United States Department of Labor
Employees' Compensation Appeals Board

J.E., Appellant	)	
and	)	**Docket No. 19-1758**
	)	**Issued: March 16, 2021**
DEPARTMENT OF HOMELAND SECURITY, FEDERAL EMERGENCY MANAGEMENT AGENCY, Boston, MA, Employer	)	

Appearances:
Brett Elliot Blumstein, 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 August 20, 2019 appellant, through counsel, filed a timely appeal from April 29 and May 15, 2019 merit decisions 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 to consider 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 May 15, 2019 decision, OWCP received additional evidence. 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 intermittent disability from work for the period September 26, 2017 through March 17, 2018 causally related to his accepted July 15, 2015 employment injury.

FACTUAL HISTORY

On September 21, 2017 appellant, then a 46-year-old geographic information system analyst-geographer, filed a traumatic injury claim (Form CA-1) alleging that on July 15, 2015 he sustained a tick bite on the posterior aspect of his right thigh during outdoor exercise while on a travel assignment in the performance of duty. The bite caused a bullseye rash, headaches, joint pain, and joint popping and cracking for two years. Appellant stopped work on September 25, 2017.

In an October 27, 2017 report, Dr. Mangadhara Madineedi, an internist, noted appellant's symptoms of extreme right shoulder pain, cervical spine immobility, generalized joint pain and immobility, headaches, paresthesias in his fingers, disorientation, fatigue, and minor cognitive impairment. Appellant had been treated with doxycycline in July 2015, and with steroids in July 2017. Dr. Madineedi diagnosed Lyme disease based on appellant's clinical presentation and positive Lyme immunoglobulin assays on August 10, 2015 and June 13, 2017.

By decision dated November 1, 2017, OWCP accepted the claim for Lyme disease.

On December 4, 2017 OWCP received a claim for compensation (Form CA-7) for intermittent periods of disability from September 26 to November 15, 2017. On December 7, 2017 it received additional CA-7 forms for intermittent periods October 29 to November 24, 2017. In support of these claims, appellant provided time analysis (Form CA-7a) forms noting 20 hours of leave without pay (LWOP) used from September 26 to 29, 2017, 8 hours of LWOP used on November 9, 2017, 66 hours of LWOP used from November 12 to 24, 2017, 8 hours of LWOP used on November 14, 2017, and 8 hours of LWOP used on November 16, 2017. He worked part time during these claimed periods of intermittent disability and utilized LWOP for the remaining hours.

In support of his claim, appellant submitted a September 27, 2017 report by Dr. Neal C. Chen, a Board-certified orthopedic surgeon, who noted appellant's symptoms of bilateral scapular pain and numbness of the right thumb, index, and long finger. Dr. Chen also noted that appellant had been treated for Lyme disease. He diagnosed bilateral periscapular muscle pain and possible right carpal tunnel syndrome.[4]

In a November 20, 2017 letter, Katherine Dugan, a family nurse practitioner, described appellant's symptoms and noted work restrictions.

In a development letter dated December 15, 2017, OWCP requested that appellant submit additional information to support his claim for compensation for intermittent disability from

[4] September 17, 2017 right shoulder x-rays demonstrated postoperative changes of the left humerus with intramedullary nails in the humeral diaphysis. Appellant participated in physical therapy treatments from September 28 to December 7, 2017.

September 26 to November 24, 2017, including medical evidence establishing that he was disabled during the claimed period as a result of his accepted employment condition. It afforded him 30 days to submit additional medical evidence.

Appellant also submitted notes from other nurse practitioners dated from August 10, 2015 to August 9, 2017. In July 19 and August 31, 2017 reports, Dr. Maneet Kaur, a Board-certified internist, diagnosed recurrent Lyme disease with possible arthralgia, synovitis, and inflammatory arthritis. She prescribed medication.

In a report dated August 10, 2017, Dr. Jason Weller, a Board-certified neurologist, noted a very slight essential tremor in the right third digit of unknown etiology.

OWCP received physical therapy treatment notes dated November 9, 14, and 16, 2017 by Lincoln Lawrence, a physical therapist.

In a December 14, 2017 report, Dr. Judith M. Strymish, Board-certified in internal medicine, opined that appellant's symptoms were likely not due to Lyme disease as he had a negative Immunoglobulin G (IgG) Western blot test, and his symptoms did not develop until well after antibiotics were started.[5]

Dr. Raymon Durso, a Board-certified neurologist, noted on December 15, 2017 that appellant's 2015 serology results were inconsistent with an active Lyme infection and that cervical spine imaging studies showed disc protrusions at C5-6 and C6-7.[6] He opined that appellant did not have an active Lyme infection or neurologic sequelae. Dr. Durso attributed appellant's subscapular pain to muscular tension secondary to anxiety.

On January 11, 2018 appellant underwent laboratory blood tests, including serology for Lyme disease, ordered by Dr. Jean J. Barry, a Board-certified internist. In a January 14, 2018 report, Dr. Barry opined that his ongoing symptoms were caused by Lyme disease, noting that the January 11, 2018 laboratory tests were indicative of a Lyme infection with immunosuppression.

On January 9, 2018 OWCP received an additional Form CA-7 for the period December 12 to 23, 2017. Appellant subsequently claimed intermittent disability for the periods January 8 to 19 and January 22 to February 3, 2018, when he worked part time and used LWOP for the remaining hours. On a January 25, 2018 Form CA-7a, appellant noted six hours LWOP used on January 11, 2018.

By decision dated February 16, 2018, OWCP denied appellant's claim for compensation for intermittent disability during the period September 26 through November 15, 2017. It found that the medical evidence of record was insufficient to establish work-related disability during the claimed period.

[5] Dr. Strymish previously examined appellant on August 10, 2015 and opined that he had no serologic, orthopedic, or neurologic signs of Lyme disease.

[6] An October 11, 2017 magnetic resonance imaging scan of the cervical spine demonstrated multilevel degenerative changes most severe at C5-6 and C6-7 with severe spinal canal stenosis and mild cord flattening, and multilevel neuroforaminal narrowing most marked at C5-6 on the right.

In a development letter dated February 16, 2018, OWCP notified appellant of the additional evidence needed to establish his claims for compensation for the periods November 26 to December 9, and December 12 to 23, 2017, January 8 to 19, and January 22 to February 3, 2018. It afforded him 30 days to submit additional medical evidence.

On March 26, 2018 OWCP received an additional Form CA-7 claiming intermittent periods of disability from February 4 to March 17, 2018.

In a development letter dated April 9, 2018, OWCP notified appellant of the additional evidence needed to establish his claims for compensation for the period February 4 through March 17, 2018. It afforded him 30 days to submit additional medical evidence.

By decision dated April 9, 2018, OWCP denied appellant's claims for compensation for intermittent disability during the periods November 26 to December 9, and December 12 to 23, 2017, and January 3 to 19 and January 22 to February 3, 2018. It found that the medical evidence submitted described his symptoms, but did not address his work capacity.

On January 29, 2019 appellant, through counsel, requested reconsideration of the February 16 and April 9, 2018 decisions. He submitted additional evidence.[7]

In an August 1, 2018 report, Dr. Allison M. Beaulieu noted appellant's complaints of chronic pain syndrome with total body pain and depression, and a history of chronic Lyme disease.

Dr. Payal K. Modi, Board-certified in emergency medicine, noted in an August 2, 2018 report appellant's account of a history of chronic Lyme disease with systemic symptoms. He diagnosed depression and chronic pain. Dr. Modi recommended that appellant consider other etiologies for his symptoms.

In a September 27, 2018 report, Dr. John W. Ellis, a Board-certified family medicine specialist, provided a history of injury and treatment. He related appellant's complaints of organic brain syndrome, generalized achiness and joint pain, weakness, insomnia, paresthesias, and numbness from the left elbow to the ring and small fingers, and numbness from the left wrist into the thumb and fingers. On examination Dr. Ellis observed findings consistent with a recent left ear infection, cervical and lumbar paraspinal tenderness and spasm, mild bilateral plexus impingement, weakness in movement of all extremities, healed surgical scars over the left wrist and elbow with median and ulnar nerve impairment, and a mildly positive Romberg sign. He diagnosed Lyme disease with sequelae of systemic infection and immune response, causing severe fatigue, cognitive issues, and impaired functioning of all extremities. Dr. Ellis found appellant totally disabled from work due to severe malaise and weakness beginning in March 2018.

In an addendum report dated December 13, 2018, Dr. Ellis opined that Lyme disease temporarily totally disabled appellant from work for intermittent periods August 17 to December 24, 2017, January 17 to May 13, 2018, and from May 27, 2018 onward.

[7] Appellant also submitted serology tests results dated from December 22, 2017 to July 7, 2018. January 11, March 21, and June 26, 2018 samples were positive for immunoglobulin indicative of a possible prior Epstein-Barr viral infection, and negative for Bartonella and Borrelia.

By decision dated April 29, 2019, OWCP denied modification of its February 16, 2018 decision.

By separate decision also dated April 29, 2019, OWCP denied modification of its April 9, 2018 decision as the evidence submitted was insufficient to establish that the accepted condition disabled appellant from work from November 26 to December 9, December 12 to 23, 2017, January 3 to 19, and January 22 through February 3, 2018.

By decision dated May 15, 2019, OWCP denied appellant's claim for compensation from February 4 through March 17, 2018 as the medical evidence of record was insufficient to establish disability from work for the claimed period.

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[8] 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.[9] Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues which must be proven by the preponderance of the reliable, probative, and substantial medical evidence.[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. 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.[12]

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.[13] Rationalized medical evidence is medical evidence which includes a physician's detailed medical opinion on the issue of whether there is a causal relationship between the claimant's claimed disability and the accepted employment injury. 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

[8] *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).

[9] *Id*.; *William A. Archer*, 55 ECAB 674 (2004).

[10] 20 C.F.R. § 10.5(f); *B.O.*, *supra* note 8; *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

[11] *Id.* at § 10.5(f); *see B.K.*, Docket No. 18-0386 (issued September 14, 2018); *S.M.*, 58 ECAB 166 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004).

[12] *Id*.

[13] *J.M.*, Docket No. 19-0478 (issued August 9, 2019).

explaining the nature of the relationship between the diagnosed condition and the claimed period of disability.[14]

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.[15]

The Board has interpreted section 8103, which requires payment of expenses incidental to the securing of medical services, as authorizing payment for loss of wages incurred while obtaining medical services.[16] An employee is entitled to disability compensation for any loss of wages incurred during the time he or she receives authorized treatment and for loss of wages for time spent incidental to such treatment. The rationale for this entitlement is that, during such required examinations and treatment and during the time incidental to undergoing such treatment, an employee did not receive his or her regular pay.[17]

ANALYSIS

The Board finds that appellant has met his burden of proof to establish entitlement to wage-loss compensation for up to four hours of time lost for medical appointments on September 27, November 9, 14, and 16, 2017 and January 11, 2018.

On September 27, 2017 appellant attended a medical appointment with Dr. Chen who evaluated appellant for periscapular pain related to the accepted Lyme disease. The record also establishes that he attended physical therapy treatments on November 9, 14, and 16, 2017 for musculoskeletal pain attributed to Lyme disease. Additionally, on January 11, 2018, appellant underwent laboratory blood tests ordered by Dr. Barry to assess the presence of Lyme-related antibodies.

As noted above, an employee is entitled to disability compensation for any loss of wages incurred during the time he or she receives authorized treatment and for loss of wages for time spent incidental to such treatment.[18] Here, the case record establishes that appellant underwent evaluation and treatment for musculoskeletal complaints related to his accepted Lyme disease on September 27 and November 9, 14, and 16, 2017 and on January 11, 2018. The Board thus finds that this medical evidence is sufficient to establish that he is entitled to up to four hours of wage-loss compensation on those dates.

[14] *R.H.*, Docket No. 18-1382 (issued February 14, 2019).

[15] *M.A.*, Docket No. 20-0033 (issued May 11, 2020); *A.W.*, Docket No. 18-0589 (issued May 14, 2019).

[16] *A.V.*, *supra* note 8; *Y.H.*, Docket No. 17-1303 (issued March 13, 2018).

[17] For a routine medical appointment, a maximum of four hours of compensation for time lost to obtain medical treatment is usually allowed. *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Compensation Claims*, Chapter 2.901.19(c) (February 2013); *A.V.*, *supra* note 8. *See also K.A.*, Docket No. 19-0679 (issued April 6, 2020); *William A. Archer*, 55 ECAB 674 (2004).

[18] *Id*.

The Board further finds, however, that appellant has not met his burden of proof to establish entitlement to wage-loss compensation for the remaining claimed intermittent disability from September 26, 2017 through March 17, 2018 causally related to his accepted July 15, 2015 employment injury.

In support of his claims for disability, appellant submitted July 19 and August 31, 2017 reports by Dr. Kaur and an August 10, 2017 report by Dr. Weller, which do not address appellant's condition during the claimed periods of disability. Evidence that does not address appellant's claimed period of disability is of no probative value and is insufficient to establish his claim.[19]

Appellant provided reports from several physicians who did not attribute his symptoms to Lyme disease, or otherwise find him disabled from work. In reports dated December 14 and 15, 2017, Drs. Strymish and Durso, respectively, opined that appellant had no objective clinical or serologic signs of Lyme disease. In an August 1, 2018 report, Dr. Beaulieu noted appellant's complaints of chronic total body pain of unspecified etiology. In an August 2, 2018 report, Dr. Modi indicated that appellant's symptoms were not due to Lyme disease. These reports tend to negate appellant's assertion that the accepted Lyme disease disabled him for work for the claimed periods. As the Board has held, medical evidence that neither addresses the claimed period of disability,[20] or negates causal relationship,[21] is of no probative value. These reports are, therefore, insufficient to meet appellant's burden of proof.

Dr. Madineedi diagnosed Lyme disease on October 27, 2017 and Dr. Barry noted serologic findings consistent with a Lyme infection in a January 14, 2018 report. However, neither physician addressed whether appellant was disabled from work for any period.[22]

In September 27 and December 13, 2018 reports, Dr. Ellis opined that appellant was disabled from work for intermittent periods August 17 to May 27, 2018 due to fatigue, cognitive issues, and systemic musculoskeletal and neurologic symptoms caused by Lyme disease. However, he did not identify the objective clinical indicators demonstrating a chronic Lyme infection, or explain how appellant's symptoms disabled him from work during the claimed period. 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 injury.[23] Dr. Ellis' opinion is, therefore, of limited probative value and is insufficient to establish appellant's claim.[24]

[19] *T.L.*, Docket No. 18-0934 (issued May 8, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[20] *Id.*

[21] *M.C.*, Docket No. 19-1074 (issued June 12, 2020).

[22] *See supra* note 15.

[23] *G.R.*, Docket No. 19-0940 (issued December 20, 2019); *D.L.*, Docket No. 19-0900 (issued October 28, 2019); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017); *C.M.*, Docket No. 14-0088 (issued April 18, 2014).

[24] *G.R.*, *id*.; *M.M.*, Docket No. 18-0817 (issued May 17, 2019).

Appellant also submitted reports by nurse practitioners. As nurse practitioners are not considered physicians under FECA, their medical findings and opinions are insufficient to establish entitlement to compensation benefits.[25]

Finally, appellant submitted results from diagnostic testing. The Board has held, however, that diagnostic studies, standing alone, lack probative value as they do not address whether the accepted condition disabled him from work during the claimed periods.[26] These reports are, therefore, insufficient to establish the claim.

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.[27]

On appeal counsel asserts that Dr. Ellis' opinion is sufficient to warrant additional development, including referral to a second opinion specialist. As explained above, Dr. Ellis did not provide sufficient medical rationale to meet appellant's burden of proof to establish disability for work for the claimed periods.

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 met his burden of proof to establish entitlement to wage-loss compensation for up to four hours of time lost for medical appointments on September 27 and November 9, 14, and 16, 2017, and January 11, 2018. The Board further finds that he has not met his burden of proof to establish intermittent disability from work for the remainder of the period September 26, 2017 through March 17, 2018 causally related to his accepted July 15, 2015 employment injury.

[25] 5 U.S.C. § 8101(2) provides that a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. *See id.* at § 8101(2); 20 C.F.R. § 10.5(t); *supra* note 17 at Chapter 2.805.3a(1) (January 2013); *M.J.*, Docket No. 19-1287 (issued January 13, 2020); *P.H.*, Docket No. 19-0119 (issued July 5, 2019); *T.K.*, Docket No. 19-0055 (issued May 2, 2019); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as nurses, physician assistants, 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) (nurse practitioners and physical therapists are not considered physicians under FECA).

[26] *See M.J., id.*; *see J.S.*, Docket No. 17-1039 (issued October 6, 2017).

[27] *M.A.*, *supra* note 15; *J.M.*, Docket No. 18-0853 (issued March 9, 2020).

ORDER

IT IS HEREBY ORDERED THAT the May 15 and April 29, 2019 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 16, 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