and truck, and she fell injuring her left leg, arm, and elbow, and lower back.

In support of her claim, appellant submitted return to work forms, including an April 4, 2018 unsigned form, which noted that she may return to work on April 23, 2018. An April 18, 2018 form signed by A.B. Williams⁴ indicated that appellant may return to work on May 3, 2018. OWCP subsequently received an additional form dated May 2, 2018 signed by R. Goodsen⁵ who noted that appellant may not return to work until after her next appointment on June 25, 2018.

On May 28, 2018 appellant filed a claim for compensation (Form CA-7) for leave without pay (LWOP) for the period May 12 through 25, 2018.

OWCP, in a June 5, 2018 development letter, advised appellant of the deficiencies of her claim. It requested additional factual and medical evidence and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

On June 10, 2018 appellant filed an additional Form CA-7 claim requesting compensation for LWOP for the period May 28 through June 8, 2018.

Appellant responded to OWCP's development letter in a completed questionnaire dated June 7, 2018. She explained that she was still off work under a physician's care. Appellant related that her injury on March 29, 2018 was witnessed by a manager of distribution operations who called 911 and stayed with her until an ambulance arrived and took her to the emergency room at Bons Secours. She related that the immediate effects of her injury included severe pain and trauma to her lower back and left leg, knee, arm, and elbow. Appellant noted that since her fall she had been in therapy and had not sustained any other injury except a left thumb injury which she reported on March 5, 2018. She also noted that she had no symptoms prior to her claimed injury.

In a May 14, 2018 left lower extremity computerized tomography (CT) scan report, Dr. Larry K. Nolan, a diagnostic radiologist, provided impressions of superficial soft tissue contusion/fluid extending along the lateral left thigh and no evidence of fracture.

⁴ The Board notes that the professional qualifications of A.B. Williams are not contained in the case record.

⁵ The Board also notes that the professional qualifications of R. Goodsen are not contained in the case record.

On June 25 and July 9, 2018 appellant filed additional Form CA-7 claims requesting compensation for LWOP for the period June 9 through July 6, 2018.

In an imaging order dated April 18, 2018, Dr. Lerla G. Joseph, an attending Board-certified internist, diagnosed contusion of the left thigh, subsequent encounter. She requested a CT scan of the left thigh.

On July 12, 2018 OWCP accepted appellant's claim for left thigh abrasion.

In a development letter dated July 12, 2018, OWCP informed appellant of the deficiencies of her disability claim. It advised her of the type of medical evidence needed and afforded her 30 days to provide the necessary evidence.

Appellant continued to file several Form CA-7 claims requesting compensation for LWOP for the period July 7 through 20, 2018.

Dr. Joseph, in a June 25, 2018 form report, advised that appellant may return to work on July 31, 2018. On June 26, 2018 she reported examination findings and provided assessments of stable fibromyositis, mixed hyperlipidemia, migraine, gastroesophageal reflux disease, solitary bone cyst, and long-term drug therapy.

An August 6, 2018 form report with an illegible signature indicated that appellant may return to work on August 8, 2018 with restrictions.

By decision dated August 16, 2018, OWCP denied appellant's claims for disability compensation commencing May 12, 2018 finding that she had not submitted rationalized medical evidence sufficient to establish that the claimed disability was causally related to her accepted March 29, 2018 employment-related injury.

OWCP thereafter received an August 14, 2018 report from a physical therapist who diagnosed left hip and knee pain and provided an assessment of fair rehabilitation potential. The physical therapist noted that appellant would benefit from benefit of skilled physical therapy, which would enable to her return to work at full capacity.

On August 24, 2018 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review regarding the August 16, 2018 decision.

On September 3, 2018 appellant filed another Form CA-7 claim requesting compensation for LWOP from August 18 through 31, 2018.

In an August 7, 2018 prescription note and August 30, 2018 report, Dr. Joseph Andriano, a Board-certified internist, diagnosed left knee/thigh strain and ordered physical therapy. In duty status reports (Form CA-17) dated October 2 and December 4, 2018 and a narrative report dated December 4, 2018, he listed March 29, 2018 as the date of injury. Dr. Andriano diagnosed left hip pain and tenderness due to injury. In the Form CA-17 reports, he advised that appellant could not perform her regular work, but she could resume work on October 2 and December 4, 2018 with restrictions.

On August 8, 2018 Dr. Joseph reiterated her prior assessments of stable fibromyositis, mixed hyperlipidemia, migraine, gastroesophageal reflux disease, solitary bone cyst, and long-term drug therapy. She noted that appellant could return to sedentary work.

In a December 4, 2018 left lower extremity CT scan report, Dr. David A. May, a Board-certified diagnostic radiologist, provided an impression of mild bilateral hip joint osteoarthritis. He also noted that no acute finding was evident.

By decision dated April 2, 2019, an OWCP hearing representative affirmed the August 16, 2018 decision.

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.⁶ 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.⁷

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.⁸ 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.⁹

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.¹⁰ The opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale.¹¹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish total disability commencing May 12, 2018 causally related to her accepted March 29, 2018 employment injury.

In a June 25, 2018 form report, Dr. Joseph advised that appellant may return to work/school on July 31, 2018. The Board finds that, although she supported that appellant was disabled from

⁶ See *M.B.*, Docket No. 18-1455 (issued March 11, 2019); *D.W.*, Docket No. 18-0644 (issued November 15, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

⁷ See 20 C.F.R. § 10.5(f); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

⁸ *Id.* at § 10.5(f); see e.g., *G.T.*, 18-1369 (issued March 13, 2019); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

⁹ *G.T.*, *id.*; *Merle J. Marceau*, 53 ECAB 197 (2001).

¹⁰ See *S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

¹¹ *C.B.*, Docket No. 18-0633 (issued November 16, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

work during the claimed period, she did not provide rationale explaining how that disability was causally related to the accepted March 29, 2018 employment injury. Thus, this report is insufficient to establish appellant's claim.¹²

Dr. Joseph's remaining reports addressed appellant's diagnosed conditions and medical treatment, but failed to offer an opinion as to whether appellant was disabled from work due to the accepted employment injury. Therefore, her reports are insufficient to establish the claimed period of disability.¹³

Dr. Andriano's October 2 and December 4, 2018 Form CA-17 reports diagnosed left hip pain and tenderness due to the accepted March 29, 2018 employment injury. He indicated that although appellant could not perform her regular work, she could resume work on October 2 and December 4, 2018 with restrictions. While Dr. Andriano supported that she was disabled from work during the claimed period, he failed to relate her disability to the accepted March 29, 2018 employment injury.¹⁴ In an August 7, 2018 prescription note and August 30, 2018 report, he diagnosed left knee/thigh strain and ordered physical therapy, but failed to provide an opinion as to whether appellant was disabled from work.¹⁵ For the reasons provided, the Board finds that Dr. Andriano's reports and prescription are insufficient to meet her burden of proof.

Appellant also submitted diagnostic test results from Drs. Nolan and May. However, the Board has long held that diagnostic studies lack probative value as they do not address whether the claimed disability was caused by the accepted employment injury.¹⁶

The April 18 and May 2, 2018 form reports by A.B. Williams and R. Goodsen, addressed appellant's disability during the claimed period. However, the professional qualifications of these individuals are not contained in the case record. The Board has held that a medical report may not be considered probative medical evidence if there is no indication that the person completing the report qualifies as a physician under FECA.¹⁷ Therefore, these form reports are insufficient to establish the claim.

The remainder of the medical evidence also lacks probative value as it is either unsigned or prepared by a physical therapist. The Board has held, a report that is unsigned or bears an illegible signature lacks proper identification that the author is a physician and cannot be considered probative medical evidence.¹⁸ Additionally, physical therapists are not considered

¹² *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *R.B.*, Docket No. 18-0048 (issued June 24, 2019); *R.A.*, Docket No. 14-1327 (issued October 10, 2014).

¹³ *F.H.*, *id.*; *K.M.*, Docket No. 17-1730 (issued February 9, 2018); *R.R.*, Docket No. 17-1368 (issued October 19, 2017) (Board found reports that contained no opinion or explanation on causal relationship to be of limited probative value and insufficient to meet appellant's burden of proof.)

¹⁴ *Supra* note 12.

¹⁵ *Supra* note 13.

¹⁶ *See J.M.*, Docket No. 19-1517 (issued January 29, 2020 *F.H.*, *supra* note 12).

¹⁷ *R.M.*, 59 ECAB 690 (2008).

¹⁸ *C.J.*, Docket No. 18-0298 (issued October 3, 2018); *P.C.*, Docket No. 17-0880 (issued October 13, 2017); *M.W.*, Docket No. 17-0369 (issued July 27, 2017).

physicians as defined under FECA.¹⁹ Consequently, their findings or opinions will not suffice for purposes of establishing entitlement to compensation benefits.²⁰ For the reasons stated, the Board finds that this evidence is also insufficient to meet appellant's burden of proof.

The Board finds that appellant failed to submit sufficient medical evidence to establish employment-related disability for the period claimed due to her accepted March 29, 2018 employment injury.²¹

On appeal counsel contends that OWCP's April 2, 2019 decision is contrary to fact and law and that OWCP failed to adjudicate the claim in accordance with the proper standard of causation. He has not, however, provided any evidence to support his arguments. As explained above, as explained above, the medical evidence of record is insufficient to meet appellant's 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 total disability commencing May 12, 2018 causally related to her accepted March 29, 2018 employment injury.

¹⁹ 5 U.S.C. § 8101(2); *R.B.*, Docket No. 18-0048 (issued June 24, 2019); *Jennifer L. Sharp*, 48 ECAB 209 (1996) (physical therapists). *See also Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (a medical issue can only be resolved through the submission of probative medical evidence from a physician).

²⁰ *R.B., id.*; *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006).

²¹ *See C.R.*, Docket No. 19-1427 (issued January 3, 2020); *L.G.*, Docket No. 18-0140 (issued August 6, 2019); *Alfredo Rodriguez*, 47 ECAB 437 (1996).

ORDER

IT IS HEREBY ORDERED THAT the April 2, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 26, 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