United States Department of Labor
Employees' Compensation Appeals Board

J.L., Appellant	)	
and	)	**Docket No. 20-0992**
	)	**Issued: August 9, 2022**
DEPARTMENT OF HOMELAND SECURITY, U.S. CUSTOMS & BORDER PROTECTION, Nogales, AZ, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 9, 2020 appellant, through counsel, filed a timely appeal from a March 6, 2020 merit decision 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 over the merits of this case.

[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*.

ISSUE

The issue is whether appellant has met his burden of proof to establish disability from work for the period June 11 through July 12, 2012 causally related to his accepted January 27, 2012 employment injury.

FACTUAL HISTORY

On March 2, 2012 appellant, then a 23-year-old customs and border patrol officer, filed a traumatic injury claim (Form CA-1) alleging that on January 27, 2012 he sustained a right thumb sprain when he bent his thumb backward while practicing defensive tactics, in the performance of duty. He did not stop work. On April 4, 2012 OWCP accepted appellant's claim for right thumb and wrist sprains.

Appellant underwent occupational therapy for the period May 8 through June 5, 2012.

OWCP received a May 24, 2012 report, wherein Dr. Michael J. Cunningham, a Board-certified orthopedic surgeon, recommended that appellant continue occupational therapy for four weeks. In a separate treatment note of even date, Dr. Cunningham described appellant's history of injury and treatment with anti-inflammatories. He diagnosed sprain of the ulnar collateral ligaments and de Quervain's tenosynovitis. Dr. Cunningham found that appellant could continue with heavier activities with a protective thumb splint. On June 14, 2012 he repeated his diagnoses and recommended that appellant continue to use the thumb brace during significant manual activities, but otherwise not wear it.

In a June 26, 2012 note, Dr. Cunningham repeated his diagnoses of sprain of the ulnar collateral ligament and de Quervain's tenosynovitis and found that appellant was making progress with therapy. He recommended that appellant start to wean from use of the thumb split, only using it during heavy manual types of activities. On July 16, 2012 Dr. Cunningham prescribed another six weeks of therapy.[3] In a treatment note of even date, he found a mild flare up of appellant's right de Quervain's tenosynovitis and further found that his ulnar collateral ligament sprain was stable and healed. Dr. Cunningham recommended that appellant continue with moderate levels of activity, but remain off work. In a note dated August 28, 2012, he found that appellant's right wrist and thumb conditions of ulnar collateral ligament sprain and de Quervain's tenosynovitis had improved. Dr. Cunningham found that appellant could return to his usual job duties on August 29, 2012.[4]

On June 17, 2019 appellant filed a claim for compensation (Form CA-7) for disability from work during the period June 11 through July 12, 2012. On the reverse side of the form, the employing establishment noted that he was terminated on May 5, 2012.

[3] Appellant continued occupational therapy based on Dr. Cunningham's diagnoses and prescription through August 9, 2012.

[4] By decision dated November 16, 2017, OWCP denied expansion of appellant's claim to include the additional conditions of de Quervain's tenosynovitis and ulnar collateral ligament sprain as causally related to the January 27, 2012 employment injury.

In a July 15, 2019 compensation claim development letter, OWCP requested that appellant provide additional medical evidence addressing his claimed disability from work for the period June 11 through July 12, 2012. It afforded him 30 days to respond.

On August 1, 2019 Dr. Cunningham noted that appellant sustained a thumb and wrist injury in 2012 while in training. He diagnosed sprain of the ulnar collateral ligament of the right wrist and de Quervain's tenosynovitis. Dr. Cunningham reported that appellant was held off work due to the sprain and the discomfort that he was experiencing at that time.

By decision dated October 8, 2019, OWCP denied appellant's claim for compensation, finding that the medical evidence was insufficient to establish disability from work during the period June 11 through July 12, 2012 causally related to the accepted employment injury.

On October 16, 2019 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on February 4, 2020.

By decision dated March 6, 2020, OWCP's hearing representative affirmed the October 8, 2019 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] 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.[6] From each period of disability claimed, the employee has the burden of establishing that he or she was disabled from work as a result of the accepted employment injury.[7] 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.[8]

Under FECA the term "disability" means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.[9] 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 his or her federal employment, but who nonetheless has the capacity to earn the wages that he or she was receiving at the time of

[5] *Supra* note 2.

[6] *See C.B.*, Docket No. 20-0629 (issued May 26, 2021); *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).

[7] *D.R.*, Docket No. 18-0232 (issued October 2, 2018).

[8] *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

[9] *B.K.*, Docket No. 18-0386 (issued September 14, 2018); 20 C.F.R. § 10.5(f).

injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.[10] When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they 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 claimed disability and the accepted employment injury.[13]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish disability from work for the period June 11 through July 12, 2012 causally related to his accepted January 27, 2012 employment injury.

In reports dated May 24, June 14, and June 26, 2012, Dr. Cunningham described appellant's history of injury and diagnosed sprain of the ulnar collateral ligaments and de Quervain's tenosynovitis. He recommended that appellant use a thumb brace during manual activities. On July 16, 2012 Dr. Cunningham found a mild flare up of appellant's right de Quervain's tenosynovitis and recommended that he continue with moderate levels of activity, but remain off work. On August 28, 2012 he opined that appellant could return to his usual job duties on August 29, 2012. On August 1, 2019 Dr. Cunningham diagnosed sprain of the ulnar collateral ligament of the right wrist and de Quervain's tenosynovitis. He reported that appellant was held off work due to the sprain and the discomfort that he was experiencing at that time. These reports address nonaccepted conditions. As Dr. Cunningham did not relate appellant's claimed period of disability to the accepted employment conditions of right thumb and wrist sprain, this evidence is of no probative value.[14]

As the medical evidence of record does not contain a rationalized medical opinion establishing disability from work during the claimed period due to his accepted employment injury, the Board finds that appellant has not met his burden of proof.

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.

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[10] *S.M.*, Docket No. 19-0658 (issued March 17, 2020); *B.A.*, Docket No. 17-1471 (issued July 27, 2018).

[11] *K.H.*, Docket No. 19-1635 (issued March 5, 2020).

[12] *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).

[14] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish disability from work for the period June 11 through July 12, 2012 causally related to his accepted January 27, 2012 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the March 6, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 9, 2022
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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