

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

S.S., Appellant)	
)	
and)	Docket No. 21-0763
)	Issued: November 12, 2021
U.S. POSTAL SERVICE, POST OFFICE,)	
Baker, LA, 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
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 7, 2021 appellant filed a timely appeal from a November 16, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish disability from work for the period June 13 through December 27, 2013 causally related to her accepted January 15, 2013 employment injury.

¹ The Board notes that appellant's AB-1 form indicates that she is appealing from a purported November 1, 2020 decision of OWCP; however, the case record does not contain a final adverse decision of that date. The most recent final adverse decision of OWCP is dated November 16, 2020.

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board on a different issue.³ The facts and circumstances as set forth in the Board's prior decisions and order are incorporated herein by reference. The relevant facts are as follows.

On January 15, 2013 appellant, then a 49-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured the right side of her body and lower back when she picked up a tray of mail while in the performance of duty. She stopped work on that date and has not returned to work. OWCP assigned the claim OWCP File No. xxxxxx229.⁴ On August 24, 2018 it accepted appellant's claim for temporary aggravation of sprain of lumbar spine ligaments, initial encounter. OWCP paid her wage-loss compensation on the supplemental rolls, effective March 2, 2013.

On September 4, 2018 appellant filed a claim for compensation (Form CA-7) for disability from work for the period June 13 through December 27, 2013.

OWCP received medical evidence from Dr. Joseph B. Boucree, Jr., a Board-certified orthopedic surgeon. In work status form reports dated June 15 and September 7, 2013, Dr. Boucree advised that appellant was incapacitated from work from June 15 through July 27, 2013 and September 7 through October 15, 2013. He noted that she suffered an on-the-job injury. In narrative reports dated June 15, July 27, and October 5, 2013, Dr. Boucree noted a date of injury of January 15, 2013. He also noted appellant's continued complaints of neck and back pain with radicular pain in the upper and lower extremities, bilateral shoulder mechanical pain, right shoulder more pronounced. Dr. Boucree diagnosed lumbar sprain and strain.

Dr. Roy Berkowitz, a family practitioner, noted in work status form reports dated July 7 and 14, September 29, and November 3, 2014 that appellant remained incapacitated and unable to work from July 7 through August 11, 2014, and September 29 through December 9, 2014 due to a work-related injury at the employing establishment. In a November 20, 2013 narrative report, he noted appellant's history of injury on January 15, 2013. Dr. Berkowitz diagnosed lumbar sprain. He opined that appellant sustained an employment-related injury on January 15, 2013. In a July 7, 2014 narrative report, Dr. Berkowitz noted a date of injury of January 15, 2013 and reiterated his prior diagnosis of lumbar sprain. He opined that appellant was very depressed and unable to work as a consequence of her 2007 work injury. In a July 11, 2014 narrative report, Dr. Berkowitz again noted a date of injury of January 15, 2013. He further noted appellant's complaint of continued low back pain. Dr. Berkowitz advised that she would be able to return to full-duty work within six months of the date of his report. On July 14, 2014 he restated his prior diagnosis of lumbar sprain. Dr. Berkowitz provided an impression that appellant continued to be

³ Docket No. 15-1781 (issued December 21, 2015); *Order Remanding Case*, Docket No. 17-0057 (issued February 14, 2017); Docket No. 17-1627 (issued March 15, 2018).

⁴ Appellant has a prior traumatic injury claim assigned OWCP File No. xxxxxx753, wherein appellant alleged that, on February 6, 2007, she injured her right arm, wrist, and shoulder when she fell backwards while in the performance of duty.⁴ OWCP initially accepted the claim for contusion of the right wrist and other symptoms referable to the back. It later expanded the accepted conditions to include right rotator cuff tear. OWCP administratively combined OWCP File Nos. xxxxxx753 and xxxxxx229, with OWCP File No. xxxxxx753 designated as the master file.

incapacitated and unable to work due to a work-related injury. In a duty status report (Form CA-17) of even date, he diagnosed a lumbar sprain/strain due to injury and continued to advise that appellant was unable to work.

In an April 11, 2014 report, Dr. Edward Chorette, an internist, provided an impression of lumbar sprain. On May 15, 2014 he reported appellant's complaint of low back pain for approximately the past two years, which she informed was work related. Dr. Chorette discussed examination findings and indicated that appellant had an appointment with a different physician on May 24, 2014 regarding her shoulder surgery.

In a May 15, 2014 work status form report, Dr. Chorette advised that appellant was incapacitated from work through June 19, 2014.

Dr. Jeffrey Andry, a Board-certified family practitioner, in reports dated December 12, 2014, and January 16, February 13, and May 1, 2015, noted appellant's medical history which included low back pain, right side rotator cuff surgery, and major depression. He provided impressions of low back pain secondary to a lumbar sprain, depression, lumbar sprain with prior evidence of intervertebral disc disease with a herniated disc at L4-5, continued right shoulder pain despite several surgeries for right rotator cuff tear, contusion of the right wrist, brachial neuritis, cervicgia, and right rotator cuff sprain. In the January 16 and May 1, 2015 reports, Dr. Andry advised that appellant would remain off work.

OWCP, in a development letter dated September 17, 2018, informed appellant that the evidence submitted was insufficient to establish her claim for wage-loss compensation. It advised her of the type of medical evidence necessary to establish her claim and afforded her 30 days to submit the requested evidence.

In an undated response, appellant noted that she was unable to submit medical documents from 2013 because her physician was no longer in practice. She asserted that OWCP already had all the medical records from her physician in her file. Appellant further asserted that, since her claim had been approved, she was entitled to wage-loss compensation.

By decision dated November 1, 2018, OWCP denied appellant's claim for compensation for disability during the period June 13 through December 27, 2013. It found that the medical evidence of record was insufficient to establish that she was disabled from work during the claimed period causally related to her January 15, 2013 employment injury.

OWCP subsequently received a March 5, 2018 postoperative report from Dr. Kevin McCarthy, a Board-certified orthopedic surgeon, regarding a cervical fusion procedure and March 5 and 6, 2018 progress notes containing an illegible signature.

On December 17, 2018 appellant requested reconsideration of the November 1, 2018 decision.

By decision dated February 4, 2019, OWCP denied modification of its November 1, 2018 decision. It found that the medical evidence submitted did not contain a rationalized medical

opinion explaining the causal relationship between appellant's diagnosed conditions and disability from work during the period June 13 through December 27, 2013.⁵

In a November 16, 2020 *de novo* decision, OWCP again denied appellant's claim for wage-loss compensation for disability during the claimed period.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ 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.⁷ 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.⁸ 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.⁹

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.¹⁰ 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.¹¹

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.¹² 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.¹³

⁵ On October 23, 2019 OWCP paid appellant \$78.19 for a medical appointment on July 27, 2013.

⁶ *Supra* note 2.

⁷ *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).

⁸ *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).

⁹ *See* 20 C.F.R. § 10.5(f); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

¹⁰ *Id.* at § 10.5(f); *see e.g., G.T.*, 18-1369 (issued March 13, 2019); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

¹¹ *G.T., id.*; *Merle J. Marceau*, 53 ECAB 197 (2001).

¹² *See S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

¹³ *C.B.*, Docket No. 18-0633 (issued November 16, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work for the period June 13 through December 27, 2013 causally related to her accepted January 15, 2013 employment injury.

In support of her claim for compensation, appellant submitted reports from Dr. Berkowitz. In a July 7, 2014 report, Dr. Berkowitz diagnosed lumbar sprain. He opined that appellant was very depressed and unable to work as a consequence of her 2007 work injury. Although Dr. Berkowitz opined that appellant developed employment-related disability, his opinion is of limited probative value because he did not explain, with rationale, how or why appellant was unable to perform her regular work during the claimed period of disability due to the effects of her accepted conditions. 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.¹⁴ Therefore, Dr. Berkowitz' report is insufficient to establish appellant's disability claim.

Similarly, while Dr. Berkowitz, in his work status form reports dated June 15, 2013 through November 3, 2014, narrative reports dated July 11 and 14, 2014, and Form CA-17 report dated July 14, 2014 placed appellant off work on intermittent dates during the period June 15, 2013 through December 9, 2014 due to a work-related injury, he did not explain, with rationale, how or why appellant was unable to perform her regular work during the claimed period of disability due to the effects of her accepted conditions. Therefore, these reports are insufficient to establish appellant's disability claim.¹⁵

Dr. Berkowitz' November 20, 2013 report is also insufficient to establish appellant's disability claim. In his November 20, 2013 report, he opined that appellant sustained an employment-related lumbar sprain on January 15, 2013. However, Dr. Berkowitz did not offer an opinion as to whether she had disability during the claimed period causally related to an accepted 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.¹⁶ Therefore, this evidence is insufficient to establish appellant's disability claim.

While Dr. Berkowitz' remaining report dated July 11, 2014 indicated that appellant could return to full-duty work within six months of the date of his report, this evidence does not provide an opinion concerning appellant's disability for the period June 13 through December 2013.

¹⁴ See *T.S.*, Docket No. 20-1229 (issued August 6, 2021); *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).

¹⁵ *Id.*

¹⁶ See *T.S.*, *supra* note 14; *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).

Therefore, Dr. Berkowitz' report is of no probative value and insufficient to establish the disability claim.¹⁷

Appellant also submitted reports from Dr. Boucree. In work status form reports dated June 15 and September 7, 2013, Dr. Boucree advised that appellant was incapacitated from work from June 15 through July 27, 2013 and September 7 through October 15, 2013. He indicated that she suffered an on-the-job injury. However, Dr. Boucree did not explain, with rationale, how or why appellant was unable to perform her regular work during the claimed period of disability due to the effects of her accepted conditions. Thus, his reports are insufficient to establish appellant's disability claim.¹⁸

In narrative reports dated June 15, July 27, and October 5, 2013, Dr. Boucree diagnosed lumbar sprain and strain and opined that appellant sustained an employment-related injury on January 15, 2013. However, he did not offer an opinion that appellant was disabled during the claimed period causally related to an accepted employment condition. Therefore, these reports are of no probative value and, thus, insufficient to establish appellant's disability claim.¹⁹

Further, the reports of Dr. Andry, Dr. Chorette, and Dr. McCarthy do not provide an opinion concerning appellant's disability for the period June 13 through December 2013. They are, therefore, of no probative value and insufficient to establish the disability claim.²⁰

Appellant submitted progress notes containing an illegible signature. 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.²¹ Accordingly, this report is insufficient to establish appellant's claim.

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.²² Because appellant has not submitted rationalized medical opinion evidence sufficient to establish employment-related total disability during the claimed period due to her accepted conditions, the Board finds that she has not met her burden of proof to establish her claim.

¹⁷ *M.V.*, Docket No. 20-0872 (issued January 27, 2020); *P.R.*, Docket No. 20-0596 (issued October 6, 2020); *M.L.*, Docket No. 18-1058 (issued November 21, 2019); *D.J.*, Docket No. 18-0200 (issued August 12, 2019).

¹⁸ *See supra* note 13.

¹⁹ *See supra* note 14.

²⁰ *See supra* note 16.

²¹ *See T.S.*, *supra* note 14; *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).

²² *Supra* note 7.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish disability for the period June 13 through December 27, 2013 causally related to her accepted January 15, 2013 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the November 16, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 12, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board