

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

S.Y., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Detroit, MI, Employer**

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**Docket No. 19-1304
Issued: March 24, 2020**

Appearances:

Alan J. Shapiro, Esq., for the appellant¹

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

JANICE B. ASKIN, Judge

PATRICIA H. FITZGERALD, Alternate Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 24, 2019 appellant, through counsel, filed a timely appeal from three March 11, 2019 merit decisions 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 to consider the merits of this case.

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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish disability from work on January 19 and May 25, 2014, and from April 19 to 23, 2018 causally related to her accepted employment conditions.

FACTUAL HISTORY

On October 1, 2012 appellant, then a 46-year-old mail processor/clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained an acute cervical disc prolapse causally related to factors of her federal employment.³ She indicated that she initially became aware of the condition and its relationship to her federal employment on September 28, 2012. When appellant returned to duty on September 28, 2012 following an extended absence, the employing establishment sent her home as no work was available within her medical restrictions.

Dr. Zakari M. Tata, Board-certified in family practice and palliative care, released appellant to modified-duty work on October 1, 2012.

In a November 8, 2012 report, Dr. Abiola Dianne Adisa-Obadyan a Board-certified physiatrist, diagnosed right carpal tunnel syndrome, osteoarthritis of the right shoulder, and degenerative disc disease. Appellant returned to modified-duty work on November 26, 2012. However, she stopped work again on January 3, 2013.

On June 18, 2013 appellant underwent authorized right shoulder arthroscopy with subacromial decompression and extensive subacromial debridement to address right shoulder impingement syndrome. OWCP accepted the claim for right rotator cuff tendinitis, cervical sprain, and bilateral carpal tunnel syndrome. It paid appellant wage-loss compensation for the period July 8 to December 27, 2013. Dr. Adisa-Obayan held appellant off from work through January 17, 2014.

In a January 21, 2014 report, Dr. Adisa-Obayan opined that appellant had attained maximum medical improvement (MMI). She returned appellant to modified-duty work, with limited use of the right arm, lifting restricted to three pounds, no use of the right arm above shoulder level, and no use of power or vibratory tools. Dr. Adisa-Obayan renewed these restrictions through April 28, 2014. Appellant remained off work.

In a May 19, 2014 report, Dr. Adisa-Obayan noted that appellant's condition was unchanged. She renewed prior work restrictions and renewed medications.

In a January 23, 2015 report, Dr. Adisa-Obayan noted that appellant had returned to restricted duty as a customer care agent, answering the telephone and typing. She found that appellant's condition was unchanged. Dr. Adisa-Obayan diagnosed carpal tunnel syndrome,

³ The record indicates that under OWCP File No. xxxxxx808, appellant claimed a November 7, 2000 traumatic injury to her neck and lower back. She lost no time from work.

lumbar degenerative disc disease, osteoarthritis of the right shoulder, a rotator cuff disorder, and sprains and strains of the neck.

On July 17, 2018 appellant filed claims for compensation (Form CA-7) for January 19 and May 25, 2014, and April 19 to 23, 2018.

In a development letter dated July 20, 2018, OWCP informed appellant that the factual and medical evidence of record was insufficient to establish her claims. It advised her regarding the evidence necessary to establish her claim and afforded her 30 days to submit the necessary evidence.

By two separate decisions dated August 30, 2018, OWCP denied appellant's claims for compensation for wage-loss on January 19 and May 25, 2014, as she submitted no evidence supporting disability from work on the claimed dates.

By decision dated August 31, 2018, OWCP denied appellant's claim for compensation for wage loss from April 19 to 23, 2018 as appellant submitted no evidence supporting disability for the claimed dates.

On September 6, 2018 counsel requested a telephonic oral hearing from the August 30 and 31, 2018 decisions. During the hearing, held on February 8, 2019, appellant testified that she could not recall why she had claimed wage-loss compensation for January 19, 2014, that May 25, 2014 was a holiday for which she should have received compensation, and that a physician had held her off work for the period April 19 to 23, 2018. The hearing representative left the record open for 30 days to allow appellant to submit additional evidence.

OWCP issued three separate decisions dated March 11, 2019 affirming its August 30 and 31, 2018 decisions denying appellant's claims for compensation for the periods January 19 and May 25, 2014 and April 19 to 23, 2018.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the December 13, 2012 employment injury.⁵

Under FECA, the term disability means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury.⁶ The question of whether an employee is disabled from work is an issue that must be resolved by competent medical evidence.⁷

⁴ *Supra* note 1.

⁵ *S.H.*, Docket No. 19-1128 (issued December 2, 2019); *C.R.*, Docket No. 18-1805 (issued May 10, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ 20 C.F.R. § 10.5(f).

⁷ *S.H.*, *supra* note 5; *A.T.*, Docket No. 19-0410 (issued August 13, 2019).

The employee is responsible for providing sufficient medical evidence to justify payment of compensation sought.⁸

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.⁹ 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.¹⁰

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability on January 19 and May 25, 2014, or from April 19 to 23, 2018 causally related to her accepted conditions.

Appellant submitted several reports from Dr. Adisa-Obayan. Dr. Adisa-Obayan returned appellant to modified-duty work, with limited use of the right arm, lifting restricted to three pounds, no use of the right arm above shoulder level, and no use of power or vibratory tools. She renewed these restrictions through April 28, 2014 and again on January 23, 2015. In a May 19, 2014 report, Dr. Adisa-Obayan noted that appellant's condition was unchanged. In a January 23, 2015 report, she noted that appellant had returned to restricted duty as a customer care agent, answering the telephone and typing. Dr. Adisa-Obayan again found that appellant's condition was unchanged. However, in those reports she did not address whether appellant's accepted conditions disabled her from work during the claimed period. The Board has held that medical evidence that does not provide an opinion as to whether a period of disability is due to an accepted employment condition is insufficient to meet a claimant's burden of proof.¹¹ Therefore these reports are insufficient to establish appellant's claim.

As there is no medical evidence of record to establish that the accepted conditions disabled appellant from work on the dates claimed, the Board finds that she has not met her burden of proof.¹²

On appeal counsel contends that OWCP's March 11, 2019 decisions are "[c]ontrary to law and fact." As explained above, appellant failed to submit medical evidence supporting disability for the claimed periods and therefore has not met her burden of proof.

⁸ *Id.*; see *T.A.*, Docket No. 18-0431 (issued November 7, 2018); see also *Amelia S. Jefferson*, 57 ECAB 183 (2005).

⁹ *S.H.*, *supra* note 5; *S.M.*, Docket No. 17-1557 (issued September 4, 2018); *William A. Archer*, 55 ECAB 674, 679 (2004); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

¹⁰ *T.L.*, Docket No. 18-0934 (issued May 8, 2019); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

¹¹ *M.A.*, Docket No. 19-1119 (issued November 25, 2019); *S.I.*, Docket No. 18-1582 (issued June 20, 2019).

¹² *S.H.*, *supra* note 5; *A.T.*, *supra* note 7; *Sandra Pruitt*, *supra* note 10.

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 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 on January 19 and May 25, 2014, or from April 19 to 23, 2018 causally related to her accepted conditions.

ORDER

IT IS HEREBY ORDERED THAT the three March 11, 2019 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 24, 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