

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

_____)
B.H., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Cincinnati, OH, Employer)
_____)

Docket No. 22-0383
Issued: August 29, 2022

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On January 17, 2022 appellant filed a timely appeal from a December 16, 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 December 16, 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 November 2 through 19, 2021 causally related to his accepted September 17, 2021 employment injury.

FACTUAL HISTORY

On September 23, 2021 appellant, then a 34-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on September 17, 2021 he fractured his back when he was involved in a motor vehicle accident while in the performance of duty. He stopped work on that date. OWCP accepted appellant's claim for concussion with loss of consciousness, nondisplaced fracture of right clavicle, wedge compression fracture of T11-12 vertebra, and wedge compression fracture of unspecified thoracic vertebra.

On November 10, 2021 appellant filed a claim for compensation (Form CA-7) for disability from work for the period October 23 through November 5, 2021. On the reverse side of the claim form, an occupational health specialist for the employing establishment indicated that appellant received continuation of pay from September 18 through November 5, 2021. On an attached time analysis form (Form CA-7a), appellant indicated that he used eight hours of leave without pay on November 2, 3, 4, and 5, 2021.

In a November 15, 2021 development letter, OWCP advised appellant that the evidence submitted was insufficient to establish disability beginning November 2, 2021 and requested that he submit additional factual and medical evidence to establish that he was unable to work during the period claimed due to his September 17, 2021 employment injury. It provided a questionnaire for his completion and afforded him 30 days to respond.

In a November 1, 2021 outpatient progress note, Maureen Carberry, a physician assistant, reported appellant's complaints of ongoing neck pain and dull aching back pain. She conducted a physical examination and diagnosed T11 superior endplate fracture, C7-T6 acute compression fractures, right upper extremity weakness, and low back pain.

OWCP also received diagnostic examination reports and hospital records dated November 1, 2021. The hospital records indicated that appellant was admitted for diagnoses of other displaced fracture of seventh cervical vertebra and wedge compression fracture of the thoracic vertebra. X-ray examination reports of the cervical and thoracic spines showed stable fractures through C7-T6 vertebral bodies without appreciable loss of vertebral body height and stable T11 superior endplate fracture.

A November 10, 2021 cervical spine magnetic resonance imaging (MRI) scan demonstrated an unremarkable examination aside from a shallow disc bulge at C5-6.

On November 29, 2021 appellant filed an additional Form CA-7 for disability from work for the period November 5 through 19, 2021.

By decision dated December 16, 2021, OWCP denied appellant's claim for disability for the period November 2 through 19, 2021. It found that the medical evidence of record was

insufficient to establish that he was disabled from work during the claimed period due to his accepted September 17, 2021 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 The term disability is defined as the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of the 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

To establish causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence.⁷ The opinion of the physician must be based on a complete factual and medical background, 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.⁸

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.⁹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish disability from work for the period November 2 through 19, 2021 causally related to his accepted September 17, 2021 employment injury.

³ *Supra* note 1.

⁴ *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 20 C.F.R. § 10.5(f); *S.T.*, Docket No. 18-0412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

⁶ *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *D.G.*, Docket No. 18-0597 (issued October 3, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

⁷ *L.O.*, Docket No. 20-0170 (issued August 13, 2021); *S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

⁸ *V.A.*, Docket No. 19-1123 (issued October 29, 2019); *C.B.*, Docket No. 18-0633 (issued November 16, 2018).

⁹ *See S.G.*, Docket No. 18-1076 (issued April 11, 2019); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

In support of his claim for compensation, appellant submitted a November 1, 2021 progress note by Ms. Carberry, a physician assistant. This report, however, is of no probative value to establish appellant's wage-loss compensation claim because physician assistants are not considered physicians as defined under FECA.¹⁰

OWCP also received November 1, 2021 cervical and thoracic spine x-ray examination reports and a November 10, 2021 cervical spine MRI scan. The Board has consistently held that diagnostic test studies, standing alone, lack probative value as they do not address whether the accepted employment injury caused the diagnosed condition.¹¹ For this reason, the Board finds that the diagnostic reports of record are insufficient to establish appellant's disability claim.¹²

As stated previously, 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.¹³ Because appellant has not submitted rationalized medical opinion evidence sufficient to establish employment-related disability during the claimed period, 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.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish disability from work for the period November 2 through 19, 2021 causally related to his accepted September 17, 2021 employment injury.

¹⁰ 5 U.S.C. § 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 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.S.*, Docket No. 21-1140 (issued June 29, 2022) (physician assistants are not considered physicians under FECA and are not competent to provide medical opinions); *George H. Clark*, 56 ECAB 162 (2004) (physician assistants are not considered physicians under FECA).

¹¹ *G.T.*, Docket No. 18-1369 (issued March 13, 2019); *Merle J. Marceau*, 53 ECAB 197 (2001).

¹² See *M.D.*, Docket No. 21-1270 (issued March 21, 2022).

¹³ *Supra* note 6.

ORDER

IT IS HEREBY ORDERED THAT the December 16, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 29, 2022
Washington, DC

Alec J. Koromilas, 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