United States Department of Labor
Employees' Compensation Appeals Board

D.S., Appellant	)	
and	)	**Docket No. 20-0638**
	)	**Issued: November 17, 2020**
U.S. POSTAL SERVICE, PLAINVIEW POST OFFICE, Plainview, NY, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 29, 2020 appellant filed a timely appeal from an August 30, 2019 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]

ISSUE

The issue is whether appellant has met his burden of proof to establish disability from work for the period beginning June 25, 2019, causally related to his accepted May 10, 2019 employment injury.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the August 30, 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.*

FACTUAL HISTORY

On May 10, 2019 appellant, then a 55-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that, on that date, he sustained a right foot injury while in the performance of duty when he stepped down onto a driveway while delivering his mail route. He stopped work on May 11, 2019. Appellant received continuation of pay from May 11 to June 24, 2019.

In a May 16, 2019 report, Dr. Richard A. Ritter, a Board-certified orthopedist, treated appellant for a right foot injury that occurred on May 10, 2019, when he was stepping off a ledge onto a driveway and his foot shifted and he felt a crack sensation. He diagnosed right mid-foot sprain and contusion. Dr. Ritter prescribed a Darco shoe and returned him to work modified-sedentary duty. In a return to work slip of even date, he noted that appellant was able to return to work in a light-duty position performing desk work. Dr. Ritter completed a May 28, 2019 duty status report (Form CA-17) and diagnosed right foot sprain and returned appellant to work full time with restrictions.[3]

On June 6, 2019 Dr. Ritter treated appellant in follow-up for improving right foot symptoms. He noted an essentially normal physical examination with some tenderness over the metatarsal shaft. Dr. Ritter indicated that although appellant was unable to work in his date-of-injury capacity as a letter carrier, he would be capable of sedentary work. He completed a Form CA-17 on June 20, 2019, and diagnosed right foot sprain due to injury. Dr. Ritter noted that appellant was totally disabled from work.

A June 18, 2019 magnetic resonance imaging (MRI) scan of the right foot revealed partial thickness tearing of the second metatarsophalangeal (MTP) plantar plate with edema and effusion and hallux valgus with severe arthrosis at the medial metatarsosesamoid joint.

In a report dated June 25, 2019, Dr. Ritter treated appellant in follow-up for persistent pain directly over the plantar aspect of the first and second MTP joints. He reviewed the June 18, 2019 MRI scan of the right foot and diagnosed partial thickness right foot second MTP plantar plate tear. Dr. Ritter opined that appellant was unable to return to work due to his current injury and the nature of his work. He completed a July 1, 2019 Form CA-17, and noted clinical findings of right foot sprain. Dr. Ritter again noted that appellant was unable to return to work. In an attending physician's report (Form CA-20) dated July 2, 2019, he recounted a history of the right foot injury on May 10, 2019. Dr. Ritter diagnosed right foot second MTP plantar plate tear and checked a box marked "Yes," indicating that the diagnosed conditions were caused or aggravated by the described employment incident. He noted that appellant was totally disabled from May 10, 2019 to the present.

On July 22, 2019 appellant filed a claim for wage-loss compensation (Form CA-7) due to work-related disability for the periods June 25 through July 5, 2019 and July 6 through 19, 2019.

OWCP accepted appellant's claim for right foot sprain.

[3] The restrictions were lifting/carrying limited to 15 pounds continuously and intermittently, sitting up to eight hours a day, simple grasping, fine manipulation, and reaching above the shoulder up to eight hours a day, standing for one hour a day, walking up to two hours a day, no climbing, kneeling or driving a vehicle, bending/stopping, twisting, pulling/pushing limited to four hours a day.

On July 23, 2019 Dr. Ritter noted that appellant was unable to work until his next evaluation. In a July 25, 2019 Form CA-17, he again diagnosed sprain of the right foot and indicated that appellant was disabled from work.

In a development letter dated July 30, 2019, OWCP requested that appellant submit a well-reasoned medical report from his attending physician detailing whether objective findings related to the accepted May 10, 2019 employment injury restricted him from performing full-duty work. It afforded him 30 days to submit the requested evidence.

Appellant was treated in follow-up on July 23, 2019 by Steven Esposito, a physician assistant, who diagnosed partial-thickness right foot second MTP plantar plate tear. Mr. Esposito noted that appellant remained out of work as there was no light duty available.

On August 3 and 22, 2019 appellant filed Form CA-7 claims due to work-related disability for the period July 20 through August 2, 2019, and August 3 to 16, 2019.

In letters of medical necessity dated August 26 and 28, 2019, Dr. Ritter recounted treating appellant for a right foot injury that occurred on May 10, 2019, when he stepped off a ledge and twisted his foot. An MRI scan revealed a partial thickness tear of the plantar plate. Dr. Ritter opined that this injury was directly caused by the mechanism of the May 10, 2019 work injury. He noted that this kind of injury was typically caused by hyperextension of the MTP joint which was "likely" what had occurred when appellant stepped. Dr. Ritter opined that due to the location of the partial-thickness tear along the plantar aspect of his foot appellant has been unable to return to work as a mail carrier as he was required to be ambulatory and stand for the majority of his workday. He advised that he found it medically necessary for appellant to remain out of work from May 10, 2019, until his pain improved. Dr. Ritter indicated that appellant would be capable of modified sedentary duty if available.

By decision dated August 30, 2019, OWCP denied appellant's claim, finding that he had not established disability from work for the period beginning June 25, 2019, causally related to the accepted May 10, 2019 right foot sprain. It found that, with respect to the claimed period of disability, "the medical evidence of file does not establish that you were disabled as a result of your accepted work-related medical condition(s)."

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.[4]

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.[5] Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn

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

[5] 20 C.F.R. § 10.5(f).

wages.[6] 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.[7] 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.[8]

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.[9]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish disability from work for the period beginning June 25, 2019, causally related to his accepted May 10, 2019 employment injury.

In support of his claim appellant submitted a May 16, 2019 report from Dr. Ritter who diagnosed right mid-foot sprain and contusion and returned him to work modified-sedentary duty. In a return to work slip of even date, Dr. Ritter noted that appellant was able to return to work with restrictions, light-duty/desk work. Similarly, in a Form CA-17 dated May 28, 2019, he diagnosed right foot sprain and returned appellant to work full time with restrictions. As he twice opined that appellant could return to work in May 2019, Dr. Ritter's opinion negates causal relationship for the claimed period.[10] Therefore, the Board finds that these reports are insufficient to establish appellant's claim for compensation.[11]

On June 6, 2019 appellant presented with improving right foot symptoms. Dr. Ritter noted that appellant had been unable to work in his usual capacity as a letter carrier, but he could perform sedentary work. He later noted that appellant was unable to return to work. In Form CA-17s dated June 20 to July 25, 2019, Dr. Ritter diagnosed right foot sprain due to injury and noted that appellant was totally disabled from work. Similarly, on July 23, 2019, he noted that appellant was unable to work until his next evaluation. However, Dr. Ritter did not address whether appellant's disability was causally related to the accepted employment condition of right foot sprain or otherwise provide medical reasoning explaining why his current condition or disability was due to

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

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

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

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

[10] *T.W.*, Docket No. 19-0677 (issued August 16, 2019).

[11] *L.S.*, Docket No. 18-0264 (issued January 28, 2020); *Id*.

the accepted May 10, 2019 employment injury.[12] Thus these reports are of no probative value and are insufficient to establish appellant's claim for compensation.[13]

On June 25, 2019 Dr. Ritter reviewed the MRI scan and diagnosed partial thickness right foot second MTP plantar plate tear. He opined that appellant was unable to return to work due to his current injury and the nature of his work. However, partial thickness right foot second MTP plantar plate tear is not an accepted condition. If an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.[14] As Dr. Ritter did not provide an opinion as to whether these conditions were causally related to the accepted employment injury, these reports are insufficient to establish appellant's claim.

In a July 2, 2019 attending physician's report (Form CA-20), Dr. Ritter diagnosed right foot second MTP plantar plate tear and checked a box marked "Yes" indicating that the diagnosed conditions were caused or aggravated by the described employment incident. He noted that appellant was totally disabled from May 10, 2019, to the present and noted no light-duty work was available. However, the Board has held that checking a box marked "Yes" in a form report, without additional explanation or rationale, is not sufficient to establish causal relationship.[15] This report is, therefore, insufficient to establish that the claimed disability is causally related to the accepted employment injury.

In letters of medical necessity dated August 26 and 28, 2019, Dr. Ritter diagnosed partial thickness tear of the plantar plate and opined that these conditions were directly caused by the mechanism of the work injury. He noted that this kind of injury was typically caused by hyperextension of the MTP joint, which was "likely what had occurred when [appellant] stepped." Dr. Ritter indicated that, due to the location of the partial-thickness tear along the plantar aspect of his foot, he found it medically necessary for appellant to remain out of work from May 10, 2019. The Board has held that medical opinions that suggest that a condition was "likely" caused by work activities are speculative or equivocal in character and have limited probative value.[16] As such, these medical notes by Dr. Ritter are insufficient to establish appellant's claim.

In support of his claim, appellant also provided a July 23, 2019 report from a physician assistant. Physician assistants, however, are not considered physicians as defined under FECA.[17] Consequently, their medical findings and opinions are insufficient to establish entitlement to

[12] *J.M.*, Docket No. 18-0847 (issued December 5, 2019).

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

[14] *S.H.*, Docket No. 19-1128 (issued December 2 2019).

[15] *M.D.*, Docket No. 18-0195 (issued September 13, 2018).

[16] *J.W.*, Docket No. 18-0678 (issued March 3, 2020).

[17] Section 8101(2) of FECA provides that medical opinion, in general, 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 also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *H.K.*, Docket No. 19-0429 (issued September 18, 2019); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006).

compensation benefits. Appellant also submitted results from diagnostic testing. The Board has held, however, that diagnostic studies are of limited probative value as they do not address whether the employment incident caused any of the diagnosed conditions.[18] These reports are therefore insufficient to establish the claim.

As appellant has not submitted rationalized medical opinion evidence establishing disability from work beginning on June 25, 2019 due to the accepted May 10, 2019 employment injury, he has not met his burden of proof. Therefore, he is not entitled to wage-loss compensation for the period claimed.

On appeal appellant asserts that he submitted sufficient medical evidence in support of his claim for compensation beginning June 25, 2019. As noted above, the medical evidence failed to address whether appellant's disability was causally related to the accepted employment condition of right foot sprain or otherwise provide medical reasoning explaining why his current condition or disability was due to the accepted May 10, 2019 employment injury.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish disability from work for the period beginning June 25, 2019, causally related to his accepted May 10, 2019 employment injury.

[18] *See J.S.*, Docket No. 17-1039 (issued October 6, 2017).

ORDER

IT IS HEREBY ORDERED THAT the August 30, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 17, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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