

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

A.G., Appellant	)	
	)	
and	)	<b>Docket No. 21-0268</b>
	)	<b>Issued: July 7, 2021</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Windsor Locks, CT, Employer	)	
	)	

*Appearances:* *Case Submitted on the Record*  
*Alan J. Shapiro, Esq.,* for the appellant<sup>1</sup>  
*Office of Solicitor,* for the Director

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge

**JURISDICTION**

On December 21, 2020 appellant, through counsel, filed a timely appeal from an October 7, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that, following the October 7, 2020 decision, appellant submitted additional evidence to OWCP. 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 his burden of proof to establish disability from work for the period July 7 through September 20, 2019 causally related to his accepted December 28, 2017 employment injury.

## **FACTUAL HISTORY**

On December 28, 2017 appellant, then a 59-year-old clerk, filed a traumatic injury claim alleging that on that date he suffered a hip injury after he slipped and fell down stairs while in the performance of duty. He initially stopped work on December 28, 2017. On August 17, 2018 OWCP accepted the claim for right knee contusion and left knee contusion.

In an August 21, 2018 memorandum of telephone call (Form CA-110), appellant informed OWCP that he had returned to full-time limited-duty work. He stopped work again on January 22, 2019 and did not return.

In a July 16, 2019 report, Dr. Brett Wasserlauf, a Board-certified orthopedic surgeon, noted that appellant experienced right knee pain after falling down stairs at work. He indicated that appellant had difficulty bearing weight on his right knee, walking extended distances, and ascending stairs. Dr. Wasserlauf provided physical examination findings and diagnosed right quadriceps tendon rupture, patellofemoral arthritis of the right knee, and chronic right knee pain. He recommended surgical intervention and advised that appellant should avoid impact-type activities.

On July 25, 2019 appellant filed a claim for compensation (Form CA-7) for disability from work during the period July 7 through 20, 2019.

On August 1, 2019 OWCP expanded the acceptance of appellant's claim to include right quadriceps tendon rupture.

In a development letter dated August 7, 2019, OWCP advised appellant that it had received his Form CA-7 claim for wage-loss compensation for the period July 7 through 20, 2019. It requested that he provide medical evidence establishing disability during the period claimed. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP subsequently received hospital notes, dated July 22, 2019, and a magnetic resonance imaging (MRI) scan of his right knee, of even date, which revealed no internal derangement and fatty atrophy of partial-thickness distal quadriceps tendon tear.

On August 8, 2019 appellant filed a Form CA-7 claim for compensation for disability from work for the period July 21 through August 2, 2019.

In a letter dated August 16, 2019, OWCP informed appellant that no action could be taken on his CA-7 claim or any subsequent CA-7 claims until he provided medical evidence to support that he was totally disabled from work for the periods claimed.

OWCP subsequently received an August 12, 2019 report from Dr. Wasserlauf who noted that appellant experienced continued right knee pain. Dr. Wasserlauf indicated that appellant had

an inability to bear weight, loss of motion, and muscle weakness, which was aggravated by movement and lifting. He provided physical examination findings and diagnosed right quadriceps tendon rupture and patellofemoral arthritis of the right knee. Dr. Wasserlauf advised that the benefits of quadriceps surgery would outweigh the risks.

On September 5, 2019 appellant filed a Form CA-7 claiming compensation for disability from work for the period July 6 through September 6, 2019.

Appellant submitted a July 16, 2019 workers' status report from Dr. Wasserlauf who diagnosed right quadriceps tendon rupture and patellofemoral arthritis of the right knee. Dr. Wasserlauf noted that appellant was not currently working and advised that he could perform sedentary work with the restriction of lifting no more than 10 pounds.

On September 19, 2019 appellant filed a Form CA-7 claiming compensation for disability from work for the period September 7 through 20, 2019.

In a letter dated September 30, 2019, OWCP noted that it had received appellant's Form CA-7. It informed appellant that additional evidence was needed to establish his claim.

On December 16, 2019 appellant, through counsel, requested reconsideration of the purported September 30, 2019 decision, noting that OWCP did not address the claimed periods of disability.

By decision dated May 15, 2020, OWCP denied appellant's claim for compensation for disability during the period July 7 through September 20, 2019. It found that the medical evidence of record was insufficient to establish disability from work during the claimed periods.

In an April 10, 2020 report, Dr. Neil Allen, a Board-certified specialist in internal medicine, reviewed appellant's medical record and history of injury. He noted that appellant initially returned to work on January 20, 2018, but the employing establishment did not honor his attending physician's work restrictions. Dr. Allen reported that appellant suffered repetitive buckling of his right knee and fell on several occasions due to right knee instability. He indicated that on January 22, 2019 appellant pushed a parcel weighing over 2,000 pounds when his right knee buckled, and he was nearly crushed by the parcel. Dr. Allen noted that appellant stopped work on that date and sought surgical repair of his right quadriceps tendon tear, which was never authorized. He reported that appellant experienced continued right knee pain and reviewed MRI scans and x-rays of his right knee. Dr. Allen opined that appellant's requested surgical procedure was appropriate and medically necessary. He indicated that once fatty infiltration occurred the tendon could no longer heal on its own and surgical repair was the only treatment option.

On June 1, 2020 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on August 31, 2020. During the hearing, appellant testified that he stopped working in January 2019 because he fell at work after a package almost tipped over on him. He further indicated that he fell in June 2020 and hurt his ankle. Appellant reported that he asked the employing establishment for limited-duty or sedentary work.

By decision dated October 7, 2020, OWCP's hearing representative affirmed the May 15, 2020 decision, finding that the medical evidence of record was insufficient to establish disability

from work during the claimed periods causally related to the accepted December 28, 2017 employment injury.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup> Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. 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.<sup>7</sup>

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.<sup>8</sup>

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.<sup>9</sup>

### **ANALYSIS**

The Board finds that appellant has not met his burden of proof to establish disability from work for the period July 7 through September 20, 2019 causally related to his accepted December 28, 2017 employment injury.

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<sup>4</sup> *Supra* note 2.

<sup>5</sup> *B.M.*, Docket No. 19-1075 (issued February 10, 2021); *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

<sup>6</sup> 20 C.F.R. § 10.5(f); *see J.K.*, Docket No. 20-0606 (issued March 11, 2021); *B.K.*, Docket No. 18-0386 (issued September 14, 2018).

<sup>7</sup> *See C.E.*, Docket No. 19-1617 (issued June 3, 2020).

<sup>8</sup> *See K.H.*, Docket No. 19-1635 (issued March 5, 2020).

<sup>9</sup> *See K.A.*, Docket No. 19-1564 (issued June 3, 2020); *Sandra D. Pruitt*, 57 ECAB 126 (2005); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

Appellant filed CA-7 forms, dated July 25 through September 19, 2019, claiming compensation for disability from work for the period July 7 through September 20, 2019.

In support of his claim, appellant submitted reports from Dr. Wasserlauf, dated July 16 through August 12, 2019, who diagnosed right quadriceps tendon rupture and patellofemoral arthritis of the right knee. Dr. Wasserlauf noted that appellant had difficulty putting weight on his right knee, walking extended distances, and ascending stairs. He advised that appellant could perform sedentary work with the restriction of lifting no more than 10 pounds. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how appellant's claimed disability is causally related to the accepted employment injury.<sup>10</sup> As such, this evidence is insufficient to establish appellant's disability claim.

In an April 10, 2020 report, Dr. Allen reviewed appellant's medical record and history of injury. He opined that appellant's requested right knee procedure was appropriate and medically necessary. Dr. Allen noted that once fatty infiltration occurred the tendon could no longer heal on its own and surgical repair was the only treatment option. However, he did not address appellant's work status or explain how his symptoms disabled him from work during the claimed period. Accordingly, Dr. Allen's report is also of limited probative value regarding causal relationship and insufficient to establish appellant's claim.<sup>11</sup>

Appellant also submitted an MRI scan of his right knee, dated July 23, 2019. The Board has held, however, that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address whether the accepted employment injuries resulted in appellant's period of disability on specific dates.<sup>12</sup>

As the medical evidence of record does not include a rationalized opinion on causal relationship between appellant's claimed disability and his accepted employment injury, the Board finds that he has not met his burden of proof.<sup>13</sup>

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 his burden of proof to establish disability from work for the period July 7 through September 20, 2019 causally related to his accepted December 28, 2017 employment injury.

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<sup>10</sup> See *B.M.*, *supra* note 5.

<sup>11</sup> *Id.*

<sup>12</sup> *S.D.*, Docket No. 20-1255 (issued February 3, 2021); *O.C.*, Docket No. 20-0514 (issued October 8, 2020).

<sup>13</sup> *J.E.*, Docket No. 19-1758 (issued March 16, 2021).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 7, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 7, 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