

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

M.K., Appellant)	
)	
and)	Docket No. 22-0298
)	Issued: August 10, 2022
U.S. POSTAL SERVICE, NRS TRI-COUNTY)	
POST OFFICE, Southeastern, PA, Employer)	
)	

Appearances: *Case Submitted on the Record*
Thomas R. Uliase, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On December 21, 2021 appellant filed a timely appeal from a July 8, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). 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.³

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 an 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.*

³ The Board notes that, following the July 8, 2021 decision, OWCP received additional evidence. 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 October 5, 2020 and continuing, causally related to his accepted January 15, 2020 employment injury.

FACTUAL HISTORY

On January 15, 2020 appellant, then a 39-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that, on that date, he injured his back when he moved packages in the back of his truck while in the performance of duty. He stopped work on the date of injury and received continuation of pay.

By decision dated February 12, 2020, OWCP accepted the claim for lumbar spine ligament sprain.

In a July 24, 2020 statement, appellant noted that he had experienced low back pain and attempted to manage and finish his assignment, but continued to experience back pain. He reported his condition to his supervisor.

Appellant submitted a September 28, 2020 prescription from Dr. Frank Mazzotta, an attending family practitioner, who diagnosed low back pain and ordered a magnetic resonance imaging (MRI) scan without contrast of the lumbar spine.

On October 26, 2020 appellant filed a claim for compensation (Form CA-7) for disability from work for the period October 5 through 23, 2020.

In support of his disability claim, appellant submitted an October 6, 2020 lumbar spine MRI scan report from Dr. Scott H. Faro, a diagnostic radiologist. Dr. Faro provided impressions of multilevel degenerative changes of the lumbar spine, including mild central canal stenosis at L4-5 and L5-S1, mild bilateral subarticular narrowing at L4-5 with displacement of L5 nerve roots, and disc herniations at the L3-4 through the L5-S1 disc space levels.

Appellant also submitted an October 20, 2020 medical report from Dr. Eric A. Williams, a Board-certified orthopedic surgeon. Dr. Williams diagnosed low back pain, degenerative disc disease (DDD), and other intervertebral disc degeneration, lumbar region.

OWCP, by development letter dated November 9, 2020, informed appellant of the deficiencies in his claim and requested that he submit medical evidence to support his reported disability during the claimed period causally related to the accepted January 15, 2020 employment injury. It afforded him 30 days to respond.

Appellant filed an additional Form CA-7 dated November 9, 2020 claiming compensation for disability from work for the period October 24 through November 6, 2020.

In a prescription form dated September 28, 2020, Dr. Mazzotta advised that appellant could not return to work until he was cleared for return. In a November 16, 2020 report, he noted that appellant was under his care for the January 15, 2020 work-related injury. Dr. Mazzotta diagnosed lumbar sprain and hip pain.

Appellant filed several CA-7 forms claiming compensation for disability from work for the period November 7, 2020 through January 15, 2021.

In support of his disability claims, appellant submitted a February 11, 2020 lumbar spine MRI scan report by Dr. Michael Yuz, a diagnostic radiologist. Dr. Yuz provided an impression of straightening of lumbar lordosis compatible with muscle spasm. He also provided impressions that at L5-S1 there was an annular tear with broad-based herniated disc measure up to six-millimeter (mm) impinges on the ventral thecal sac, mild-to-moderate bilateral foraminal stenosis, bilateral hypertrophic facet disease, and right facet joint effusion. At L3-4, Dr. Yuz provided impressions of a bilobed five mm bulge, far left paracentral herniated disc that measured up to 5 mm, moderate-to-severe left and mild-to-moderate right foraminal stenosis, moderately stenotic canal, and bilateral hypertrophic facet disease and ligamentum flavum hypertrophy.

Dr. Mazzotta, in prescriptions dated September 28 and November 3, 2020, diagnosed lumbago with sciatica and ordered physical therapy. In a December 3, 2020 report, he reiterated that appellant was under his care for a January 15, 2020 work-related injury and noted that a lumbar MRI scan revealed herniated discs. Dr. Mazzotta related that on November 20, 2020 appellant returned for an evaluation of a recurring injury. He diagnosed the accepted condition of sprain of ligaments of the lumbar spine and, also diagnosed pain in unspecified hip. Dr. Mazzotta opined that appellant was totally disabled from work and indicated that appellant could return to work if his condition improved.

In hospital records dated October 6, 2020, Dr. Susan Rodriguez, a Board-certified family practitioner, diagnosed lumbago.

OWCP, by decision dated February 4, 2021, denied appellant's claims for disability from work for the period commencing October 5, 2020 and continuing. It found that the medical evidence of record was insufficient to establish disability.

On February 9, 2021 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review and submitted additional medical evidence. In a final report dated December 8, 2020, Dr. Mina Ghaly, a pain management specialist, noted that in January 2020 appellant sustained a work-related injury. Appellant's diagnoses were listed as lumbar DDD, low back pain, lumbar facet arthropathy, lumbar foraminal stenosis, lumbar radiculopathy, and work-related injury. In a January 6, 2021 report, Dr. Ghaly noted that he administered a lumbar interlaminar epidural steroid injection under fluoroscopic guidance at L5/S1.

In a January 6, 2021 final report, Dr. Antoni Parellada, a Board-certified diagnostic radiologist, noted that intraprocedural images of the lumbar spine were obtained.

Appellant continued to file CA-7 forms claiming compensation for disability from work from January 30 to June 4, 2021.

In support of his claims, appellant submitted a January 6, 2021 hospital discharge instructions signed by Diane Gillespie, a registered nurse, who noted a diagnosis of low back pain.

Appellant also submitted a December 31, 2020 medical assessment form from Dr. Mazzotta in which he noted appellant's continued low back and left hip pain and, also

diagnosed lumbar spine DDD. In a certificate to return to school/work dated January 27, 2020, prescriptions dated January 27, February 3, March 2, and November 3, 2020, and reports dated January 31 and November 3, 2020, Dr. Mazzotta reiterated his diagnosis of low back pain, also diagnosed left hip pain, lumbar radiculopathy, lumbar spinal stenosis, and other intervertebral disc displacement, ordered diagnostic testing and physical therapy, and addressed appellant's work capacity.

In final reports dated March 5, 2021, Dr. Ghaly reiterated his diagnoses of lumbar foraminal stenosis, lumbar radiculopathy, lumbar DDD, and lumbar facet arthropathy and administered a steroid injection.

Appellant, through counsel, submitted a March 30, 2021 report from Dr. Rita Carabello, an osteopath and family practitioner. Dr. Carabello noted a history of her own treatment and Dr. Mazzotta's treatment of appellant commencing January 17, 2020. She further noted that appellant had progressed since his accepted work injury. Dr. Carabello related that there was no documentation of any injury to the lumbar spine area prior to the incident. She advised that appellant was still unable to work due to his pain, weakness, and inability to stand. Dr. Carabello questioned whether he would ever be able to return to work.

In a March 30, 2021 progress note, Dr. James S. Harrop, a Board-certified neurosurgeon, examined appellant and reviewed diagnostic test results. He found no diagnosis. Dr. Harrop noted that appellant reported a history that he had no prior back or spine issues until he lifted a 70-pound object at work, which caused an immediate onset of back pain radiating to his legs that had persisted for one year and he took medications and received injections for his condition.

An April 2, 2021 lumbar spine computerized tomography scan from Dr. Adam C. Zoga, a diagnostic radiologist, provided an impression of no spondylolysis, fracture, or spondylolisthesis, and multilevel degenerative changes from L3-4 through L5-S1 better delineated on an October 6, 2020 MRI scan.

In an April 30, 2021 progress note, Dr. Dajie Wang, a Board-certified anesthesiologist specializing in pain medicine, related a history of the January 15, 2020 employment injury and provided assessments of lumbar radiculopathy, lumbar disc displacement, and anxiety.

A telephonic hearing was held before an OWCP hearing representative on May 13, 2021.

On June 11, 2021 appellant, through counsel, submitted an addendum dated June 1, 2021 from Dr. Carabello who restated the findings set forth in her prior March 30, 2021 letter.

By decision dated July 8, 2021, an OWCP hearing representative affirmed the February 4, 2021 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for which

⁴ *Supra* note 2.

compensation is claimed is causally related to the employment injury.⁵ 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.⁶ 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.⁷

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.⁸ 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.⁹

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.¹⁰ 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 incident identified by the employee.¹¹

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.¹²

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish disability from work for the period commencing October 5, 2020 and continuing, causally related to his accepted January 15, 2020 employment injury.

⁵ 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).

⁶ 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).

⁷ See 20 C.F.R. § 10.5(f); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

⁸ *Id.* at § 10.5(f); see e.g., *G.T.*, 18-1369 (issued March 13, 2019); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

⁹ *G.T.*, *id.*; *Merle J. Marceau*, 53 ECAB 197 (2001).

¹⁰ See *S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

¹¹ *C.B.*, Docket No. 18-0633 (issued November 16, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

¹² See *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, *supra* note 6.

In support of his disability claims, appellant submitted medical records from his physician, Dr. Mazzotta. In his December 3, 2020 report, Dr. Mazzotta diagnosed lumbar spine ligament sprain. He also noted that appellant had hip pain. Dr. Mazzotta opined that appellant was totally disabled from work. While he noted appellant's inability to work during the claimed period, he did not provide any medical reasoning to support his opinion on disability, nor did he attribute appellant's disability to the accepted January 15, 2020 employment injury.¹³ Similarly, Dr. Mazzotta's prescriptions dated September 28 and November 3, 2020, addressed appellant's lumbar and left hip conditions, need to undergo diagnostic testing, and disability from work, but he did not provide any medical reasoning to support his opinion on disability, nor did he attribute appellant's disability to the accepted employment injury.¹⁴ His remaining certificates to return to school/work, prescriptions, and reports either predate the claimed period of disability or do not specifically address appellant's inability to work on the claimed dates.¹⁵ For these reasons, the Board finds that the medical evidence from Dr. Mazzotta is insufficient to establish appellant's disability claims.

Appellant also submitted Dr. Carabello's March 30 and June 1, 2021 reports in which she opined that he remained unable to work due to his pain, weakness, and inability to stand. Although Dr. Carabello addressed his inability to work during the claimed period, she did not offer any medical reasoning to support her opinion on disability, nor did she attribute his disability to the accepted employment injury.¹⁶

In hospital records dated October 6, 2020, Dr. Rodriguez, diagnosed lumbago. Dr. Williams and Dr. Ghaly, in reports dated October 20 and December 8, 2020 and March 5, 2021 provided assessments of lumbar DDD, low back pain, lumbar facet arthropathy, lumbar foraminal stenosis, lumbar radiculopathy, and work-related injury. In his January 6 and March 5, 2021 reports, Dr. Ghaly indicated that he administered a lumbar interlaminar epidural steroid injection under fluoroscopic guidance at L5/S1. Dr. Wang's April 30, 2021 progress note provided assessments of lumbar radiculopathy, lumbar disc displacement, and anxiety. The Board has held that medical evidence that does not provide an opinion as to whether a period of disability is due to an accepted employment condition is insufficient to meet a claimant's burden of proof.¹⁷ As none of these physicians addressed appellant's disability status, the Board finds that their reports are of no probative value and are therefore insufficient to establish his disability claims.¹⁸

¹³ See *M.D.*, Docket No. 21-1270 (issued March 21, 2022); *M.A.*, Docket No. 20-0033 (issued May 11, 2020); *F.S.*, Docket No. 18-0098 (issued August 13, 2018); *P.W.*, Docket No. 17-0154 (issued June 9, 2017).

¹⁴ *Id.*

¹⁵ See *R.G.*, Docket No. 18-0027 (issued May 13, 2019); *V.G.*, Docket No. 17-1425 (issued February 16, 2018); *M.C.*, Docket No. 15-1762 (issued August 26, 2016).

¹⁶ *Supra* note 14.

¹⁷ See *B.M.*, Docket No. 20-0826 (issued May 10, 2021); *Y.D.*, Docket No. 20-0097 (issued August 25, 2020); *M.A.*, Docket No. 19-1119 (issued November 25, 2019); *S.I.*, Docket No. 18-1582 (issued June 20, 2019).

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

Dr. Harrop's March 30, 2020 progress note is insufficient to establish disability as it predates the claimed period of disability and, therefore does not address the claimed period of disability.¹⁹

The record also contains diagnostic reports. However, the Board has long held, that diagnostic studies, standing alone, lack probative value because they do not address whether the employment injury caused any of the diagnosed conditions or associated disability.²⁰ For this reason, the Board finds that the diagnostic reports of record are insufficient to establish appellant's disability claim.

Appellant submitted a copy of Ms. Gillespie's hospital discharge instructions to support his disability claim. Nurses are not considered physicians as defined under FECA.²¹ As such, this evidence is also of no probative value and insufficient to establish the 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 his accepted condition, the Board finds that he 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 and 20 C.F.R. §§ 10.605 through 10.607.²³

¹⁹ See *D.V.*, Docket No. 19-0868 (issued March 21, 2022); *C.S.*, Docket No. 21-0051 (issued September 2, 2021); *M.L.*, Docket Nos. 18-1058 and 18-1224 (issued November 21, 2019); *D.J.*, Docket No. 18-0200 (issued August 12, 2019); *V.G.*, *supra* note 15.

²⁰ See *M.D.*, Docket No. 21-1270 (issued March 21, 2022); *T.W.*, Docket No. 20-1669 (issued May 6, 2021); *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

²¹ Section 8101(2) of FECA provides that the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *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); see also *S.T.*, Docket No. 21-1060 (issued March 11, 2022); *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *L.S.*, Docket No. 19-1231 (issued March 30, 2021); *J.D.*, Docket No. 16-1752 (issued March 1, 2017) (a nurse is not considered a physician as defined under FECA).

²² *Supra* note 6.

²³ The Board notes that on return of the case record OWCP should consider combining this case file with OWCP File No. xxxxxx335, wherein on July 29, 2021 appellant filed a Form CA-1 alleging that he sustained a back injury on September 24, 2020 while in the performance of duty.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish disability from work for the period commencing October 5, 2020 and continuing, causally related to his accepted January 15, 2020 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the July 8, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 10, 2022
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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