

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

L.M., Appellant)	
)	
and)	Docket No. 21-0063
)	Issued: November 8, 2021
U.S. POSTAL SERVICE, EAST/LAMAR CARRIER ANNEX POST OFFICE, Memphis, TN, Employer)	
)	

Appearances:
Appellant, pro se
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 October 14, 2020 appellant filed a timely appeal from an April 21, 2020 merit decision 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 over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the April 21, 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 his burden of proof to establish disability from work for the period November 9, 2019 through January 3, 2020 causally related to his accepted September 22, 2014 employment injury.

FACTUAL HISTORY

On October 30, 2014 appellant, then a 45-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on September 22, 2014 he felt a sharp pain in his lower back, which radiated down his right leg while climbing steep stairs in the performance of duty. He stopped work that day and returned on October 30, 2014. OWCP initially accepted the claim for lumbar sprain. It subsequently expanded the acceptance of the claim to include aggravation of degeneration of lumbar or lumbosacral intervertebral disc at L5-S1 and aggravation and displacement of lumbar intervertebral disc without myelopathy at L5-S1. OWCP paid appellant intermittent wage-loss compensation on the supplemental rolls as of September 23, 2014.³

On November 26, 2019 appellant filed a claim for compensation (Form CA-7) requesting wage-loss compensation for disability from work for the period November 9 through 22, 2019. On December 6, 2019 he filed a Form CA-7 requesting wage-loss compensation for disability from work for the period November 23 through December 6, 2019. In the accompanying Time Analysis Form (Form CA-7a), appellant claimed, and the employing establishment verified, 72 hours leave without pay (LWOP) used for the period November 9 through 22, 2019, and 72 hours LWOP used for the period November 23 through December 6, 2019 as “under doctor’s care.” The leave taken was continuous.

In November 11 and 21, and December 5, 2019 duty status reports (Form CA-17), Dr. Rommel G. Childress, a Board-certified orthopedic surgeon, diagnosed lumbar spasms. He indicated that appellant had been totally disabled from work since November 6, 2019 because of severe lumbar spasm and pain. Dr. Childress noted that appellant was waiting for a neurosurgical consult.

In development letters dated December 2 and 12, 2019, OWCP noted that appellant was claiming disability from work due to a worsening of his accepted work-related condition, commencing November 9, 2019. It noted the deficiencies in the evidence received and indicated that his physician must submit a complete and comprehensive narrative report, which included a history of his injury and a thorough explanation with objective findings as to how his accepted work-related condition worsened such that he was no longer able to perform the duties of his position on November 9, 2019 and continuing. OWCP also advised appellant that a medical slip

³ The present claim was assigned OWCP File No. xxxxxx067 by OWCP. Under OWCP File No. xxxxxx669, appellant has an accepted claim for left shoulder girdle sprain and unspecified injury of muscle and tendon of the left rotator cuff due to a February 13, 2017 traumatic injury when he pulled down the rear door of his vehicle while in the performance of duty. Appellant returned to full-time limited-duty work on January 20, 2018. Under OWCP file number xxxxxx914, OWCP accepted a left muscle strain at thigh level when appellant tripped over a branch while in the performance of duty on November 21, 2018. Appellant’s claims have not been administratively combined.

disabling him from work or a Form CA-17 was insufficient to establish disability without a medical explanation and objective findings. It afforded appellant 30 days to submit the requested evidence.

In a November 11, 2019 report, Dr. Childress noted that appellant reported missing a few days of work because of severe pain and spasms. Appellant had related that he developed severe pain in the right leg after walking a couple of hours. Dr. Childress indicated that review of appellant's magnetic resonance imaging (MRI) scan indicated that his symptoms were consistent with his disc pathology and prior lumbar laminectomy at L5-S1. He advised that appellant has documented right-sided disc bulge, with a slight impression on the L5 nerve and with slight foraminal compromise at that level. Dr. Childress also has documented hypertrophic facts at L4-5 and L5-S1. He noted examination findings of 40 degrees forward flexion with straight leg raising of 40 degrees on the right and 55 degrees on the left. Appellant had difficulty bending beyond 40 degrees and had right radicular pain and numbness and tingling, but was intact neurologically. Dr. Childress related that he may request lumbar facet blocks or an updated MRI scan since the latest one was almost two years old. He placed appellant off work. Dr. Childress indicated that appellant would be seen in follow up in one week.

In a November 21, 2019 medical report, Dr. Childress indicated that appellant's episodes of the right leg giving out predisposed him to falls. He noted that appellant had been at home and had one fall since he was last seen. Dr. Childress indicated that appellant had major back pain and spasms and radicular difficulty with no improvement with medication. He indicated that appellant had difficulty with straight leg raising on the right, limited lumbar mobility of forward flexion and significant right lumbar paraspinal spasms. Dr. Childress opined that appellant was totally disabled from work. He prescribed bed rest with restricted activities at home.

In a December 5, 2019 report, Dr. Childress indicated that appellant's increasing pain and difficulty with his right leg has extended into his left buttock. He reported that appellant had limited mobility of his lumbar spine to 40 degrees, with palpable right and left lumbar paraspinal spasm and positive straight leg raising on the right at 30 degrees and on the left at 55 degrees. There was also diminished sensation to light touch in the right leg, laterally and on the foot. Dorsiflexion was 4/5 on the right. Dr. Childress continued appellant on bed rest and restricted activities. He noted that appellant was still awaiting neurosurgical consultation.

Appellant continued to submit Form CA-7 claims for wage-loss compensation for the periods December 7 through 29, 2019, and December 21, 2019 through January 3, 2020. In the accompanying Form CA-7a, he claimed and the employing establishment verified 80 hours LWOP used for December 7 through 20, 2019, 64 hours LWOP used for on December 21 through January 3, 2020 as "under doctor's care." The leave taken was continuous.

In a December 19, 2019 report, Dr. Childress reported that appellant had recently fallen when walking. A foot dropped on appellant's right side, causing him to trip. He hit his left shoulder, causing a bruise. Dr. Childress indicated that appellant could lift pretty well and it was no more than a possible strain. He indicated that appellant was still having spasms and difficulty functioning at home, with minor activities, and with his legs giving way with his back issue. Dr. Childress continued appellant with rest and restricted activities at home for his lumbar disc pathologies and spasms. He noted that appellant was still awaiting a neurosurgical consultation. In a December 19, 2019 Form CA-17, Dr. Childress opined that appellant was totally disabled

from work because of severe lumbar pain/spasms. He noted that appellant was awaiting a neurosurgical consultation.

By decision dated January 16, 2020, OWCP denied appellant's claim for disability from work for the period November 9, 2019 through January 3, 2020. It found that the medical evidence did not establish that he was disabled as a result of the accepted work-related medical conditions.

In a January 9, 2020 report, Dr. Childress reported that appellant was still at home and his back and leg pain and radicular symptoms had slightly improved. He indicated that appellant had limited lumbar mobility to approximately 55 degrees of forward flexion with some spasms and bilateral straight leg raising at 45 to 50 degrees. Dr. Childress indicated that he would see appellant back in a week to see if he could tolerate return to work on a part-time basis. He also noted that appellant still had been unable to see a neurosurgeon.

In a January 16, 2020 letter, Dr. Childress indicated that appellant had a work-related lumbar spine condition for which he was actively being treated. He advised that appellant has been totally incapacitated and unable to work because of severe lumbar pain, spasms, and instability. Due to the September 22, 2014 work-related injury, Dr. Childress indicated that appellant had been experiencing severe lumbar pain, spasms, and radicular leg pain and, because of this, he also sustained a fall. He explained that the fall was a direct result of the September 22, 2014 work-related injury and no additional injuries were sustained as a result of the fall. Dr. Childress continued to opine that appellant was totally incapacitated and unable to perform any and all work duties. He additionally noted that they were still awaiting authorization for a neurosurgeon.

On January 22, 2020 appellant requested a review of the written record before a representative of OWCP's Branch of Hearings and Review. On January 27, 2020 he withdrew his request for a review of the written record by an OWCP hearing representative and instead requested reconsideration.

By decision dated April 21, 2020, OWCP denied modification of its prior decision.⁴

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ has the burden of proof to establish the essential elements of his or her claim, including that disability or a specific condition for which compensation is claimed is causally related to the employment injury.⁶ For each period of

⁴ The record reflects that OWCP paid appellant's disability claim for the period November 6 through 8, 2019.

⁵ *Supra* note 1.

⁶ *K.A.*, Docket No. 19-1564 (issued June 3, 2020); *T.H.*, Docket No. 19-0436 (issued August 13, 2019); *see B.K.*, Docket No. 18-0386 (issued September 14, 2018); *see also Amelia S. Jefferson*, 57 ECAB 183 (2005); *Nathaniel Milton*, 37 ECAB 712 (1986).

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.⁷

The term disability is defined as the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of the injury.⁸ Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.⁹ 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.¹⁰

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 reliable, probative, and substantial medical evidence.¹¹ Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work.¹² The physician's opinion must be based on the facts of the case and the complete medical background of the employee, must be one of reasonable medical certainty, and must include objective findings in support of its conclusions.¹³

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific date 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.¹⁴

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish disability from work for the period November 9, 2019 through January 3, 2020 causally related to his accepted September 22, 2014 employment injury.

Appellant submitted reports from Dr. Childress in support of his disability claim. In a November 11, 2019 report, Dr. Childress advised that appellant had documented right-sided disc bulge, with a slight impression on the L5 nerve and with slight foraminal compromise at that level. He also had documented hypertrophic facets at L4-5 and L5-S1. Dr. Childress reported that

⁷ *K.A., id.; T.H., id.; see D.G.,* Docket No. 18-0597 (issued October 3, 2018); *Amelia S. Jefferson, id.*

⁸ 20 C.F.R. § 10.5(f); *E.P.,* Docket No. 20-0655 (issued March 17, 2021); *T.H., supra* note 6; *S.T.,* Docket No. 18-0412 (issued October 22, 2018); *Cheryl L. Decavitch,* 50 ECAB 397 (1999).

⁹ *E.P., id.; G.T.,* Docket No. 18-1369 (issued March 13, 2019); *Robert L. Kaaumoana,* 54 ECAB 150 (2002).

¹⁰ *See* 20 C.F.R. § 10.5(f); *N.M.,* Docket No. 18-0939 (issued December 6, 2018).

¹¹ *J.A.,* Docket No. 18-1304 (issued May 1, 2019); *William A. Archer,* 55 ECAB 674 (2004).

¹² *B.W.,* Docket No. 19-0049 (issued April 25, 2019); *Dean E. Pierce,* 40 ECAB 1249 (1989).

¹³ *V.A.,* Docket No. 19-1123 (issued October 29, 2019); *C.B.,* Docket No. 18-0633 (issued November 16, 2018).

¹⁴ *M.J.,* Docket No. 19-1287 (issued January 13, 2020); *J.B.,* Docket No. 19-0715 (issued September 12, 2019).

appellant had missed a few days of work because of severe pain and spasms in the right leg after walking a couple of hours, which was consistent with appellant's disc pathology and prior lumbar laminectomy at L5-S1. He reported detailed objective findings and took appellant off work. However, Dr. Childress also qualified his opinion by noting that appellant's last MRI scan was almost two years old and that appellant should obtain a new MRI scan if his symptoms continued. His opinion regarding appellant's current objective findings was, therefore, based upon stale medical evidence.¹⁵ Dr. Childress did not provide a reasoned medical opinion, which explained why appellant's current objective findings rendered him unable to perform his limited work duties from November 9, 2019 and how appellant's current objective findings were causally related to his accepted September 22, 2014 employment injuries.¹⁶

In his November 21 and December 5, 2019 reports, Dr. Childress indicated that appellant's right leg gave out and caused him to fall. He noted increased symptomology, provided detailed examination findings, and continued to opine that appellant was totally disabled from work. In a December 19, 2019 report, Dr. Childress indicated that appellant was still having back spasms and difficulty functioning at home and with his legs giving way. He also reported that appellant recently had another fall, during which he bruised his left shoulder. However, Dr. Childress did not offer a rationalized medical opinion, which explained why appellant's falls were causally related to his accepted employment injury.¹⁷

In a January 16, 2020 letter, Dr. Childress noted that appellant has been totally incapacitated from work because of severe lumbar pain, spasms, and instability from the September 22, 2014 work-related injury. He opined that, as a direct result of the September 22, 2014 work-related injury, appellant sustained a fall from which no additional injuries were sustained. The Board has held that an opinion 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.¹⁸ Thus, the Board finds that as Dr. Childress failed to provide sufficient rationale, his opinion is of limited probative value and insufficient to establish appellant's disability claim.

Appellant also submitted CA-17 form reports from Dr. Childress dated November 11 and 21, and December 5 and 19, 2019. However, these reports are of no probative value regarding the underlying issue of the present case because they do not contain an opinion regarding causal relationship. The Board has held that medical evidence that does not offer an opinion regarding

¹⁵ See *G.F.*, Docket No. 20-1031 (issued December 3, 2020); *M.P.*, Docket No. 18-0094 (issued June 26, 2018).

¹⁶ See *L.T.*, Docket No. 19-1794 (issued October 2, 2020); *T.T.*, Docket No. 18-1054 (issued April 8, 2020); *A.S.*, Docket No. 17-2010 (issued October 12, 2018); *S.M.*, 58 ECAB 166 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); 20 C.F.R. § 10.5(f).

¹⁷ See *L.T.*, *id.*

¹⁸ See *T.T.*, *supra* note 16.

the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.¹⁹ Therefore, these reports are insufficient to establish appellant's claim.

As noted, appellant must submit reasoned medical evidence directly addressing the specific dates of disability for work for which he claims compensation.²⁰ He did not provide medical evidence containing a rationalized opinion establishing that he was disabled from work from November 9, 2019 through January 3, 2020 causally related to his accepted September 22, 2014 employment injuries, and thus he has not met his burden of proof.²¹

On appeal appellant contends that he was working six hours a day and in receipt of wage-loss compensation before Dr. Childress took him off work beginning of November 2019. He also noted that OWCP previously paid his claims before November 2019 and paid his claims after he returned to work in January 2020. For the reasons noted above, the Board finds that Dr. Childress' reports are insufficient to establish appellant's claim.

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 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 November 9, 2019 through January 3, 2020 causally related to his accepted September 22, 2014 employment injury.

¹⁹ See *C.M.*, Docket No. 20-1077 (issued December 18 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

²⁰ See *L.T.*, *supra* note 16; *K.A.*, Docket No. 16-0592 (issued October 26, 2016).

²¹ See *supra* note 17.

ORDER

IT IS HEREBY ORDERED THAT the April 21, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 8, 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