

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

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**T.L., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Cleveland Heights, OH, Employer**

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**Docket No. 19-1540  
Issued: February 5, 2020**

*Appearances:*  
*Alan J. Shapiro, Esq., for the appellant<sup>1</sup>*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On July 11, 2019 appellant, through counsel, filed a timely appeal from a May 29, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that following the May 29, 2019 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 her claim for compensation for disability from work for the period January 29 through August 3, 2018, causally related to her accepted March 16, 2017 employment injury.

## **FACTUAL HISTORY**

On March 16, 2017 appellant, then a 31-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date, she injured her lower extremities and right shoulder when she slipped and fell while in the performance of duty. She stopped work on the date of injury. On January 24, 2018 OWCP ultimately accepted appellant's claim for lumbar sprain, left hip sprain, and left knee contusion. In its acceptance letter, OWCP noted that she had also been diagnosed with a left knee medial meniscus tear and left knee osteoarthritis, however, the medical evidence of record was insufficient to establish that the additional left knee diagnoses were causally related to the accepted March 16, 2017 employment injury.

In duty status reports (Form CA-17) dated February 8 and April 3, 2018, Dr. Richard A. Figler, Board-certified in family practice and sports medicine, diagnosed osteoarthritis of the knee, a medial meniscus tear, and patellofemoral instability. He advised that appellant was able to work full-time light duty and described her work restrictions. On the supervisor's portion of the April 3, 2018 report, a supervisor described appellant's usual work requirements and noted that "alternate work" was available.

In a Form CA-17 dated May 16, 2018, Dr. Figler diagnosed a tear of the medial meniscus of the knee and patellofemoral instability. He advised that appellant was able to work full-time light duty and described her work restrictions. On the supervisor's portion of the report, a supervisor noted that alternate work was available.

In a Form CA-17 dated July 17, 2018, Dr. Figler diagnosed osteoarthritis of the knee, a medial meniscus tear, and patellofemoral instability. He reiterated appellant's ability to work full-time light-duty work and described her work restrictions. On the supervisor's portion of the report, a supervisor reiterated that alternate work was available.

On August 24, 2018 appellant filed multiple claims for compensation (Form CA-7) for intermittent wage loss for the period January 20 through August 3, 2018. In time analysis forms (Form CA-7a) accompanying her claim, she reported a total of 141.83 hours of leave without pay (LWOP). Appellant worked a majority of the dates claimed during the period, and reported LWOP for portions of those days when there was "no work available." She also claimed LWOP for medical appointments on June 13 (5.3 hours) and July 17, 2018 (3.99 hours).

By letter dated September 4, 2018, OWCP requested that appellant provide additional factual and medical information to establish disability from work during the period January 29 through August 3, 2018. It afforded her 30 days to submit the requested information.

By decision dated October 9, 2018, OWCP denied appellant's claim for compensation for disability from work for the period January 29 through August 3, 2018 and continuing. It found that the medical evidence of record was insufficient to establish that she was disabled during this period due to her employment injury.

On October 25, 2018 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on March 14, 2019. During the hearing, appellant stated that, after her return to work as a carrier with restrictions, she was accommodated until the employing establishment hired additional employees and began sending her home on certain days.

By decision dated May 29, 2019, OWCP's hearing representative affirmed the October 9, 2018 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the preponderance of the evidence.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup> 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.<sup>8</sup>

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 their disability and entitlement to compensation.<sup>9</sup>

### **ANALYSIS**

The Board finds that appellant has not met her burden of proof to establish disability from work for the period January 29 through August 3, 2018 causally related to her March 16, 2017 employment injury.

In CA-17 forms dated February 8 through July 17, 2018, Dr. Figler advised that appellant was able to work light duty and provided restrictions. The employing establishment noted in the reports dated April 3 to July 17, 2018 that "alternate work" was available. There is no medical

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<sup>4</sup> See *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *D.W.*, Docket No. 18-0644 (issued November 15, 2018).

<sup>5</sup> *Id.*

<sup>6</sup> 20 C.F.R. § 10.5(f); *B.O.*, *supra* note 4; *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

<sup>7</sup> *Id.* at § 10.5(f); see *B.K.*, Docket No. 18-0386 (issued September 14, 2018).

<sup>8</sup> *Id.*

<sup>9</sup> *A.W.*, Docket No. 18-0589 (issued May 14, 2019).

evidence indicating that appellant was disabled from work on the dates and hours claimed due to the accepted conditions. Appellant worked portions of full days on the claimed dates and there is no evidence of record explaining why she was unable to work for a full eight hours on the claimed dates. Furthermore, the CA-17 forms from Dr. Figler do not refer to appellant's accepted conditions. Instead, they refer to diagnoses of osteoarthritis of the knee and a medial meniscus tear, conditions that were specifically noted as not established to be causally related to the accepted March 16, 2017 injury in OWCP's January 24, 2018 acceptance letter, as well as patellofemoral instability. Evidence that does not address appellant's accepted conditions and dates of disability is insufficient to establish the claim.<sup>10</sup>

Because appellant has not submitted rationalized medical opinion evidence to establish employment-related disability for the period January 29 through August 3, 2018 causally related to her accepted left knee contusion, lumbar sprain, and left hip sprain, the Board finds that she has not met her burden of proof to establish her claim for 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 from work for the period January 29 through August 3, 2018 causally related to her March 16, 2017 employment injury.

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<sup>10</sup> See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 29, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 5, 2020  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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