United States Department of Labor
Employees' Compensation Appeals Board

T.S., Appellant	)	
and	)	**Docket No. 20-1229**
	)	**Issued: August 6, 2021**
U.S. POSTAL SERVICE, CHICAGO NETWORK DISTRIBUTION CENTER, Forest Park, IL, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
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 29, 2020 appellant, through counsel, filed a timely appeal from an April 2, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

[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.*

[3] The Board notes that, following the issuance of the April 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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish disability from work for the period March 11 through May 10, 2019, causally related to her accepted November 4, 2018 employment injury.

FACTUAL HISTORY

On November 4, 2018 appellant, then a 34-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that, on that date, she fractured her left fifth toe when a forklift driver backed up and ran over her left foot while in the performance of duty. On the reverse side of the claim form, the employing establishment indicated that she stopped work on the date of injury.

By decision dated November 14, 2018, OWCP accepted the condition of closed displaced fracture of the fifth toe of the left foot, as work related.

In a duty status report (Form CA-17) dated February 11, 2019, Dr. George A. Sisson, Jr., an orthopedic surgeon, released appellant to full-time, full-duty work as of February 12, 2019.

In a February 28, 2019 letter, Dr. Tomasz M. Budz, an attending podiatrist, advised that appellant may not return to work at that time due to severe left lower extremity pain. He requested that she be excused from work for two weeks pending x-ray and magnetic resonance imaging (MRI) scan reports. Dr. Budz, in a March 14, 2019 letter, indicated that appellant was evaluated on that date for a left foot condition sustained when a forklift crushed her foot on November 4, 2018. He noted that an MRI scan showed no acute fractures or ligament tears. The MRI scan also showed stress reaction to bones of the left foot. Dr. Budz noted that appellant was currently undergoing treatment for her continued left foot pain.

A Form CA-17 report dated March 12, 2019 by Dr. Ameer Matariyeh, a podiatrist, diagnosed left foot contusion due to the November 4, 2018 employment injury and found that appellant was unable to perform her regular work, and listed her work restrictions. In a May 7, 2019 report, he advised that appellant may not return to work at that time. Dr. Matariyeh noted that physical examination findings and MRI scan test results confirmed left lateral foot pain and bone marrow edema. He requested that appellant be excused from work until she had been cleared by physical therapy and seen in a podiatry clinic for a follow-up evaluation.

OWCP also received an unsigned and undated report which provided a history of the November 4, 2018 employment injury and findings on physical examination of appellant's foot/ankle, and referred her to physical therapy for the treatment of her left foot pain.

On May 17, 2019 appellant filed a claim for compensation (Form CA-7) for disability from work for the period March 11 through May 10, 2019.

OWCP, in a May 21, 2019 development letter, informed appellant of the deficiencies of her wage-loss compensation claim. It advised her of the type of medical evidence needed and afforded her 30 days to respond. No additional evidence was received.

By decision dated June 26, 2019, OWCP denied appellant's claim for compensation for the period March 11 through May 10, 2019. It noted that she had not responded to its May 21, 2019 development letter.

OWCP subsequently received physical therapy reports dated June 27 and July 3, 2019.

On July 2, 2019 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review regarding the June 26, 2019 decision.

OWCP continued to receive physical therapy reports dated July 2 and 19, 2019.

OWCP also received an August 15, 2019 electromyogram/nerve conduction velocity (EMG/NCV) study by Dr. David J. Weiss, a Board-certified physiatrist. Dr. Weiss provided an impression that the study was normal. He also provided impressions of no electrodiagnostic evidence of a left lower extremity neuropathy, left lumbosacral radiculopathy, or peripheral neuropathy.

In reports dated March 12, April 23, June 24, July 30, and August 20, 2019, Dr. Budz reiterated the history of the November 4, 2018 employment injury. He conducted an examination and provided assessments of left foot pain, neurapraxia of the left lower extremity, subsequent encounter, and neuritis. In reports dated July 30 and August 20, 2019, Dr. Budz noted that appellant's November 4, 2018 employment injury resulted in a nerve injury to the left dorsal intermediate cutaneous nerve causing chronic pain. In the July 30, 2019 report, he released her to part-time work with restrictions, effective August 7, 2020. In the August 20, 2019 report, Dr. Budz advised that appellant may return to full-time, limited-duty work with restrictions, effective September 11, 2019.

A telephonic hearing was held on November 5, 2019. By decision dated January 10, 2020, the hearing representative affirmed the June 26, 2019 decision.

OWCP thereafter received a December 23, 2019 report by Dr. Budz. He reiterated that she was released to part-time work with restrictions on August 7, 2019 and full-time work with restrictions on September 11, 2019. Dr. Budz explained that appellant was unable to work from March 11 through August 7, 2019 due to uncontrolled left foot pain, a left contusion with bone marrow edema, and a nerve injury to the left dorsal intermediate cutaneous nerve as noted on the March 9, 2019 MRI scan. He further advised that she developed neurapraxia resulting from her crush injury.

On January 22, 2020 appellant, through counsel, requested reconsideration of the January 10, 2020 decision.

OWCP, by decision dated April 2, 2020, denied modification of the January 10, 2020 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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.[5] 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.[6] 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.[7]

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.[8] 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.[9]

To establish causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such causal relationship.[10] The opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[11]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work for the period March 11 through May 10, 2019, causally related to her accepted November 4, 2018 employment injury.

In support of her claim for compensation, appellant submitted reports from Dr. Budz. In a December 23, 2019 report, Dr. Budz found that she was totally disabled from work from March 11

[4] *Supra* note 2.

[5] *See D.S.*, Docket No. 20-0638 (issued November 17, 2020); *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *C.R.*, Docket No. 18-1805 (issued May 10, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[6] *See L.F.*, Docket No. 19-0324 (issued January 2, 2020); *T.L.*, Docket No. 18-0934 (issued May 8, 2019); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

[7] *See* 20 C.F.R. § 10.5(f); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

[8] *Id.* at § 10.5(f); *see e.g.*, *G.T.*, Docket No. 18-1369 (issued March 13, 2019); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

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

[10] *See S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

[11] *C.B.*, Docket No. 18-0633 (issued November 16, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

to August 7, 2019 due to uncontrolled left foot pain, a left contusion with bone marrow edema, a nerve injury to the left dorsal intermediate cutaneous nerve, and neurapraxia resulting from her crush injury. Although he opined that appellant developed employment-related disability during the claimed period of disability, his opinion is of limited probative value because he did not explain, with rationale, how or why she was unable to perform her regular work due to the effects of her accepted employment condition of closed displaced fracture of the fifth toe of the left foot. 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.[12] Therefore, Dr. Budz' December 23, 2019 report is insufficient to establish appellant's disability claim.

Dr. Budz' remaining reports dated February 28 through August 20, 2019, noted a history of the November 4, 2018 employment injury, diagnosed left foot pain, neurapraxia of the left lower extremity, subsequent encounter, and neuritis. He opined that appellant was totally disabled from work for two weeks commencing February 28, 2019. Dr. Budz subsequently released her to part-time work with restrictions as of August 7, 2020 and full-time, limited-duty work with restrictions as of September 11, 2019. 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 claimed period 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.[13] Therefore, these reports are insufficient to establish appellant's disability claim.

Likewise, the medical evidence from Dr. Matariyeh is also insufficient to establish that appellant's disability commencing March 11, 2019 was causally related to the November 4, 2018 employment injury. In a March 12, 2019 Form CA-17 report, he diagnosed left foot contusion due to the November 4, 2018 employment injury. Dr. Matariyeh opined that appellant was unable to perform her regular work and listed her work restrictions. In addition, in a May 7, 2019 report, he confirmed that she had left lateral foot pain and bone marrow edema based on his physical examination and MRI scan test results. Dr. Matariyeh opined that appellant could not return to work until she was medically cleared. However, he did not offer an opinion regarding whether she was totally disabled from work during the claimed period due to the accepted injury. Thus, the Board finds that Dr. Matariyeh's March 12 and May 7, 2019 reports are of no probative value and are insufficient to establish her disability claim.[14]

Appellant also submitted Dr. Weiss' August 15, 2019 EMG/NCV study. The Board has held, however, that diagnostic studies, standing alone, lack probative value on the issue of causal

[12] *See S.K.*, Docket No. 19-0272 (issued July 21, 2020); *T.T.*, Docket No. 18-1054 (issued April 8, 2020); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

[13] *See J.M.*, Docket No. 19-1169 (issued February 7, 2020); *A.L.*, 19-0285 (issued September 24, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[14] *Id.*

relationship as they do not address whether the accepted employment injuries resulted in appellant's period of disability on specific dates.[15]

Appellant submitted an unsigned and undated report which provided a history of the November 4, 2018 employment injury and examination findings, and referred her to physical therapy for the treatment of her left foot pain. The Board has held that reports that are unsigned or bear an illegible signature lack proper identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.[16] Accordingly, this report is insufficient to establish appellant's claim.

The record also contains physical therapy reports dated June 27 and July 2, 3, and 19, 2019. Certain healthcare providers such as physical therapists, nurses, physician assistants, and social workers are not considered physicians as defined under FECA. Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[17]

For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work during the claimed period as a result of the accepted employment injury.[18] Because appellant has not submitted rationalized medical opinion evidence to establish employment-related total disability during the claimed period due to her accepted left foot condition, the Board finds that she has not met her burden of proof to establish her claim.

On appeal, counsel contends that OWCP failed to adjudicate the claim in accordance with the proper standard of causation and failed to give due deference to the findings of the attending physician. As explained above, to establish causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such causal relationship.[19] The opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific

[15] *See D.M.*, Docket No. 20-0548 (issued November 25, 2020); *O.C.*, Docket No. 20-0514 (issued October 8, 2020); *R.J.*, Docket No. 19-0179 (issued May 26, 2020).

[16] *See Y.D.*, Docket No. 20-0097 (issued August 25, 2020); *M.A.*, Docket No. 19-1551 (issued April 30, 2020); *T.O.*, Docket No. 19-1291 (issued December 11, 2019).

[17] Section 8101(2) of FECA provides that the term 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); 20 C.F.R. § 10.5(t). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *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); *see also R.L.*, Docket No. 19-0440 (issued July 8, 2019) (physical therapists); *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *J.L.*, Docket No. 17-1207 (issued December 8, 2017) (a physical therapist is not considered a physician under FECA).

[18] *Supra* note 5.

[19] *Supra* note 11.

employment factors identified by the employee.[20] The medical evidence of record is insufficient to meet appellant's 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 for the period March 11 through May 10, 2019, causally related to her accepted November 4, 2018 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the April 2, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 6, 2021
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

[20] *Supra* note 12.