

FACTUAL HISTORY

On September 3, 2010 appellant, then a 26-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on September 3, 2010 he injured the right side of his back and left elbow when he stepped and fell on a wet floor by an automation desk while in the performance of duty. He did not stop work. OWCP initially accepted appellant's claim for: back sprain, lumbar region; back contusion; and left elbow contusion. It later expanded the accepted conditions to include thoracic or lumbosacral neuritis or radiculitis. OWCP authorized lumbar facet injections appellant received beginning on December 2, 2011.

On November 2 and 13, 2020 appellant filed additional CA-7 forms claiming compensation for disability from work from October 10 through November 6, 2020. In accompanying time analysis forms (Form CA-7a), he requested 134 hours of wage-loss compensation from October 10 through November 6, 2020 due to his physician's restrictions.

In development letters dated November 6 and 13, 2020, OWCP informed appellant that additional evidence was needed to establish his claims for compensation for total disability from work during the period October 10 through November 6, 2020. It afforded him 30 days to submit the necessary evidence.

OWCP subsequently received medical evidence from Dr. Kevin P. McCarthy, a Board-certified orthopedic surgeon. In a November 18, 2020 medical report, Dr. McCarthy discussed physical examination findings and reviewed diagnostic results. He provided impressions of a history of L4-S1 radioactive ablation, lumbar spondylosis, and low back pain.

Dr. McCarthy, in a December 23, 2020 disability form, diagnosed the accepted condition of lumbar spine sprain. He also diagnosed lumbar spondylosis without myelopathy or radiculopathy and low back pain. Dr. McCarthy placed appellant off work from October 9, 2020 through February 10, 2021. He noted that the reason for disability was lumbar pain.

In a physical therapy order dated November 25, 2020, Dr. McCarthy diagnosed lower back pain with facet syndrome and ordered physical therapy.

OWCP also received a January 12, 2021 physical therapy initial evaluation report and January 14, 2021 physical therapy daily note.

In a January 19, 2021 decision, OWCP denied appellant's claims for disability for the period October 10 through November 6, 2020, finding that the medical evidence of record was insufficient to establish that he was disabled from work due to his accepted work-related conditions.

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

³ *Supra* note 1.

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, 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 claimed disability and the accepted employment injury.¹⁰

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish disability from work during the period October 10 through November 6, 2020 causally related to his accepted September 3, 2010 employment injury.

In support of his claims, appellant submitted medical evidence from Dr. McCarthy. In a December 23, 2020 disability form, Dr. McCarthy diagnosed the accepted condition of lumbar spine sprain, as well as, lumbar spondylosis without myelopathy or radiculopathy, and low back pain. He placed him off work from October 9, 2020 through February 10, 2021. Dr. McCarthy opined that appellant's disability was due to lumbar pain. Although he related that appellant was temporarily totally disabled, Dr. McCarthy did not relate appellant's disability to his accepted employment conditions.¹¹ Rather, he attributed his disability to lumbar pain. The Board has held,

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 *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).

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

⁸ *G.T.*, *id.*; *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 *T.S.*, Docket Nos. 20-1177 and 20-1296 (issued May 28, 2021); *V.A.*, Docket No. 19-1123 (issued October 29, 2019).

¹¹ *R.A.*, Docket No. 19-1752 (issued March 25, 2020); *V.G.*, Docket No. 18-0936 (issued February 6, 2019).

however, that pain is a symptom and not a compensable medical diagnosis.¹² Further, the Board notes that OWCP has not accepted appellant's claim for lumbar spondylosis without myelopathy or radiculopathy as employment related. For conditions not accepted by OWCP as being employment related, it is the employee's burden of proof to provide rationalized medical evidence sufficient to establish causal relation, not OWCP's burden to disprove such relationship.¹³ For these reasons, the Board finds that Dr. McCarthy's disability form is insufficient to establish appellant's disability claim.

Dr. McCarthy's remaining November 18, 2020 report and November 25, 2020 physical therapy order addressed appellant's diagnosed conditions and medical treatment, but failed to offer an opinion as to whether appellant was disabled from work due to the accepted employment injury. Therefore, his reports are of no probative value and are insufficient to establish appellant's claim for compensation.¹⁴

Appellant also submitted a January 12, 2021 physical therapy initial evaluation report and January 14, 2021 physical therapy daily note from his physical therapists. These reports, however, do not constitute competent medical evidence because physical therapists are not considered physicians as defined under FECA. Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to compensation benefits.¹⁵

Because appellant has not submitted rationalized medical opinion evidence to establish employment-related total disability during the claimed period due to his accepted employment conditions, the Board finds that he 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 and 20 C.F.R. §§ 10.605 through 10.607.

¹² *R.N.*, Docket No. 19-1004 (issued October 18, 2019); *A.T.*, Docket No. 19-0410 (issued August 13, 2019); *Robert Broome*, 57 ECAB 339, 342 (2004).

¹³ *E.F.*, Docket No. 18-1723 (issued May 1, 2019); *T.W.*, Docket No. 16-0176 (issued January 10, 2018); *G.A.*, Docket No. 09-2153 (issued June 10, 2010); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Alice J. Tysinger*, 51 ECAB 638 (2000).

¹⁴ *C.S.*, Docket No. 19-1377 (issued February 26, 2020); *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *K.M.*, Docket No. 17-1730 (issued February 9, 2018); *R.R.*, Docket No. 17-1368 (issued October 19, 2017) (the Board found reports that contained no opinion or explanation on causal relationship to be of limited probative value and insufficient to meet appellant's burden of proof).

¹⁵ 5 U.S.C. § 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 20 C.F.R. § 10.5(t). See also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *C.L.*, Docket No. 20-0510 (issued June 9, 2021) (physical therapists are not physicians as defined by FECA); *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).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish disability from work during the period October 10 through November 6, 2020, causally related to his accepted September 3, 2010 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the January 19, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 5, 2022
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