

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

_____)
D.D., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Nashville, TN, Employer)
_____)

Docket No. 21-0775
Issued: November 23, 2021

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 March 25, 2021 appellant filed a timely appeal from a February 11, 2021 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 February 11, 2021 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 commencing November 28, 2020 through January 9, 2021 causally related to the accepted July 23, 2020 employment injury.

FACTUAL HISTORY

On July 24, 2020 appellant, then a 35-year-old mail handler assistant, filed a traumatic injury claim (Form CA-1) alleging that on July 23, 2020 when lifting a heavy mail sack weighing what he believed to be over 70 pounds, he experienced back pain while in the performance of duty. He did not immediately stop work. OWCP paid appellant wage-loss compensation on the supplemental rolls from September 11 through November 20, 2020.

On July 24, 2020 appellant was treated in the emergency room by Dr. Roderick I. Bahner, Jr., Board-certified in emergency medicine, for back and thoracic pain that developed after appellant was unloading a truck at work. X-rays of the right scapula and thoracic spine revealed no acute fracture. Dr. Bahner diagnosed posterior thoracic muscle strain. In a work excuse note of even date, he returned appellant to work with a lifting restriction of 20 pounds. Appellant was also treated in the emergency room by Tricia Ferguson, a registered nurse, on July 24, 2020 who noted that appellant needed to follow-up with a specialist before returning to work.

On September 9, 2020 OWCP accepted appellant's claim for sprain of the ligaments of the thoracic spine.

OWCP received additional evidence. Appellant was treated by Dr. Kevin E. Bradshaw, a chiropractor, on September 8, 2020 for back pain that developed after a work injury. Dr. Bradshaw released appellant from work until evaluated by an orthopedist.

On September 15, 2020 Dr. David H. McCord, a Board-certified orthopedic surgeon, treated appellant for a work-related back injury sustained on July 23, 2020 while lifting a heavy sack of packages weighing approximately 75 to 80 pounds onto a conveyor belt. Findings on examination revealed antalgic gait, tenderness at T7-9, L1-2, and L5-S1, restricted range of motion, positive straight leg raises on the right, and burning and tingling of the right buttock and inner thigh. An x-ray of the lumbar spine revealed levoscoliosis with mild lumbar spondylosis. An x-ray of the thoracic spine revealed mild thoracic spondylosis, dextroscoliosis of the upper thoracic spine, and questionable lack of segmentation at T3-4. In a medical status form dated September 24, 2020, Dr. McCord noted that appellant would be unable to return to work until further testing was completed. On October 8, 2020 he reviewed a magnetic resonance imaging (MRI) scan, which revealed no disc herniation or severe stenosis, but a congenital fusion at T4-5. Dr. McCord recommended facet injections at T7-8 and T8-9. In a medical status form dated October 8, 2020, he indicated that appellant was undergoing facet block injections and would be unable to return to work until after appellant's follow-up appointment.

An MRI scan of the thoracic spine dated October 8, 2020 revealed congenital fusion of T3 and T4 with lack of segmentation across the disc space, degenerative change above and below the

congenital fusion most severely at C4-5 where facet arthritis results in severe right foraminal stenosis.

On October 20, 2020 appellant filed claims for compensation (Form CA-7) for work-related disability for the period September 11 through October 9, 2020.

In an October 26, 2020 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of additional evidence required and afforded him 30 days to submit the requested evidence.

OWCP received additional evidence. An October 29, 2020 record of care indicated that Dr. McCord performed a right-sided facet block injection at T7 through T9. He diagnosed spondylosis. On November 17, 2020 Dr. McCord reported that appellant received four or five days of relief from the facet blocks when appellant's symptoms returned. He recommended repeat facet blocks on the right side at T7-8 and T8-9. In a work capacity evaluation (Form OWCP-5c) dated November 17, 2020, Dr. McCord treated appellant for back pain. He returned appellant to work on November 21, 2020 with restrictions. In a medical status form dated November 17, 2020, Dr. McCord returned appellant to limited-duty work on November 21, 2020.

On November 22, 2020 the employing establishment offered appellant a modified mail handler position performing light duty effective November 22, 2020. Appellant accepted the position and returned to work.

In a medical status form dated December 1, 2020, Dr. McCord noted that appellant was unable to return to work as he was undergoing facet blocks in his spine. On December 17, 2020 he performed a right-sided facet block injection at T7-8 and T8-9. Dr. McCord diagnosed spondylosis.

Appellant filed Form CA-7 for the period November 28 through December 4, 2020.

In a December 14, 2020 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of additional evidence required and afforded him 30 days to submit the requested evidence.

Appellant filed Form CA-7 for work-related disability for the period December 5, 2020 through January 9, 2021.

OWCP received additional evidence. On January 5, 2021 Dr. McCord treated appellant in follow-up and indicated that the series of facet injections on the right side at T7-8 and T8-9 provided only 24 hours of relief. He noted that appellant's condition worsened and he recommended radiofrequency ablation. Dr. McCord advised that appellant remain on limited duty. In a medical status form of even date, he recommended a brace, imposed lifting restrictions and returned appellant to limited-duty work on January 10, 2021.

By decision dated February 11, 2021, OWCP denied appellant's claims for wage-loss compensation, finding that he had not established disability from work commencing November 28, 2020 through January 9, 2021 causally related to the accepted July 23, 2020 employment injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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.⁴ 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.⁵ 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.⁶

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.⁷ 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 and he or she is entitled to compensation for any loss of wages.⁸

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.⁹ 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.¹⁰

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish disability for the period November 28, 2020 through January 9, 2021, causally related to his accepted July 23, 2020 employment injury.

³ *Supra* note 1.

⁴ *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).

⁵ *See M.B.*, Docket No. 18-1455 (issued March 11, 2019); *D.W.*, Docket No. 18-0644 (issued November 15, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

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

⁷ *Id.* at § 10.5(f); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

⁸ *See G.T.*, Docket No. 18-1369 (issued March 13, 2019); *Merle J. Marceau*, 53 ECAB 197 (2001).

⁹ *See S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

¹⁰ *C.B.*, Docket No. 18-0633 (issued November 16, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

In support of his claims for compensation, appellant submitted reports from Dr. McCord beginning September 15, 2020 through January 5, 2021 describing his history of injury on July 23, 2020. On October 29, 2020 Dr. McCord performed a right-sided facet block injection at T7 through T9 and diagnosed spondylosis. On November 17, 2020 he reported that appellant had only temporary relief from the facet blocks and recommended repeat facet blocks on the right side at T7-8 and T8-9. However, Dr. McCord does not specifically address dates of disability or offer an opinion regarding appellant's disability from work for the period commencing November 28, 2020.¹¹ Accordingly, his reports are of no probative value and are insufficient to establish appellant's claim for compensation.¹²

In a work capacity evaluation (OWCP-5c) dated November 17, 2020, Dr. McCord treated appellant for back pain and returned appellant to work on November 21, 2020 with restrictions. In medical status forms dated November 17, 2020 and January 5, 2021, he returned appellant to limited duty on November 21, 2020 and January 5, 2021, respectively. Similarly, in a medical status form dated December 1, 2020, Dr. McCord noted that appellant was unable to return to work as he was undergoing facet blocks in his spine. Likewise, on January 5, 2021, he indicated that the series of facet injections gave only temporary relief and appellant's condition worsened. Dr. McCord recommended radiofrequency ablation and continued limited duty. However, these reports are of no probative value because he did not provide an opinion that appellant was disabled from work or working limited duty during the claimed period, beginning November 28, 2020, causally related to the accepted July 23, 2020 thoracic sprain.¹³ Therefore, these reports are insufficient to establish his claim.

As the medical evidence of record is insufficient to establish employment-related disability from work commencing November 28, 2020 through January 9, 2021 causally related to the accepted July 23, 2020 employment injury, the Board finds that appellant has not met his burden of proof to establish his 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(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 commencing November 28, 2020 through January 9, 2021 causally related to his accepted July 23, 2020 employment injury.

¹¹ *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018); *see also William A. Archer*, 55 ECAB 674 (2004) (the Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of claimed disability).

¹² *See M.M.*, Docket No. 18-0817 (issued May 17, 2019); *M.C.*, Docket No. 16-1238 (issued January 26, 2017).

¹³ *Supra* note 11.

ORDER

IT IS HEREBY ORDERED THAT the February 11, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 23, 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