United States Department of Labor
Employees' Compensation Appeals Board

V.I., Appellant	)	
and	)	**Docket No. 20-0593**
	)	**Issued: April 26, 2021**
U.S. POSTAL SERVICE, LANIER CARRIER ANNEX, Cumming, GA, 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
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On January 21, 2020 appellant filed a timely appeal from November 12, 2019 and January 2, 2020 merit decisions 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 her burden of proof to establish intermittent disability from work on July 29 and August 1, 2019, and August 10 through 13, 2019 causally related to her accepted January 9, 2017 employment injury.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the January 2, 2020 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 January 9, 2017 appellant, then a 34-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained face abrasions and scratches to the right side of her face when a package fell and struck her close to her eye. She stopped work that day. OWCP accepted the claim for head contusion, and subsequently expanded acceptance of the claim to include headache. Appellant received continuation of pay and on February 15, 2017 she accepted a modified job offer working eight hours per day.

By decision dated April 29, 2019, OWCP accepted that appellant sustained a recurrence of disability as of July 24, 2018. Appellant was advised that if she lost time due to her recurrence, she should submit a completed claim for compensation (Form CA-7).

In Northside Hospital Forsyth discharge instructions dated July 24, 2019, Dr. Russell K. Mitchell, a Board-certified emergency room physician, diagnosed intractable migraine headache. In discharge instructions dated August 2, 2019, he noted that appellant was treated in the emergency room that day for nausea and typical migraine. The discharge instructions summarized treatment provided, listed follow-up instructions, and recommended that she contact and follow up with her primary physician.

In an August 5, 2019 prescription note, K. Cindy Sar, a nurse practitioner, related that appellant was seen in the office that day following a visit to the emergency room on August 2, 2019. Appellant was released to return to work on August 13, 2019 following migraine treatment.

On August 15, 2019 appellant filed a claim for intermittent wage-loss compensation (Form CA-7) for the period July 27 through August 2, 2019. In an attached time analysis form (Form CA-7a) she noted eight hours of leave without pay (LWOP) on July 29, 2019 five hours on August 1, 2019 due to illness, and eight hours on August 2, 2019 for a physician's visit. Appellant noted that she worked three hours on August 1, 2019.

In a letter dated August 27, 2019, OWCP informed appellant that the evidence of record was insufficient to establish her entitlement to intermittent wage-loss compensation for the period July 27 through August 2, 2019. It advised her regarding the type of evidence required to establish her claim. Appellant was afforded 30 days to provide the requested evidence.

In response to OWCP's request, appellant submitted emergency room treatment notes dated August 2, 2019 from Dr. Mitchell that he had treated appellant for uncontrolled migraine. Dr. Mitchell reported that she was evaluated for a headache in the same location which began three weeks prior. He diagnosed atypical migraine and nausea.

On October 10, 2019 appellant filed a Form CA-7 for the period August 10 through 13, 2019. She indicated that she had been on LWOP during this time period.

By decision dated November 12, 2019, OWCP authorized payment for eight hours of disability on August 2, 2019. It found the evidence insufficient to establish entitlement to wage-loss compensation for eight hours on July 29, 2019 and five hours on August 1, 2019.

By decision dated January 2, 2020, OWCP denied appellant's claim for compensation for disability from work for the period August 10 through 13, 2019, finding that she did not submit any evidence to support her claim for total disability from work causally related to the accepted employment-related medical condition.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.[4] 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.[5] 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.[6]

Under FECA, the term disability means an incapacity because of an employment injury, to earn the wages the employee was receiving at the time of the injury.[7] When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, prevent the employee from continuing in his or her employment, he or she is entitled to compensation for any 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]

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]

[3] *Supra* note 1.

[4] *D.P.*, Docket No. 18-1439 (issued April 30, 2020); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

[5] *Id.*; *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

[6] 20 C.F.R. § 10.5(f); *J.M.*, Docket No. 18-0763 (issued April 29, 2020).

[7] *Id*. at § 10.5(f); *see J.T.*, Docket No. 19-1813 (issued April 14, 2020); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

[8] *J.T.*, *id.*; *Merle J. Marceau*, 53 ECAB 197 (2001).

[9] *T.T.*, Docket No. 18-1054 (issued April 8, 2020).

[10] *D.P.*, *supra* note 4; *Sandra D. Pruitt*, 57 ECAB 126 (2005).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish intermittent disability from work for the period July 29 and August 1, 2019 and August 10 through 13, 2019 causally related to her accepted January 9, 2017 employment injury.

In support of her claims for wage-loss compensation, appellant submitted emergency room discharge instructions dated July 24 and August 2, 2019 and an August 2, 2019 emergency room treatment notes from Dr. Mitchell. Dr. Mitchell diagnosed migraine headache and instructed appellant to contact her treating physician. However, he did not provide an opinion in the discharge instructions or treatments as to whether appellant was disabled from work during the claimed periods due to the accepted employment injury. As such, Dr. Mitchell's reports are of no probative value and are insufficient to establish appellant's claim for compensation.[11]

Appellant also submitted a disability note from Ms. Sar, a nurse practitioner, noting that appellant was seen on August 5, 2019 and was released to return to work on August 13, 2019. The Board has held that medical reports signed solely by a physician assistant or a nurse practitioner are of no probative value as such providers are not considered physicians as defined under FECA.[12] This report is therefore insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical evidence establishing that she was disabled from work on the dates in question due to the accepted January 9, 2017 employment injury, the Board finds that she has not met her burden of proof.

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 on July 29 and August 1, 2019 and August 10 through 13, 2019.

[11] *Y.D.*, Docket No. 20-0097 (issued August 25, 2020); *J.T.*, Docket No. 19-1813 (issued April 14, 2020); *see also L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[12] Section 8101(2) of FECA provides that physician "includes 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). *See also David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *M.C.*, Docket No. 19-1074 (issued June 12, 2020); *S.L.*, Docket No. 19-0607 (issued January 28, 2020) (nurse practitioners are not considered physicians under FECA.

ORDER

IT IS HEREBY ORDERED THAT the January 2, 2020 and November 12, 2019 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 26, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board