United States Department of Labor
Employees' Compensation Appeals Board

S.K., Appellant	)	
and	)	**Docket No. 19-0272**
	)	**Issued: July 21, 2020**
FEDERAL JUDICIARY, U.S. BANKRUPTCY COURT NORTHERN DISTRICT OF OKLAHOMA, Tulsa, OK, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On November 19, 2018 appellant filed a timely appeal from an August 29, 2018 merit decision 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.[2]

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that following the August 29, 2018 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 April 1 through October 16, 2015 causally related to her accepted employment injury.

FACTUAL HISTORY

On September 29, 2015 appellant, then a 51-year-old analyst, filed an occupational disease claim (Form CA-2) alleging that she developed a cervical condition due to factors of her federal employment including holding a telephone receiver in an awkward position against her neck while using three computer screens for 15 years. She advised that she first became aware of her claimed condition on March 4, 2015 and realized its relation to her federal employment on August 18, 2015.[3] Appellant had voluntarily resigned from the employing establishment on March 31, 2015 and began working as a claims analyst for a private employer in November 2015. OWCP accepted appellant's claim for sprain of ligaments of the cervical spine, spondylosis of the cervical region, and cervical disc displacement, and it paid her wage-loss compensation on the supplemental rolls for intermittent dates of disability during the period December 30, 2015 through May 17, 2016.

On September 29, 2015 appellant also filed a separate occupational disease claim alleging that she developed bilateral carpal tunnel syndrome as a result of performing her repetitive job duties which included typing on a computer for 15 years. She advised that she first became aware of her claimed condition on August 16, 2013 and realized its relation to her federal employment on August 18, 2015. After extensive development of this claim, it was accepted for bilateral carpal tunnel syndrome.[4]

Appellant received treatment from Dr. Jeffrey Tallant, a chiropractor, for complaints of cervical pain which radiated into both shoulders. In a June 2, 2015 note, Dr. Tallant assessed and adjusted multiple subluxations, including those at the C1, C5, T2, L5, and S1 disc levels. He provided a post-treatment analysis of "improved subjective complaints." In additional notes dated between June 3 and July 30, 2015, Dr. Tallant provided similar findings.

In an August 18, 2015 report, Dr. Zeeshaan Khan, a Board-certified orthopedic surgeon, noted that appellant visited his office complaining of neck pain with numbness radiating into both hands. The findings on physical examination of the upper extremities revealed normal sensation and a negative Hoffman's test. Dr. Khan noted that x-ray testing he obtained of appellant's neck contained an impression of multilevel cervical spondylosis with cervical kyphosis. On September 23, 2015 he diagnosed cervical stenosis and recommended treatment of appellant's cervical condition with epidural steroid injections.

[3] OWCP assigned OWCP File No. xxxxxx451.

[4] OWCP assigned OWCP File No. xxxxxx452.

Appellant submitted the August 18, 2015 x-ray reviewed by Dr. Khan and an August 25, 2015 magnetic resonance imaging (MRI) scan of the cervical spine which revealed disc degeneration/bulges at multiple levels.

In an October 12, 2015 report, Dr. Anne S. May, Board-certified in family medicine, discussed appellant's reported medical history, including her complaints at that time of cervical spine pain with numbness/tingling in her left arm and hand. The findings on examination showed spasm of the cervical paraspinous musculature, tenderness of the left trapezius muscle, and reduced bilateral grip strength. Dr. May opined that, due to the constant movement and looking down required by her employment, appellant developed a severe cervical spine strain and exacerbated the conditions of spondylosis and disc derangement at C5-6 and C6-7. She advised that appellant also experienced episodic radiculopathy of the left upper extremity consistent with a lower cervical nerve injury.

In separate October 12, 2015 report, Dr. May noted that appellant complained of pain and numbness in both hands/wrists and weakness in both hands. She reported that examination of the upper extremities revealed tenderness of the carpometacarpal joints of both thumbs, positive Phalen's sign and full range of motion of both wrists, and reduced grip strength of both hands. Dr. May noted that appellant had clinical signs and symptoms of bilateral carpal tunnel syndrome and opined that the major cause of her bilateral hand and wrist injuries was the repetitive physical work she had performed for the employing establishment. She found that appellant was temporarily partially disabled with the ability to perform light-duty work and recommended that she be restricted from repetitive work involving her hands and wrists.

On December 17, 2015 and May 5, 2016 appellant underwent epidural steroid injections performed by Dr. Rainer Kohrs, a Board-certified anesthesiologist. Dr. Kohrs diagnosed cervical radiculopathy. In an April 1, 2016 report, Dr. Kenneth Chekofsky, a Board-certified orthopedic surgeon, diagnosed bilateral carpal tunnel syndrome, bilateral ulnar nerve compression at the elbows/forearms, and cervical radiculopathy.

In reports dated December 30, 2015 and June 1 and August 1, 2016, Dr. Khan discussed appellant's reported symptoms and diagnosed cervicalgia with cervical radiculopathy. On August 22, 2016 he diagnosed disc herniation with cervical radiculopathy. In a September 19, 2016 report, Dr. Khan diagnosed cervical stenosis with radiculopathy.

In reports dated March 9 and April 20, 2016, David Maddux, a physician assistant, treated appellant in follow-up for progressive neck pain and numbness in the hands. He diagnosed cervical stenosis with radiculopathy.

Appellant continued to be treated by Dr. Khan who indicated in October 31, December 14 and 19, 2016 reports that she reported progressive symptoms in her neck. Dr. Khan diagnosed cervical stenosis with radiculopathy and recommended surgery at C5-7.[5]

[5] In a February 21, 2017 form report, Dr. Khan indicated that appellant would be disabled from the proposed date of the surgery, February 28, 2017, until an estimated date of May 25, 2017.

Under OWCP File No. xxxxxx451, Dr. Khan performed OWCP-authorized cervical surgery on February 28, 2017, including anterior cervical discectomy and fusion at C5-7. He described his follow-up treatment in a report dated March 1, 2017.[6] For disability due to this surgery, OWCP paid appellant wage-loss compensation on the supplemental rolls from April 3 through May 27, 2017.

On July 17, 2017 OWCP administratively combined OWCP File Nos. xxxxxx451 and xxxxxx452, the former being designated as the master file.

Appellant submitted a June 20, 2016 report from Dr. May who noted that appellant continued to complain of cervical spine symptoms and opined that she was temporarily partially disabled. Dr. May further opined that the major cause of appellant's injuries and need for further treatment was the cumulative trauma she experienced at work.

On October 24, 2017 appellant filed a claim for compensation (Form CA-7) alleging total disability for the period April 1 through October 16, 2015 due to the employment injuries accepted in connection with both OWCP File Nos. xxxxxx451 and xxxxxx452.

Appellant subsequently submitted a report dated October 11, 2017 from Dr. Stephen Wilson, Board-certified in physical medicine and rehabilitation, who diagnosed cumulative trauma injury to the cervical spine. Dr. Wilson opined that appellant sustained nine percent permanent impairment of the left upper extremity due to chronic radicular symptoms.

In a letter dated November 15, 2017, OWCP requested that appellant submit additional information to support her claim for wage-loss compensation for the period April 1 through October 16, 2015 including medical evidence establishing that her disability was due to the accepted conditions for the period claimed.

Appellant subsequently submitted an October 2, 2017 report from Dr. Chekofsky who diagnosed bilateral tunnel syndrome, bilateral ulnar nerve compression at the elbows/forearms, and status post cervical surgery. A December 18, 2017 electromyogram/nerve conduction velocity (EMG/NCV) study of the upper extremities revealed mild bilateral median nerve entrapment across the wrists. Dr. Chekofsky treated appellant in follow-up on January 5, 2018 and recommended a left carpal tunnel release. He performed OWCP-authorized surgeries, including left carpal tunnel release on March 8, 2018 and right carpal tunnel release on May 1, 2018.

On March 27, 2018 OWCP granted appellant a schedule award for nine percent permanent impairment of her left upper extremity. The award ran for 28.08 weeks from October 11, 2017 to April 25, 2018.[7]

By decision dated April 24, 2018, OWCP denied appellant's claim for compensation for the period April 1 through October 16, 2015 finding that she had failed to submit sufficient

[6] On April 21, 2017 Mr. Maddux also described the follow-up care he provided for appellant's cervical/upper extremity condition.

[7] OWCP then paid appellant wage-loss compensation on the supplemental and periodic rolls for the period April 26 through January 8, 2019.

medical evidence to establish causal relationship between the claimed period of disability and her accepted employment conditions.[8]

On May 21, 2018 OWCP reissued the April 24, 2018 decision with a copy of appeal rights that it previously failed to provide.

On May 30, 2018 appellant requested reconsideration of the May 21, 2018 decision.[9] She submitted a September 11, 2017 report from Dr. Khan who diagnosed cervical radiculopathy. Appellant also submitted administrative documents, including position classifications for a docket clerk and deputy clerk case administrator, and system transaction records from the employing establishment for the period March 2 through 31, 2015.

By decision dated August 29, 2018, OWCP denied modification of its May 21, 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 including the fact that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[10]

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.[11] Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.[12] 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.[13] When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for loss of wages.[14]

[8] In its April 24, 2018 decision, OWCP inadvertently listed October 16, 2016 as the ending date for appellant's claimed period of disability, but the content and context of OWCP's decision show that OWCP meant to list the date as October 16, 2015.

[9] Appellant indicated that she was requesting reconsideration of an April 24, 2018 decision, but OWCP corrected that decision and reissued a new decision on May 30, 2018 which addressed her disability claim for the period April 1 through October 16, 2015.

[10] *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

[11] 20 C.F.R. § 10.5(f).

[12] *See L.W.*, Docket No. 17-1685 (issued October 9, 2018).

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

[14] *See D.R.*, Docket No. 18-0323 (issued October 2, 2018).

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

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work for the period April 1 through October 16, 2015 causally related to her accepted employment injury.

Appellant submitted a series of reports which were produced during the claimed period of employment-related disability, *i.e.*, April 1 through October 16, 2015. In an October 12, 2015 report, Dr. May noted that appellant had clinical signs and symptoms of bilateral carpal tunnel syndrome and opined that the major cause of her bilateral hand and wrist injuries was the repetitive physical work she had performed for the employing establishment. She found that appellant was temporarily partially disabled with the ability to perform light-duty work and recommended that she be restricted from repetitive work involving her hands and wrists. Although Dr. May provided an opinion that appellant developed employment-related disability during the latter part of her claimed period of disability, her opinion is of limited probative value regarding appellant's disability claim because she did not provide a rationalized opinion on causal relationship. She did not explain how objective findings on physical examination and diagnostic testing showed that appellant could not perform her regular work due to the effects of her accepted employment conditions which included sprain of ligaments of the cervical spine, spondylosis of the cervical region, cervical disc displacement, and bilateral carpal tunnel syndrome.[17] The Board has 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.[18] Therefore, Dr. May's October 12, 2015 report is insufficient to establish appellant's disability claim.

[15] *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

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

[17] The latter condition was accepted under OWCP File No. xxxxxx452 and the other conditions were accepted under OWCP File No. xxxxxx451. OWCP administratively combined the two files, designating OWCP File No. xxxxxx451 as the master file.

[18] *See T.T.*, Docket No. 18-1054 (issued April 8, 2020); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

Other reports produced during the claimed period of employment-related disability include August 18 and September 23, 2015 reports in which Dr. Khan collectively diagnosed cervical stenosis and multilevel cervical spondylosis with cervical kyphosis. In addition, Dr. May produced a second report dated October 12, 2015 in which she opined that, due to the constant repetitive movement and looking down required by her employment, appellant developed a severe strain injury of the cervical spine and exacerbated the conditions of spondylosis and disc derangement at C5-6 and C6-7. She advised that appellant also experienced episodic radiculopathy of the left upper extremity consistent with a lower cervical nerve injury. However, these reports are of no probative value regarding appellant's disability claim because they do not contain an opinion that she had disability during the period April 1 through October 16, 2015 causally related to an accepted employment condition. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.[19] Therefore, these reports are insufficient to establish appellant's disability claim.

Appellant also submitted reports which were produced after a separate claimed period of employment-related disability. In reports dated December 30, 2015 through December 19, 2016, Dr. Khan discussed appellant's cervical/upper extremity problems and collectively diagnosed cervicalgia, cervical disc herniation, and cervical stenosis with radiculopathy. In other reports dated February 21 through September 11, 2017, he further discussed appellant's medical condition, including reports in which he discussed her February 28, 2017 cervical surgery and the follow-up treatment for that surgery. These reports are of no probative value regarding appellant's disability claim because Dr. Khan did not indicate that appellant's accepted employment conditions caused disability during the claimed period, *i.e.*, April 1 through October 16, 2015.[20] The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.[21]

Appellant also submitted December 17, 2015 and May 5, 2016 reports from Dr. Kohrs who diagnosed cervical radiculopathy and discussed his administering of epidural steroid injections. In addition, in an October 11, 2017 report, Dr. Wilson diagnosed cumulative trauma injury to the cervical spine and provided an opinion on the permanent impairment of appellant's left upper extremity. On June 20, 2016 Dr. May opined that constant data entry and typing while working caused cumulative trauma injury to appellant's hands and wrists, causing her to be temporarily partially disabled for an unspecified period. In several reports dated between April 1, 2016 and May 1, 2018, Dr. Chekofsky discussed his treatment of appellant's upper extremity conditions, including surgeries for bilateral carpal tunnel syndrome. However, these reports also are of no probative value regarding appellant's disability claim because they do not contain an opinion that she had disability during the period April 1 through October 16, 2015 causally related to her

[19] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[20] *Id.*

[21] *See supra* note 17.

accepted employment conditions.[22] Therefore, these reports are insufficient to establish appellant's disability claim.

Appellant submitted reports dated June 2 and 3, and July 31, 2015 from Dr. Tallant, a chiropractor. He indicated that appellant had subluxations at the C1, C5, T2, L5, and S1 disc levels, but he did not demonstrate that these subluxations were documented by x-ray to exist. Under FECA, chiropractors are only considered physicians, and their reports considered medical evidence, to the extent that they treat spinal subluxations as demonstrated by x-ray to exist.[23] These submitted reports of Dr. Tallant are not considered to be medical evidence and are of no probative value regarding appellant's disability claim because he did not treat spinal subluxations that were demonstrated by x-ray to exist.

Appellant submitted reports dated March 9 and April 20, 2016, and April 21, 2017 from Mr. Maddux, a physician assistant, who discussed his treatment of appellant's cervical/upper extremity condition. These reports are of no probative value regarding appellant's disability claim. The Board has held that the reports of a physician assistant are of no probative value as a physician assistant is not considered a physician as defined under FECA and therefore is not competent to provide a medical opinion.[24]

Appellant submitted an August 18, 2015 x-ray, August 25, 2015 MRI scan, and December 18, 2017 EMG/NCV study. However, the Board has held that reports of diagnostic tests, standing alone, lack probative value as they do not provide an opinion on causal relationship between accepted employment conditions and a given claimed period of disability.[25]

The Board finds that appellant failed to provide a comprehensive medical report from a physician which included a rationalized medical opinion explaining how an accepted employment-related medical condition worsened such that she was unable to work during the period April 1 through October 16, 2015.[26]

[22] *See supra* note 20.

[23] 5 U.S.C. § 8101(2). *See A.M.*, Docket No. 16-1875 (issued August 23, 2017); *Jack B. Wood*, 40 ECAB 95, 109 (1988).

[24] Section 8101(2) of FECA provides that medical opinions can only be given by a qualified physician. This section defines a physician as 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 M.M.*, Docket No. 20-0019 (issued May 6, 2020); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006); *see also E.T.*, Docket No. 17-0265 (issued May 25, 2018) (physician assistants are not considered physicians under FECA).

[25] *See A.V.*, Docket No. 19-1575 (issued June 11, 2020).

[26] The Board notes that appellant had voluntarily resigned from the employing establishment on March 31, 2015. However, the Board has held that when a claimant stops work for reasons unrelated to the accepted employment injury, there is no disability within the meaning of FECA. *See S.I.*, Docket No. 18-1582 (issued June 20, 2019); *John W. Normand*, 39 ECAB 1378 (1988).

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 April 1 through October 16, 2015 causally related to her accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the August 29, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 21, 2020
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board