

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

_____)	
E.F., Appellant)	
)	
and)	Docket No. 20-1680
)	Issued: November 10, 2021
U.S. POSTAL SERVICE, KUNA POST OFFICE,)	
Kuna, ID, 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 September 24, 2020 appellant filed a timely appeal from May 8 and August 25 and 31, 2020 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish intermittent disability from work commencing November 5, 2019 causally related to her accepted March 8, 2019 employment injury; and (2) whether OWCP has abused its discretion by denying appellant's request for authorization for physical therapy.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 8, 2019 appellant, then a 39-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on that day she strained both knees and injured her back when she missed a step as she exited a long-life vehicle and fell to the ground while in the performance of duty. OWCP accepted the claim for bilateral knee contusions, initial encounter, and sprain of ligaments of the lumbar spine. It paid appellant wage-loss compensation for disability on the supplemental rolls as of April 27, 2019.

OWCP subsequently received medical reports by Dr. Kevin R. Krafft, an attending Board-certified physiatrist and sports medicine physician. In an October 7, 2019 duty status report (Form CA-17), Dr. Krafft listed appellant's work restrictions as provided by her obstetrician/gynecologist (OB/GYN).

In an October 7, 2019 narrative medical report, Dr. Krafft noted appellant's history of low back pain. He also noted that her OB/GYN had placed her on light-duty work five hours per day with lifting restrictions. Dr. Krafft discussed examination findings and provided assessments of sprain of ligaments of the lumbar spine, muscle spasms of the back, insomnia due to her condition, binge eating disorder, and threat of job loss. He indicated that he would update restrictions for her work-related back injury and those provided by her OB/GYN.

On October 30, 2019 appellant filed a claim for compensation (Form CA-7) seeking compensation for leave without pay (LWOP) for disability from October 12 through 25, 2019. In an attached time analysis form (Form CA-7a), she claimed wage-loss compensation for 44.48 hours of LWOP for the period October 15 through 25, 2019.

In a November 7, 2019 development letter, OWCP requested that appellant submit medical evidence establishing her inability to work commencing October 12, 2019. It noted that the medical evidence of record indicated that, effective October 7, 2019, her time loss from work was due to part-time limited-duty work restrictions set forth by her OB/GYN and not due to her accepted employment-related conditions. OWCP afforded appellant 30 days to submit the requested evidence.

OWCP received the employing establishment's November 6, 2019 job offer for a part-time limited-duty rural carrier effective November 7, 2019, which appellant accepted on November 6, 2019.

In November and December 2019 and January 2020, appellant filed additional Form CA-7 claims seeking compensation for LWOP from August 31 through September 13, 2019 and October 26, 2019 through January 17, 2020. In accompanying CA-7a forms, she claimed wage-loss compensation for 23.92 hours of LWOP for the period September 3 through 7, 2019 and September 13, 2019, 5.38 hours of LWOP for December 20, 2019, 41.97 hours of LWOP for the period December 21, 2019 through January 3, 2020, and 41.50 hours of LWOP for the period January 4 through 17, 2020.

In a November 4, 2019 report, Dr. Krafft reexamined appellant and reiterated his assessments of sprain of ligaments of the lumbar spine, muscle spasms of the back, insomnia due

to her condition, binge eating disorder, and threat of job loss. He determined that she had reached maximum medical improvement (MMI). Dr. Krafft released appellant to return to work with no restrictions related to her accepted employment-related injury. He indicated that she did have restrictions related to her pregnancy. Dr. Krafft related that no further diagnostic testing or treatment related to appellant's work-related injury was required at that time. He further related that, if her symptoms persisted after her pregnancy, then a follow-up evaluation may be indicated. Dr. Krafft determined that appellant had one percent whole person permanent impairment in accordance with the sixth edition of the A.M.A., *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).² In a November 4, 2019 return to work slip, he reiterated that she could return to work with nonindustrial-related restrictions.

In a December 11, 2019 narrative report and December 13, 2019 Form CA-17 report, Tarasue Maness, a certified family nurse practitioner, examined appellant and provided assessments of lower back myalgia, lumbago, lumbar degenerative disc disease, other intervertebral disc displacement and other spondylosis with radiculopathy, and mild left L3-4 and mild bilateral L4-5 foraminal stenosis in the lumbar region, chronic pain, depression, anxiety, panic attack, and disc displacement. In the December 13, 2019 Form CA-17 report, she indicated that appellant's diagnosed disc displacement was due to injury. Ms. Maness also advised that she could return to work with restrictions on December 16, 2019.

A January 6, 2020 Form CA-17 report by Dr. Eli Harris, a Board-certified anesthesiologist, diagnosed the accepted condition of disc displacement due to injury. He listed appellant's restrictions and noted that on December 16, 2019 he advised her that she could resume work.

Progress notes dated July 22, 24, and 31, and August 2, 12, and 14, 2019 signed by appellant's physical therapists addressed the treatment of her low back pain, sacroiliitis, back muscle spasm, and sprain of other parts of the lumbar spine and pelvis.

The employing establishment, in letters dated November 26 and December 10, 2019, informed OWCP that appellant was unable to work because it was unable to accommodate her work restrictions which were related to her pregnancy. It maintained that, if she did not have such restrictions, she could work full time in the modified job she accepted on November 6, 2016.

On December 18, 2019 appellant accepted the employing establishment's job offer as a modified-duty rural carrier.

In a January 23, 2020 Form CA-17 report, Dr. Shane Andrew, an orthopedic surgeon, diagnosed the accepted sprain of ligaments of the lumbar spine, initial encounter, due to injury, and advised appellant that she could resume work with restrictions.

By decision dated January 23, 2020, OWCP found that appellant was entitled to wage-loss compensation for 66.50 hours of LWOP for the period October 12 through November 4, 2019.³

² A.M.A., *Guides* (6th ed. 2009).

³ On December 16, 2019 OWCP paid appellant wage-loss compensation on the supplemental rolls for four hours of LWOP on September 6, 2019.

It, however, denied her claim for wage-loss compensation for LWOP for the period November 5, 2019 and continuing as the medical evidence was from a nurse practitioner who is not considered a physician under FECA and it also indicated that appellant had no restrictions or required further treatment related to her accepted work-related conditions.

OWCP subsequently received an additional report dated January 6, 2020 by Dr. Harris who provided examination findings. Additionally, Dr. Harris noted assessments of lower back myalgia, lumbago, lumbar degenerative disc disease, other intervertebral disc displacement and other spondylosis with radiculopathy, and mild left L3-4 and mild bilateral L4-5 foraminal stenosis in the lumbar region, chronic pain, depression, anxiety, and panic attack. He recommended that any changes in work restrictions should go through a functional capacity examination and a primary care physician. Dr. Harris noted that he explained to appellant that he did not provide work restrictions orders although it was previously provided by his nurse practitioner.

In an additional report dated January 23, 2020, Dr. Andrew noted a review of lumbar spine magnetic resonance imaging (MRI) scan results and discussed findings on physical examination. He provided assessments of other intervertebral disc degeneration and other spondylosis with radiculopathy, lumbar region. Dr. Andrew explained to appellant that he could not do anything due to her pregnancy. He referred her to pain management for acupuncture.

In February and March 2020, appellant continued to submit Form CA-7 claims seeking compensation for LWOP from January 18 through February 28, 2020. In accompanying CA-7a forms, she claimed wage-loss compensation for 50.14 hours of LWOP compensation for the period February 1 through 14, 2020 and 5.58 hours of LWOP for February 21, 2020.

Additional physical therapy daily notes and a progress note dated October 2, 7, 9, 14, 16, 23, 25, and 30 and November 4, 2019 and January 23, 27, 2020 from appellant's physical therapists again addressed the treatment of her low back pain, sacroiliitis, back muscle spasm, and sprain of other parts of the lumbar spine and pelvis.

In a January 29, 2020 report, Ms. Maness continued to note her assessments of lower back myalgia, lumbago, lumbar degenerative disc disease, other intervertebral disc displacement and other spondylosis with radiculopathy, and mild left L3-4 and mild bilateral L4-5 foraminal stenosis in the lumbar region, chronic pain, depression, anxiety, panic attack, and disc displacements.

On February 25, 2020 Rehab Authority, LLC, requested that OWCP authorize physical therapy for the period January 27 through March 12, 2020 to treat appellant's diagnoses of low back pain, sacroiliitis, and back muscle spasm.

OWCP, in a March 10, 2020 development letter, informed appellant of the deficiencies of her request for authorization for physical therapy treatment for the period January 27 through March 12, 2020. It requested that she submit a rationalized medical opinion from her physician establishing a causal relationship between her current medical condition and need for treatment and her accepted March 8, 2019 employment injury. OWCP afforded appellant 30 days to submit the necessary evidence.

In March 2020, appellant filed additional Form CA-7 claims for LWOP for disability from February 29 through April 24, 2020. In accompanying CA-7a forms, she claimed 38.76 hours of

LWOP from March 3 through 13, 2020, 22.33 hours of LWOP from March 14 through 27, 2020, and 160 hours of annual leave and other leave from March 28 through April 24, 2020.

Dr. Andrew, in an April 9, 2020 letter, referenced his January 23, 2020 evaluation of appellant, including his review of the lumbar spine MRI scan findings. He noted that the MRI scan revealed degenerative disc disease at L4-5 with Modic changes in the endplates indicating some significant inflammation in the disc. The scan also revealed some facet arthritis at L4-5 and L5-S1. Dr. Andrew related that, although appellant's employment injury did not cause the degenerative changes in her lumbar spine, her symptoms were likely aggravated by the work injury. He further related that the objective MRI scan findings indicated that she would likely have back pain intermittently and maybe even continuously throughout her life. Dr. Andrew advised that the changes were not related to appellant's work-related injury as they were degenerative and not traumatic in nature. He agreed with Dr. Krafft that no further treatment was necessary for her employment injury. Dr. Andrew maintained that this did not mean that appellant did not need therapy and or that she would need therapy throughout the rest of her life, but the therapy would be related to her degenerative changes and not her work-related injury. He concluded that she had back pain prior to her injury and she would continue to have some back pain as mentioned above due to the degenerative changes in her spine.

By decision dated May 8, 2020, OWCP denied appellant's request for authorization for physical therapy treatment, finding that the medical evidence of record did not contain a rationalized medical opinion to support that the requested treatment was medically necessary to address the effects of her accepted employment-related conditions.

In May, June, and July 2020, appellant filed additional Form CA-7 claims for LWOP for disability for the period April 25 through July 31, 2020, and CA-7a forms requesting 536 hours of LWOP and other leave for the claimed period.

Physical therapy daily notes dated January 29 and 31, and February 3, 5, 7, 10, 14, 26, and 28, and June 24, 2020 from appellant's physical therapists were submitted and continued to address the treatment of appellant's lumbar conditions.

OWCP received additional reports from Dr. Krafft. In reports dated June 2 and 25 and July 16, 2020, Dr. Krafft reiterated his prior lumbar, sleep, eating, and emotional assessments. He noted that appellant was not working because she was caring for her children due to COVID-19 and she could not lift things with her back. Dr. Krafft indicated that he would update her return to work status. He determined that appellant had zero percent whole person permanent impairment based on the sixth edition of the A.M.A., *Guides*.

In a June 2, 2020 order, Dr. Krafft referred appellant to physical therapy for treatment of her low back pain.

Dr. Krafft, in Form CA-17 reports dated June 25 and July 16, 2020, listed appellant's work restrictions.

On August 11, 2020 appellant requested reconsideration of the January 23 and May 8, 2020 decisions.

On August 18, 2020 appellant filed a Form CA-7 claim requesting LWOP for disability for the period August 1 through 14, 2020 and a Form CA-7a claiming eight hours of LWOP and eight hours of other leave for August 1, 2020.

By decision dated August 25, 2020, OWCP denied modification of its January 23, 2020 decision denying appellant's claim for wage-loss compensation commencing November 4, 2019. It found that the medical evidence submitted continued to establish that her claimed disability from work was not causally related to her accepted March 8, 2019 employment injury.

In an August 31, 2020 decision, OWCP denied modification of its May 8, 2020 decision denying appellant's request for authorization for physical therapy. It found that the medical evidence submitted continued to support that appellant's need for physical therapy treatment was not related to her accepted employment injury.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA⁴ 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

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

⁴ See *supra* note 1.

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

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

⁸ *Id.* at § 10.5(f); see *J.T.*, Docket No. 19-1813 (issued April 14, 2020); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

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

claimed. To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish intermittent disability from work commencing November 5, 2019 causally related to her accepted March 8, 2019 employment injury.

In support of her claims for compensation, appellant submitted reports a return to work slip from Dr. Krafft who determined that she reached MMI and could return to work with no restrictions related to the accepted March 8, 2019 employment-related conditions. Dr. Krafft noted that she had work restrictions related to her pregnancy and established by her OB/GYN. He later reported that appellant was unable to work because she was caring for her children due to COVID-19 and was unable to lift things using her back. Although he noted her disability for work, Dr. Krafft did not attribute her disability to the accepted March 8, 2019 employment injury. Accordingly, his reports are of no probative value and are insufficient to establish appellant's claim for disability.¹¹

Dr. Andrew's January 23, 2020 reports diagnosed the accepted sprain of the ligaments of the lumbar spine due to injury and provided work restrictions. However, he did not provide an opinion on whether appellant was disabled from work during the claimed period due to her accepted employment condition.¹² In an April 9, 2020 report, Dr. Andrew advised that lumbar spine degenerative changes as demonstrated by MRI scan were not caused by the accepted employment injury, but were likely aggravated by the work injury. Additionally, he found that these lumbar symptoms were not related to the accepted work injury because they were degenerative and not traumatic in nature. Dr. Andrew also agreed with Dr. Krafft that no further treatment of appellant's accepted injury was required and that any need for future therapy would be related to her degenerative changes and not to her accepted conditions. The Board finds that Dr. Andrew did not provide an opinion on whether appellant was disabled from work due to her March 8, 2019 employment injury,¹³ therefore, the Board finds that these reports are insufficient to establish that the claimed disability is causally related to the accepted employment injury.

Dr. Harris diagnosed lower back myalgia, lumbago, lumbar degenerative disc disease, other intervertebral disc displacement and other spondylosis with radiculopathy, and mild left L3-4 and mild bilateral L4-5 foraminal stenosis in the lumbar region, chronic pain, depression, anxiety, and panic attack. He opined that appellant's disc displacement was due to injury. Further,

¹⁰ *J.K.*, Docket No. 19-0488 (issued June 5, 2020); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

¹¹ *See M.A.*, Docket No. 20-0033 (issued May 11, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018); *T.R.*, Docket No. 17-0567 (issued April 20, 2018); *R.A.*, Docket No. 14-1327 (issued October 10, 2014).

¹² *See J.T.*, *supra* note 8; *M.J.*, Docket No. 19-1287 (issued January 13, 2020); *M.M.*, Docket No. 18-0817 (issued May 17, 2019); *M.C.*, Docket No. 16-1238 (issued January 26, 2017).

¹³ *Id.*

Dr. Harris advised that she could return to work with restrictions. The Board finds that he diagnosed conditions which were not accepted by OWCP and he did not attribute appellant's restrictions to the accepted bilateral knee and lumbar conditions. Thus, Dr. Harris' reports are insufficient to meet her burden of proof.¹⁴

The reports from Ms. Maness, a certified family nurse practitioner, and progress and daily notes from appellant's physical therapists have no probative medical value. The Board has held that neither a nurse practitioner nor a physical therapist is a physician as defined under FECA.¹⁵

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.¹⁶ Because appellant has not submitted rationalized medical opinion evidence to establish employment-related intermittent disability commencing November 5, 2019 as a result of her accepted bilateral knee and lumbar conditions, the Board finds that she has not met her burden of proof to establish her claim for disability compensation.

LEGAL PRECEDENT -- ISSUE 2

Section 8103(a) of FECA¹⁷ provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed by or recommended by a qualified physician, which OWCP considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation.¹⁸ While OWCP is obligated to pay for treatment of employment-related conditions, the employee has the burden of proof to establish that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.¹⁹

¹⁴ *F.H.*, Docket No. 18-0160 (issued August 23, 2019).

¹⁵ Section 8101(2) 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." See 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) (nurse practitioners and physical therapists are not considered physicians under FECA).

¹⁶ See *C.E.*, Docket No. 19-1617 (issued June 3, 2020); *Fereidoon Kharabi*, *supra* note 6.

¹⁷ *Supra* note 1 at § 8103(a).

¹⁸ *Id.*; see *D.S.*, Docket No. 18-0353 (issued May 18, 2020); *L.D.*, 59 ECAB 648 (2008); *Thomas W. Stevens*, 50 ECAB 288 (1999).

¹⁹ *M.P.*, Docket No. 19-1557 (issued February 24, 2020); *M.B.*, 58 ECAB 588 (2007).

Section 10.310(a) of OWCP's implementing regulations provide that an employee is entitled to receive all medical services, appliances, or supplies which a qualified physician prescribes or recommends and which OWCP considers necessary to treat the work-related injury.²⁰

In interpreting section 8103 of FECA, the Board has recognized that OWCP has broad discretion in approving services provided, with the only limitation on OWCP's authority being that of reasonableness.²¹ OWCP has the general objective of ensuring that an employee recovers from his or her injury to the fullest extent possible, in the shortest amount of time. It therefore has broad administrative discretion in choosing means to achieve this goal.²²

Abuse of discretion is shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.²³

ANALYSIS -- ISSUE 2

The Board finds that OWCP has not abused its discretion by denying appellant's request for authorization for physical therapy.

On February 25, 2020 Rehab Authority, LLC, on behalf of appellant, sought authorization for physical therapy for the period January 27 through March 12, 2020 to treat her diagnoses of low back pain, sacroiliitis, and back muscle spasm.

In his reports, Dr. Krafft noted that appellant's work restrictions were related to her pregnancy and prescribed by her OB/GYN. He opined that she did not require further diagnostic testing or treatment related to her work-related injury.

Dr. Andrew, in his April 9, 2020 report, agreed with Dr. Krafft that no further treatment of appellant's accepted conditions was required. He related that the need for future therapy would be related to the degenerative changes in her lumbar spine and not to her accepted conditions. In his January 23, 2020 report, Dr. Andrew referred appellant to pain management for acupuncture to treat her symptoms related to her pregnancy and not the accepted employment conditions.

²⁰ 20 C.F.R. § 10.310(a); *see D.W.*, Docket No. 19-0402 (issued November 13, 2019).

²¹ *B.I.*, Docket No. 18-0988 (issued March 13, 2020); *see also Daniel J. Perea*, 42 ECAB 214, 221 (1990) (holding that a abuse of discretion by OWCP is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or administrative actions which are contrary to both logic, and probable deductions from established facts).

²² *D.S.*, *supra* note 18.

²³ *Id.*; *P.L.*, Docket No. 18-0260 (issued April 14, 2020); *L.W.*, 59 ECAB 471 (2008).

As noted, the only restriction on OWCP's authority to authorize medical treatment is one of reasonableness.²⁴ In the instant case, appellant did not submit evidence to support that the requested physical therapy was medically necessary to treat her accepted bilateral knee and lumbar conditions. The Board thus finds that OWCP has not abused its discretion by denying her request for authorization for physical therapy.²⁵

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 appellant has not met her burden of proof to establish intermittent disability from work commencing November 5, 2019 causally related to her accepted March 8, 2019 employment injury. The Board further finds that OWCP has not abused its discretion by denying her request for authorization for physical therapy.

²⁴ *Supra* note 21; *see also* *A.W.*, Docket No. 14-0708 (issued January 2, 2015) (the Board found that OWCP did not abuse its discretion by relying on the opinion of its second opinion examiner as the weight of evidence to deny approval for elective spinal surgery).

²⁵ *D.C.*, Docket No. 18-0080 (issued May 22, 2018); *B.J.*, Docket No. 17-1825 (issued February 23, 2018).

ORDER

IT IS HEREBY ORDERED THAT August 31 and 25 and May 8, 2020 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 10, 2021
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