

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

F.P., Appellant)	
)	
and)	Docket No. 19-1489
)	Issued: March 18, 2020
U.S. POSTAL SERVICE, FORT WORTH)	
PERFORMANCE CLUSTER, Fort Worth, TX,)	
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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 1, 2019 appellant filed a timely appeal from a May 20, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 May 20, 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 a recurrence of total disability commencing on or after May 11, 2018 due to her accepted May 15, 2003 employment injury.

FACTUAL HISTORY

OWCP accepted that on May 15, 2003 appellant, then a 36-year-old flat sorting machine operator, sustained a lumbar sprain, thoracic sprain, closed dislocation of a lumbar vertebra, and closed dislocation of a thoracic vertebra when lifting and moving a mail tub while in the performance of duty. Appellant stopped work on May 16, 2003 and periodically returned to work in modified positions for the employing establishment.

Appellant received regular medical treatment from Dr. Christopher R. Mann, an osteopath Board-certified in occupational medicine, and Dr. Patrick K. Stanton, an osteopath Board-certified in anesthesiology. The physicians reported that she primarily complained of low back pain/spasms and pain which radiated from the low back into her lower extremities. In October 2016, appellant began working on a full-time basis in a modified clerk position which limited her continuous lifting to 15 pounds and her intermittent lifting to 20 pounds.³

In an April 25, 2018 report, Dr. Mann advised that appellant continued to manifest such symptoms/conditions as low back spasms, decreased functional range of back motion, and bilateral radiculopathy which he opined were related to the accepted May 15, 2003 employment injury. He opined that it was medically necessary to upgrade her diagnosis to include the additional condition of lumbosacral intervertebral disc disorder with radiculopathy.

Appellant stopped work on May 11, 2018 and later filed a notice of recurrence (Form CA-2a) alleging a recurrence of disability commencing on May 11, 2018 due to her accepted May 15, 2003 employment injury. She asserted that she experienced a spontaneous worsening of the symptoms in her low back and lower extremities.

Appellant subsequently submitted a May 9, 2018 report from Dr. Stanton, who indicated that she reported experiencing low back pain radiating into her lower extremities, as well as bilateral lower extremity numbness and occasional weakness of the right lower extremity. Dr. Stanton reported physical examination findings including tenderness upon low back palpation, limited range of motion of the back, and negative results upon bilateral leg raise testing. He diagnosed lumbar sprain, thoracic sprain, vertebrae subluxations at L4-5 and T8-9, herniated disc at L4-5, and chronic pain, and he recommended that appellant continue with her current medication regimen.⁴

³ OWCP paid appellant wage-loss compensation benefits through May 4, 2013 for her intermittent periods of disability.

⁴ On June 6, 2018 Dr. Stanton reported physical examination findings and provided an assessment of appellant's medical condition which was similar to that contained in his May 9, 2018 report.

In a May 11, 2018 report, Dr. Mann advised that appellant had suffered a recurrence of her May 15, 2003 employment injury. He reported that she experienced a spontaneous worsening of her low back and lower extremity symptoms, including weakness and loss of range of motion in her lower extremities (right greater than left). Dr. Mann maintained that she could not tolerate prolonged repetitive work duties and indicated that she was totally disabled from May 11 to 30, 2018.⁵ In May 30, June 13, and July 9, 2018 reports, he again opined that appellant had suffered a recurrence of her May 15, 2003 employment injury and advised that she was totally disabled from May 30 to June 27, and July 9 to 25, 2018.

In a July 18, 2018 development letter, OWCP requested that appellant submit additional evidence in support of her claim, including a physician's opinion supported by a medical explanation as to how the accepted May 15, 2003 employment injury contributed to the claimed recurrence of disability. It afforded her 30 days to respond.

In response, appellant submitted a July 18, 2018 attending physician's report (Form CA-20) from Dr. Mann who listed May 15, 2003 as the date of injury and provided diagnoses related to the "employment activity" of lumbar and thoracic sprains and vertebrae subluxations at L4-5 and T8-9.⁶ Dr. Mann checked a box marked "Yes" to indicate that the diagnosed conditions were caused or aggravated by the reported employment activity. He noted that appellant was totally disabled from May 11 to September 24, 2018.

In a July 25, 2018 report, Dr. Mann indicated that appellant reported on May 11, 2018 that she was performing her normal limited-duty job when she experienced a spontaneous onset of increased bilateral paraspinal muscle spasms with lower extremity weakness. He advised that his May 11, 2018 physical examination revealed that she had losses upon straight leg testing of 32 degrees on the right and 55 degrees on the left, increased sensory loss down the right lateral thigh, and decreased flexion against resistance of her right hallicus muscle (+2 or 3 out of +5). Dr. Mann maintained that appellant's recurrent injury was severe enough to cause temporary total disability secondary to her inability to walk more than a few steps at a time. He discussed her work duties and the results of recent diagnostic testing and he opined that she sustained a material worsening of her May 15, 2003 work injury such that she was temporarily totally disabled from returning to work.⁷

By decision dated August 27, 2018, OWCP denied appellant's claim finding that she had not submitted sufficient medical evidence to establish a recurrence of total disability commencing on or after May 11, 2018 causally related to her accepted May 15, 2003 employment injury. It

⁵ In a May 2, 2018 duty status report (Form CA-17), Dr. Mann advised that appellant could continuously lift up to 15 pounds and intermittently lift up to 20 pounds. Appellant also submitted the findings of May 17, 2018 magnetic resonance imaging testing of her lumbar spine which showed degenerative changes at L1-2 through L5-S1.

⁶ With respect to the May 15, 2003 employment injury, Dr. Mann noted that appellant reported that she experienced increased low back pain and difficulty reaching/standing while performing the "regular duties of her job."

⁷ Appellant also submitted findings of July 16, 2018 electromyogram and nerve conduction velocity testing of the lower extremities (showing right L2 and/or L3 radiculopathy and bilateral trochanteric bursitis). In July 10 and August 7, 2018 reports, Dr. Stanton recommended that she continue with her current medication regimen.

concluded therefore that she had not established that she was totally disabled for the claimed period “due to a material change/worsening of [her] accepted work-related conditions.”

In a September 4, 2018 report, Dr. John A. Sklar, a Board-certified physical medicine and rehabilitation physician serving as an OWCP referral physician,⁸ indicated that his August 30, 2018 physical examination revealed mild-to-moderate tenderness of the lumbar paraspinal, but no evidence of radiculopathy in the lower extremities. He concluded that appellant did not have residuals of her May 15, 2003 employment injury and that her accepted conditions should not be upgraded to include lumbar intervertebral disc disorder with radiculopathy. Dr. Sklar maintained that her continuing medical condition was due to nonwork-related progression of degenerative disease of the lumbar spine.

On September 6, 2018 appellant requested reconsideration of the August 27, 2018 decision.

Appellant subsequently submitted September 5, October 3 and 31, and November 28, 2018 reports from Dr. Stanton who reported physical examination findings and diagnoses which were similar to those in his previous reports.

In September 24 and November 26, 2018 Form CA-20 reports, Dr. Mann listed May 15, 2003 as the date of injury and provided diagnoses related to the employment activity of lumbar and thoracic sprains and subluxations at L4-5 and T8-9.⁹ He checked a box marked “Yes” to indicate that the diagnosed conditions were caused or aggravated by the reported employment activity. Dr. Mann noted that appellant was totally disabled from May 11, 2018 to January 28, 2019.

By decision dated December 10, 2018, OWCP denied modification of the August 27, 2018 decision. It found that appellant had not submitted probative medical evidence establishing that she sustained a recurrence of total disability commencing on or after May 11, 2018 due to her accepted May 15, 2003 employment injury.

On January 22, 2019 appellant requested reconsideration of the December 10, 2018 decision.

Appellant submitted a December 21, 2018 report from Dr. Mann who indicated that, in his July 25, 2018 report, he had explained that diagnostic testing showed that she sustained a “material worsening” of her condition. Dr. Mann again maintained that on May 11, 2018 she sustained a recurrence of her May 15, 2003 employment injury.

⁸ In July 2018, OWCP had referred appellant to Dr. Sklar for a second opinion examination and requested that he indicate whether she had residuals of her May 15, 2003 employment injury and whether her accepted conditions should be upgraded to include lumbar intervertebral disc disorder with radiculopathy related to her May 15, 2003 employment injury.

⁹ In these and later submitted Form CA-20 reports, Dr. Mann noted that, with respect to the May 15, 2003 employment injury, appellant reported that she experienced increased low back pain and difficulty reaching/standing while performing the “regular duties of [appellant] job.”

In reports dated January 4, February 12, March 20, and April 17, 2019, Dr. Stanton reported physical examination findings and diagnoses which were similar to those previously reported. In Form CA-20 reports dated January 28, March 4, and April 29, 2019, Dr. Mann listed May 15, 2003 as the date of injury and provided diagnoses related to the employment activity of lumbar and thoracic sprains and subluxations at L4-5 and T8-9. He checked a box marked “Yes” to indicate that the diagnosed conditions were caused or aggravated by the reported employment activity. Dr. Mann noted that appellant was totally disabled from May 11, 2018 to June 21, 2019.

By decision dated May 20, 2019, OWCP denied modification of the December 10, 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 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

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

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); *S.T.*, Docket No. 18-0412 (issued October 22, 2018).

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

¹³ *See D.G.*, Docket No. 18-0597 (issued October 3, 2018).

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

¹⁵ *V.A.*, Docket No. 19-1123 (issued October 29, 2019).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a recurrence of total disability commencing on or after May 11, 2018 due to her accepted May 15, 2003 employment injury.

In May 11 and 30, June 13, and July 9, 2018 reports, Dr. Mann advised that appellant had suffered a recurrence of her May 15, 2003 employment injury. He reported that she experienced a spontaneous worsening of her low back and lower extremity symptoms, and he maintained that she was totally disabled from May 11 to June 27 and July 9 to 25, 2018. In a July 25, 2018 report, Dr. Mann detailed the results of his May 11, 2018 physical examination with respect to appellant's back and lower extremities. He discussed her diagnostic testing and opined that she sustained a material worsening of her May 15, 2003 employment injury such that she was temporarily totally disabled from returning to work. In a December 21, 2018 report, Dr. Mann indicated that, in his July 25, 2018 report, he had explained that diagnostic testing showed that appellant sustained a material worsening of her condition. He again maintained that on May 11, 2018 she sustained a recurrence of her May 15, 2003 employment injury.

The Board finds that these reports are of limited probative value on the underlying issue of this case because Dr. Mann did not provide medical rationale in support of his opinion on the cause of appellant's disability on or after May 11, 2018. Dr. Mann did not provide a notable discussion of the accepted May 15, 2003 employment injury or explain why it would have been competent to cause total disability 15 years later. The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.¹⁶ Therefore, these reports of Dr. Mann are insufficient to establish appellant's claim.

In Form CA-20 reports dated July 18, September 24, and November 26, 2018 and January 28, March 4, and April 29, 2019, Dr. Mann listed May 15, 2003 as the date of injury and provided diagnoses related to the employment activity of lumbar and thoracic sprains and subluxations at L4-5 and T8-9.¹⁷ He checked boxes marked "Yes" to indicate that the diagnosed conditions were caused or aggravated by the reported employment activity. Dr. Mann noted that appellant was totally disabled from May 11, 2018 to June 21, 2019. Appellant's burden of proof includes the necessity of furnishing an affirmative opinion from a physician who supports his or her conclusion with sound medical reasoning.¹⁸ In these reports, Dr. Mann provided no rationale for his opinion on causal relationship with respect to appellant's disability from work. The Board has held that when a physician's opinion on causal relationship consists only of checking "Yes" to a form question, without more by the way of medical rationale, that opinion is of limited probative value

¹⁶ *L.G.*, Docket No. 19-0142 (issued August 8, 2019); *C.M.*, Docket No. 14-0088 (issued April 18, 2014).

¹⁷ In these reports, Dr. Mann noted that, with respect to the May 15, 2003 employment injury, appellant reported she experienced increased low back pain and difficulty reaching/standing while performing the "regular duties of her job."

¹⁸ *J.A.*, Docket No. 18-1586 (issued April 9, 2019); *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

and is insufficient to establish causal relationship.¹⁹ As such, Dr. Mann's reports are insufficient to discharge appellant's burden of proof with respect her recurrence of disability claim.

In numerous reports dated between May 9, 2018 and April 17, 2019, Dr. Stanton reported physical examinations findings and diagnosed lumbar sprain, thoracic sprain, vertebrae subluxations at L4-5 and T8-9, herniated disc at L4-5, and chronic pain. In these reports, he did not provide an opinion regarding appellant's disability from work. 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.²⁰ Therefore, these reports of Dr. Stanton are insufficient to establish appellant's claim.²¹ Appellant also submitted several reports of diagnostic testing regarding her back and lower extremities. However, diagnostic studies lack probative value as they do not address whether a given medical condition/period of disability was caused by the employment.²²

As appellant has not submitted rationalized medical evidence establishing causal relationship between her accepted May 15, 2003 employment injury and the claimed recurrence of total disability commencing May 11, 2018, she has not met her burden of proof.²³

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 a recurrence of total disability commencing on or after May 11, 2018 due to her accepted May 15, 2003 employment injury.

¹⁹ *Id.*

²⁰ *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

²¹ *Id.* In a May 2, 2018 Form CA-17 report, Dr. Mann advised that appellant could continuously lift up to 15 pounds and intermittently lift up to 20 pounds. These restrictions were within the requirements of the limited-duty job she was performing when she stopped work on May 11, 2018 and therefore this report would not show a recurrence of total disability around that time.

²² *C.S.*, Docket No. 19-1279 (issued December 30, 2019).

²³ The Board further notes that Dr. Sklar, an OWCP referral physician, indicated in a September 4, 2018 report that appellant did not have residuals of her May 15, 2003 employment injury at the time he conducted a physical examination on August 30, 2018.

ORDER

IT IS HEREBY ORDERED THAT the May 20, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 18, 2020
Washington, DC

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

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

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