



## ISSUE

The issue is whether appellant has met her burden of proof to establish disability from work commencing March 14, 2020 causally related to her accepted November 26, 2019, employment injury.

## FACTUAL HISTORY

On December 9, 2019 appellant, then a 62-year-old regular rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 26, 2019, she injured her left foot, right ankle, and right leg when she fell into a hole as she was placing a package on a porch while in the performance of duty. She stopped work on November 27, 2019 and returned to work on December 9, 2019. On February 14, 2020 OWCP accepted the claim for contusion on right great toe without damage to the nail, initial encounter.

On March 30, 2020 appellant filed a claim for compensation (Form CA-7) for disability from work for the period March 14 through 27, 2020.

In a development letter dated March 31, 2020, OWCP advised appellant that no evidence had been submitted to establish her claim for intermittent disability during the period March 14 through 27, 2020. It afforded her 30 days to submit the necessary evidence.

OWCP received medical reports from Dr. Abdul Latif Nurudeen, an attending podiatrist. In progress notes dated January 7 and 28, February 12, and March 2, 2020, Dr. Nurudeen noted a history of appellant's November 26, 2019, employment injury. He provided impressions that included the accepted condition of contusion on right great toe without damage to the nail, initial encounter, and other hammer toe(s) (acquired), right foot; pain in right toe(s), left ankle, and joints of left foot; and post-traumatic osteoarthritis, left ankle and foot.

In an undated attending physician's report, Part B of an authorization for examination and/or treatment (Form CA-16), Dr. Nurudeen reiterated appellant's history of injury. For the diagnosis he referenced his progress notes. Dr. Nurudeen checked a box marked "Yes" to indicate that the diagnosed condition was caused or aggravated by the reported employment activity. Additionally, he advised that appellant was disabled as of November 26, 2020, and she was unable to return to work.

On April 20, 2020 appellant filed another Form CA-7, claiming compensation for disability from work for the period March 28 through April 10, 2020.

OWCP, by development letter dated April 22, 2020, again advised appellant that no evidence had been submitted to establish her claim for disability commencing March 28, 2020 and continuing. It afforded her 30 days to submit the necessary evidence. No response was received.

By decision dated May 6, 2020, OWCP denied appellant's claims for compensation for disability from work for the period March 14 through 27, 2020, finding that the medical evidence of record was insufficient to establish disability during the claimed period due to her November 26, 2019 employment injury.

On May 6, 2020 appellant filed an additional Form CA-7, claiming disability from work for the period April 11 through 24, 2020.

OWCP subsequently received progress notes dated April 28 and May 5, 2020, and a May 1, 2020, duty status report (Form CA-17) in which Dr. Nurudeen restated his impressions of left ankle post-traumatic osteoarthritis and left ankle and left foot joint pain. Dr. Nurudeen indicated that the diagnosed conditions were due to appellant's November 26, 2019, employment injury. He continued to advise that she was unable to work.

On May 29 and June 17, 2020 appellant filed a Form CA-7 claim for compensation for the period May 2 through 29, 2020.

Dr. Nurudeen, in an undated report, advised that appellant's left ankle post-traumatic osteoarthritis and left ankle and left foot joint pain commenced as of January 7, 2020, and that her conditions would continue for six to nine months.

In a form dated May 14, 2020, Dr. Joseph L. Finstein, a Board-certified orthopedic surgeon, noted that appellant was seen for right knee complex tear of the medial meniscus.

OWCP, by decision dated June 18, 2020, denied appellant's claims for compensation for the period March 28 through May 29, 2020. It found that the medical evidence of record was insufficient to establish disability during the claimed period due to the accepted employment injury.

On June 18, 2020 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

OWCP thereafter received a May 27, 2020, therapy order wherein Dr. Finstein diagnosed sprain of the anterior cruciate ligament (ACL) of the right knee, initial encounter. Dr. Finstein ordered physical therapy to treat appellant's diagnosed condition.

In a June 9, 2020 progress note, Dr. Nurudeen reiterated appellant's left ankle and left foot diagnoses.

Appellant filed additional Form CA-7 claims for compensation for the period May 30 through June 26, 2020.

In a July 20, 2020 development letter, OWCP informed appellant that no evidence had been submitted to establish her claim for intermittent disability from work commencing May 30, 2020. It afforded her 30 days to submit the required evidence.

On July 28, 2020 appellant filed a Form CA-7 for compensation for disability for the period June 27 through July 10, 2020.

In a July 7, 2020 progress note, Dr. Nurudeen provided impressions of short Achilles' tendon (acquired), right and left ankles. In a Form CA-17 report of even date, he again advised that appellant's diagnoses of post-traumatic osteoarthritis of the left ankle and pain in the left ankle and left foot joints were due to her November 26, 2019, employment injury and opined that she was unable to return to work.

In a chart note dated July 7, 2020, Dr. Finstein provided an assessment of right ACL sprain and medial meniscal scuff. He advised that appellant could return to work but noted that she would

require accommodations if she were bothered by her knee condition. Also, in a therapy order of even date, Dr. Finstein ordered physical therapy to treat appellant's right knee ACL sprain.

On July 27, 2020 OWCP referred appellant, a statement of accepted facts (SOAF), the medical record, and a list of questions, to Dr. Christopher E. Cenac, Sr., a Board-certified orthopedic surgeon, for a second opinion evaluation to determine appellant's work capacity and whether she sustained additional conditions causally related to her November 26, 2019, employment injury.

On July 23, 2020 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review regarding the May 6, 2020, decision.

Following a preliminary review, by decision dated August 19, 2020, the OWCP hearing representative vacated the May 6 and June 18, 2020 decisions. The hearing representative remanded the case to OWCP to address the entire period of claimed disability, to develop appellant's wage-loss claims by issuing a development letter to appellant's current mailing address, and to further develop the medical evidence as to whether the acceptance of appellant's claim should be expanded to include additional conditions prior to its issuance of a decision on her wage-loss claims.

In a July 21, 2020 progress note, Dr. Nurudeen reiterated his impressions of acquired right and left ankle short Achilles' tendon.

In progress notes dated July 29 and August 12, 2020, Dr. Robert Kadish, an attending podiatrist, noted appellant's history of injury on November 26, 2019, and provided impressions of peroneal tendinitis, left leg; post-traumatic osteoarthritis, left ankle and foot; and pain in left ankle and joints of left foot.

An August 4, 2020 left ankle magnetic resonance imaging (MRI) scan report from Dr. Bernard Landry, a Board-certified diagnostic radiologist, revealed an impression of subtle focal tendinosis in the retro malleolar segment of the peroneus longus tendon identified without full thickness tear.

Dr. Finstein, in a chart note and report dated August 14, 2020, reiterated his diagnosis of right ACL sprain with medial meniscal scuff and opinion that appellant may resume work with restrictions.

In an August 25, 2020 report, Dr. Cenac reviewed the SOAF and the medical record and discussed examination findings. He noted that appellant had subjective complaints not substantiated by objective physical findings, x-ray studies, or diagnostic studies. Dr. Cenac found no evidence of a traumatic structural injury identified on imaging studies of the right knee and left ankles. He indicated that appellant may have had a temporary left ankle sprain and right knee contusion, but he maintained that these temporary diagnoses had long since resolved. Dr. Cenac explained that she had a completely normal physical examination. He opined that appellant's work-related conditions had resolved and there was no need for further treatment. Dr. Cenac recommended a functional capacity evaluation (FCE) to confirm that she had subjective complaints not supported by objective physical findings. He also recommended Waddell testing. Dr. Cenac related that he had identified symptom magnification and illness behavior. In an accompanying work capacity evaluation (Form OWCP-5c) dated October 26, 2020, he advised that appellant could perform her usual job without restrictions.

On September 8, 2020 OWCP referred appellant for diagnostic testing.

In a development letter dated September 15, 2020, OWCP informed appellant that no medical evidence had been submitted in support of her claims for compensation for the period March 14 through July 10, 2020. It advised her of the type of medical evidence needed to establish her disability claims.

OWCP thereafter received chart notes dated September 29 and October 30, 2020, from Dr. Finstein who reiterated his diagnosis of right ACL sprain with medial meniscal scuff. In a September 29, 2020 report, Dr. Finstein advised that appellant could return to light-duty work with restrictions.

On November 13, 2020 appellant filed a Form CA-7 claim for disability from work during the period July 11 through 29, 2020.

Dr. Kadish, in progress notes dated September 23 and October 21, 2020, and an October 1, 2020 Form CA-17, restated his impressions of left leg peroneal tendinitis, left ankle and foot post-traumatic osteoarthritis, and left ankle and left foot joint pain. In his October 1, 2020 Form CA-17 report, he advised that appellant's diagnosed conditions were due to her November 26, 2019 employment injury and that she was unable to perform her regular work duties.

An October 6, 2020 FCE determined that appellant could perform full-time sedentary work, which was below her prior heavy physical demand letter carrier position.

On October 26, 2020 Dr. Cenac reviewed the October 6, 2020 FCE. He related that, as suspected, the FCE confirmed symptom magnification and illness behavior. Dr. Cenac further related that the consistency of effort results indicated significant observational and evidence-based inconsistencies resulting in self-limiting behavior and submaximal effort. Reliability of pain results indicated that appellant's functional pain reports were unreliable. Dr. Cenac advised that his prior opinion in his August 25, 2020, report remained unchanged. He concluded that the final diagnosis was temporary left ankle sprain and right knee contusion that had long since resolved.

On December 30, 2020 OWCP requested that Dr. Cenac clarify whether appellant's claim should be accepted for the additional conditions of temporary sprain of the left ankle and contusion of the right knee, and if so, provide when these conditions resolved.

Appellant filed additional CA-7 forms for compensation for the period September 5 through December 18, 2020, and December 26, 2020 through March 13, 2021.

In January 13 and February 10, 2021 progress notes and a January 14, 2021 Form CA-17 report, Dr. Kadish continued to provide his left leg, left ankle and foot impressions. In his January 14, 2021 Form CA-17 report, Dr. Kadish reiterated his opinion on causal relationship.

Dr. Nurudeen, in a February 11, 2021 report, diagnosed left peroneal tendon repair.

In an April 6, 2021 decision, OWCP expanded the acceptance of appellant's claim to include contusion of right knee, initial encounter, and sprain of another ligament of left ankle, initial encounter.

By *de novo* decision also dated April 6, 2021, OWCP denied appellant's claim for compensation for disability from work commencing March 14, 2020, and continuing based on Dr. Cenac's second opinion reports.

On April 14, 2021 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

Appellant continued to file CA-7 forms for compensation for the period March 14 through August 13, 2021.

Dr. Kadish, in a February 22, 2021 progress note, reiterated appellant's left leg, ankle and foot diagnoses. In an operative report dated March 1, 2021, Dr. Kadish diagnosed peroneus brevis longitudinal tendon tear. He performed repair of peroneus brevis tendon, left foot. Dr. Kadish, in a July 6, 2021 prescription, noted that appellant was incapacitated until further notice due to recovery from her left foot tendon repair.

A telephonic hearing was held on July 19, 2021. By decision dated October 21, 2021, a second OWCP hearing representative affirmed the April 6, 2021, decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

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 the reliable, probative, and substantial medical evidence.<sup>8</sup> The medical evidence required to establish causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be

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<sup>4</sup> *Supra* note 2.

<sup>5</sup> 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).

<sup>6</sup> 20 C.F.R. § 10.5(f); *J.S.*, Docket No. 19-1035 (issued January 24, 2020).

<sup>7</sup> *T.W.*, Docket No. 19-1286 (issued January 13, 2020).

<sup>8</sup> *A.S.*, Docket No. 20-0406 (issued August 18, 2021); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

supported by medical rationale explaining the nature of the relationship between the claimed disability and the specific employment factors identified by the claimant.<sup>9</sup>

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates 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.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work commencing March 14, 2020, causally related to her accepted November 26, 2019, employment injury.

Second opinion physician Dr. Cenac, in his August 25, 2020, report, opined that appellant's accepted conditions had resolved and there was no need for further treatment. He noted that she may have had a temporary left ankle sprain and right knee contusion, which were subsequently accepted as work related by OWCP, but he advised that these temporary diagnoses had long since resolved. Dr. Cenac explained that appellant's examination was completely normal and there were no objective findings to substantiate her subjective complaints. He concluded that she could perform her usual job without restrictions. In a supplemental report dated October 26, 2020, Dr. Cenac reviewed the October 6, 2020, FCE and advised that his August 25, 2020, opinion remained unchanged. He explained that the FCE confirmed his suspension of symptom magnification and illness behavior. Dr. Cenac noted that the FCE revealed significant observational and evidence-based inconsistencies resulting in self-limited behavior and submaximal effort, and unreliable functional pain reports. He concluded that appellant's final diagnosis was temporary sprain of the left ankle and contusion of the right knee that had long since resolved. Dr. Cenac based his opinion on a proper factual and medical history. He provided physical examination findings and a well-rationalized opinion based on the medical evidence regarding the accepted conditions causally related to appellant's November 26, 2019, employment injury. Accordingly, the Board finds that Dr. Cenac's reports represent the weight of the medical evidence and establish that appellant was not disabled commencing March 14, 2020, and continuing, causally related to the accepted employment injury.

In support of her claims for compensation, appellant submitted reports from her attending physician, Dr. Nurudeen. In CA-17 reports dated May 1 and July 7, 2020, Dr. Nurudeen diagnosed left ankle and foot post-traumatic osteoarthritis, and left ankle and left foot joint pain due to the November 26, 2019, employment injury. He advised that appellant was unable to work. In an undated attending physician's report, Dr. Nurudeen checked a box marked "Yes" to indicate that the diagnosed conditions were caused or aggravated by the accepted employment injury. He also advised that appellant was disabled as of November 26, 2020, and she was unable to return to work. Although Dr. Nurudeen opined that she was disabled during the claimed period, he failed to explain how the November 26, 2019, employment injury was responsible for her disability and why she was unable to perform the duties of her position during the period claimed. The Board

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<sup>9</sup> *T.L.*, Docket No. 20-0978 (issued August 2, 2021); *V.A.*, Docket No. 19-1123 (issued October 29, 2019).

<sup>10</sup> *See C.T.*, Docket No. 20-0786 (issued August 20, 2021); *M.J.*, Docket No. 19-1287 (issued January 13, 2020); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

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.<sup>11</sup> Thus, Dr. Nurudeen's reports are insufficient to establish appellant's disability claim.

Dr. Nurudeen's progress notes dated January 7 through July 21, 2020, provided impressions of the accepted condition of contusion on right great toe without damage to the nail, initial encounter; and provided impressions of right foot acquired other hammer toe(s); right toe(s) pain; and right and left ankle acquired short Achilles' tendon. He reiterated his prior impressions of left ankle and left foot joint pain and left ankle and foot post-traumatic osteoarthritis. However, Dr. Nurudeen did not offer an opinion regarding whether appellant was totally disabled from work during the claimed period due to the accepted employment conditions. 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.<sup>12</sup> Thus, the Board finds that his progress notes are of no probative value and are insufficient to establish appellant's disability claim.

Likewise, Dr. Nurudeen's remaining undated report and February 11, 2021, report was also insufficient to establish that appellant's disability commencing March 14, 2020, and continuing was causally related to her accepted November 26, 2019, employment injury. He restated his impressions of left ankle and foot post-traumatic osteoarthritis and left ankle and left foot joint pain and diagnosed left peroneal tendon repair, but he did not provide an opinion regarding whether appellant was totally disabled from work during the claimed period due to the accepted employment injury. Thus, the Board finds that his reports are of no probative value and are insufficient to establish her disability claim.<sup>13</sup>

Appellant also submitted reports from her attending physician, Dr. Kadish. In CA-17 reports dated October 1, 2020, and January 14, 2021, Form CA-17, Dr. Kadish diagnosed left leg peroneal tendinitis, left ankle and foot post-traumatic osteoarthritis, and left ankle and left foot joint pain due to the November 26, 2019, employment injury. He opined that appellant was unable to perform her regular work duties. While Dr. Kadish opined that appellant developed employment-related disability, his opinion is of limited probative value because he did not explain, with rationale, how or why she was unable to perform her regular work during the claimed period of disability because of her accepted conditions. Thus, Dr. Kadish's reports are insufficient to establish appellant's disability claim.<sup>14</sup>

Likewise, Dr. Kadish's remaining March 1, 2021 operative report and July 6, 2021 prescription are also insufficient to establish that appellant's disability commencing March 14, 2020, and continuing was due to her accepted November 26, 2019, employment injury. In his

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<sup>11</sup> 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).

<sup>12</sup> See *T.S.*, Docket No. 20-1229 (issued August 6, 2021); *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).

<sup>13</sup> *Id.*

<sup>14</sup> See *supra* note 11.



March 1, 2021 operative report, he diagnosed left foot peroneus brevis longitudinal tendon tear and performed left foot repair surgery. In his July 6, 2021 prescription, Dr. Kadish advised that appellant was incapacitated until further notice due to recovery from her left foot tendon repair. Although he opined that appellant's disability from work was an employment-related disability, his opinion is of limited probative value because he did not provide medical rationale explaining how or why the accepted employment injury caused her disability during the period claimed. Therefore, Dr. Kadish's March 1, 2021 operative report and July 6, 2021 prescription are insufficient to establish appellant's disability claim.<sup>15</sup>

Dr. Kadish's remaining progress notes dated July 29, 2020 through February 22, 2021, restated his impressions of left leg peroneal tendinitis, left ankle and foot post-traumatic osteoarthritis, and left ankle and left foot joint pain. However, he did not offer an opinion as to whether appellant had disability during the claimed period causally related to an accepted condition. Therefore, Dr. Kadish's progress notes are of no probative value and insufficient to establish the disability claim.<sup>16</sup>

Likewise, Dr. Finstein's prescription, therapy orders, chart notes, and reports dated May 14 through October 30, 2020, are also insufficient to establish appellant's claim for employment-related disability during the claimed period. In his therapy orders, chart notes, and reports dated May 27 through October 30, 2020, Dr. Finstein diagnosed right knee ACL sprain with medial meniscal scuff. He released appellant to return to light-duty work with restrictions as of July 7, 2020. This evidence is of no probative value regarding appellant's disability claim because it does not contain an opinion that she had disability during the claimed period causally related to an accepted employment condition. Therefore, the medical evidence from Dr. Finstein is insufficient to establish appellant's disability claim.<sup>17</sup>

Appellant also submitted Dr. Landry's August 4, 2020, left ankle MRI scan report. The Board has held, however, that diagnostic studies standing alone are of limited probative value as they do not address whether the employment injury caused appellant to be disabled during the claimed period.<sup>18</sup> This report is, therefore, insufficient to establish the disability 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 due to the accepted employment injury.<sup>19</sup> Because appellant has not submitted rationalized medical opinion evidence 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.

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<sup>15</sup> *Id.*

<sup>16</sup> *See supra* note 12.

<sup>17</sup> *Id.*

<sup>18</sup> *See A.D.*, Docket No. 21-0143 (issued November 15, 2021); *T.S.*, *supra* note 13; *D.M.*, Docket No. 20-0548 (issued November 25, 2020); *O.C.*, Docket No. 20-0514 (issued October 8, 2020); *R.J.*, Docket No. 19-0179 (issued May 26, 2020); *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

<sup>19</sup> *Supra* note 8.

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 her burden of proof to establish disability from work for the period commencing March 14, 2020, and continuing, causally related to her accepted November 26, 2019 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 21, 2021, decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 12, 2022  
Washington, DC

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

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

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board