

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

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W.S., Appellant)	
)	
and)	Docket No. 21-0257
)	Issued: February 22, 2022
)	
DEPARTMENT OF HOMELAND SECURITY,)	
TRANSPORTATION SECURITY)	
ADMINISTRATION, Honolulu, HI, Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 11, 2020 appellant filed a timely appeal from an August 13, 2020 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 issuance of the August 13, 2020 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 January 5, 2020, causally related to his accepted November 24, 2019 employment injury.

FACTUAL HISTORY

On November 25, 2019 appellant, then a 40-year-old transportation security screener, filed a traumatic injury claim (Form CA-1) alleging that on November 24, 2019 he injured his lower right arm and lower back as a result of repetitive standing, bending, turning, twisting, lifting bins, and pushing and pulling a cart more than seven hours per day while in the performance of duty. OWCP accepted appellant's claim for lumbar sprain and right forearm strain/sprain.

On January 29 and February 1, 2020 appellant filed claims for compensation (Form CA-7) for disability from work for the period January 5 through February 1, 2020. He indicated that he had stopped work on November 26, 2019.

In support of his claims, appellant submitted medical reports from Dr. Mankwan T. Wong, an attending Board-certified internist. In a duty status report (Form CA-17) and an attending physician's report (Form CA-20) dated January 23, 2020, Dr. Wong noted appellant's history of injury on November 24, 2019 and diagnosed the conditions of right forearm and lumbar sprain. In the Form CA-17 report, he indicated that appellant's diagnosed conditions were due to injury, advised that appellant could not resume work, and provided limited-duty work restrictions. In the Form CA-20 report, Dr. Wong checked a box marked "Yes," indicating that the diagnosed conditions were caused or aggravated by the described employment activity. He advised that appellant was totally disabled from work during the period January 25 through February 6, 2020.

In certificates to return to work dated December 23, 2019 and January 23, 2020, Dr. Wong requested that appellant be excused from work during the period December 24, 2019 through January 10, 2020 and January 25 through February 6, 2020 due to a work-related injury.

Dr. Wong, in progress notes dated December 23, 2019 and January 10, 2020, repeated appellant's history of injury and his prior diagnoses of the conditions of right forearm and lumbar sprain.

In a development letter dated February 7, 2020, OWCP informed appellant that the evidence submitted was insufficient to establish his claim for wage-loss compensation. It advised him of the type of medical evidence necessary to establish his claim and afforded him 30 days to respond.

OWCP received additional medical reports from Dr. Wong. In a November 26, 2019 progress note and February 6, 2020 prescription, Dr. Wong again diagnosed lumbar and right forearm conditions. In the February 6, 2020 prescription, he ordered physical therapy to treat appellant's diagnosed conditions.

Appellant filed additional CA-7 forms claiming compensation for disability from work for the period February 2 through March 14, 2020.

In a February 10, 2020 lumbar spine magnetic resonance imaging (MRI) scan report, Dr. Robert T. Duong, a Board-certified diagnostic radiologist, provided an impression of significant degenerative spondylosis at the L4-L5 level, which was worse than seen on a July 24, 2014 MRI scan. He also provided an impression of moderate spinal stenosis, with anteroposterior (AP) diameter of the thecal sac measuring eight millimeters (mm) at the L4-L5 level. Dr. Duong noted that a 2014 lumbar spine MRI scan revealed that the AP diameter of the thecal sac measured 10 mm. He related that his current examination demonstrated mild left neural foraminal narrowing, which had developed since appellant's prior examination.

In a February 10, 2020 right forearm MRI scan report, Dr. Andrew V. Kayes, a Board-certified diagnostic radiologist, provided impressions of an equivocal mild strain pattern of the flexor forearm musculature and mild degenerative change in the radiocarpal joint. He noted that the remainder of the MRI scan results were within normal limits.

Appellant also submitted additional medical evidence from Dr. Wong. In a February 6, 2020 progress note, Dr. Wong continued to diagnose lumbar and right forearm conditions.

In a March 5, 2020 letter, Dr. Wong noted that a February 10, 2020 lumbar spine MRI scan revealed significant progression of lumbar spine spondylosis and a right forearm MRI scan of even date demonstrated tendinitis. He further noted that an accompanying study showed that occupations such as, appellant's, involved frequent lifting and forward bending, which increased lumbar spondylosis and caused chronic pain. Dr. Wong concluded that appellant required continuing physical and massage therapy treatment.

Dr. Wong, in certificates to return to work dated February 20 and March 5, 2020, requested that appellant be excused from work for the period February 21 through April 6, 2020 due to a work-related injury.

In a Form CA-20 and Form CA-17 dated February 20, 2020, and progress notes dated February 20 and March 5, 2020, Dr. Wong continued to diagnose the accepted lumbar and right forearm conditions. In the February 20, 2020 Form CA-20, he again checked a box marked "Yes," indicating that the diagnosed conditions were caused or aggravated by appellant's November 24, 2019 employment injury. Additionally, Dr. Wong advised that appellant was temporarily totally disabled from work for the period November 26, 2019 through March 5, 2020. In the February 20, 2020 Form CA-17 report, he restated his prior opinion that appellant's diagnosed conditions were due to injury, continued to advise that appellant could not resume work, and provided his limited-duty work restrictions.

By decision dated March 26, 2020, OWCP denied appellant's claims for compensation for wage-loss compensation for the period commencing January 5, 2020. It found that the medical evidence of record was insufficient to establish disability during the claimed period due to the accepted employment injury.

Appellant continued to file CA-7 forms claiming compensation for disability from work for the period March 15 through April 11, 2020. He continued to submit additional medical evidence from Dr. Wong. In progress notes dated December 9, 2019 and April 6, 2020 and a

prescription dated April 3, 2020, Dr. Wong continued to diagnose the accepted lumbar and right forearm conditions.

Dr. Wong, in an April 6, 2020 certificate to return to work, requested that appellant be excused from work for the period April 7 through May 7, 2020 due to a work-related injury.

On April 18, 2020 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review regarding the March 26, 2020 decision. The hearing was held on July 9, 2020.

Appellant subsequently filed additional CA-7 forms claiming compensation for disability from work for the period April 12 through August 1, 2020.

In a June 4, 2020 physician review report, Dr. Tifani Gleeson, Board-certified in occupational medicine, reviewed appellant's medical record on behalf of the employing establishment. She noted the accepted conditions of lumbar and right forearm sprain. Dr. Gleeson further noted that appellant had been off work since November 26, 2019. She indicated that he was six months post injury with minimal care, no planned interventions, and no indication of progress. Dr. Gleeson, therefore, recommended a second opinion examination to assess the extent of appellant's work-related disability. She related that, if such an examination could not be promptly obtained, then review by an OWCP district medical adviser (DMA) would be indicated.

OWCP continued to receive medical reports from Dr. Wong. In certificates to return to work dated May 6, June 8, and July 8, 2020, Dr. Wong requested that appellant be excused from work for the period May 8 through August 10, 2020 due to a work-related injury. In progress notes of even dates and dated July 3, 2020, Dr. Wong continued to diagnose the accepted medical conditions.

Dr. Wong, in a July 5, 2020 letter, maintained that appellant was entitled to work-related compensation. He explained that he had not reached maximum medical improvement and he had taken time off work and medications, but had slow continuous improvement in his low back and right forearm pain over the past several months. Dr. Wong reiterated his prior finding that appellant's strenuous job duties of frequent lifting and bending put him at high risk of exacerbating his injuries if he was forced to return to work when he was not ready. Additionally, he restated his request for the expansion of the acceptance of appellant's claim to include lumbar spondylosis.

By decision dated August 13, 2020, an OWCP hearing representative affirmed the March 26, 2020 decision.

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 diagnosed condition and the specific employment factors identified by the employee.¹⁰

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish disability from work for the period commencing January 5, 2020, causally related to his accepted November 24, 2019 employment injury.

In support of his claims for compensation, appellant submitted a series of reports from Dr. Wong. In Form CA-17 reports dated January 23 and February 20, 2020, Dr. Wong placed appellant off work due to a work-related injury. Although Dr. Wong opined that appellant developed employment-related disability, his opinion is of limited probative value because he did not explain, with rationale, how or why appellant was unable to perform his regular work during the claimed period of disability due to the effects of his accepted conditions of lumbar sprain and right forearm strain/sprain. The Board has held that a report is of limited probative value regarding

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

causal relationship if it does not contain medical rationale explaining how a given medical condition/period of disability has an employment-related cause.¹¹ Therefore, Dr. Wong's reports are insufficient to establish appellant's disability claim.

Likewise, while Dr. Wong's certificates to return to work dated December 23, 2019 through July 8, 2020, placed appellant off work on intermittent dates during the period November 26, 2019 through August 10, 2020 due to a work-related injury, he did not explain, with rationale, how or why appellant was unable to perform his regular work during the claimed period of disability due to the effects of his accepted conditions. Therefore, these reports are insufficient to establish appellant's disability claim.¹²

In CA-20 form reports dated January 23 and February 20, 2020, Dr. Wong indicated by checking a box marked "Yes" indicating that the diagnosed conditions were caused or aggravated by the described employment activity. The Board has held that an opinion on causal relationship with an affirmative check mark, without more by way of medical rationale, is insufficient to establish the claim.¹³ Consequently, appellant has not established his claim with the submission of these form reports.

Dr. Wong's March 5 and July 5, 2020 letters noted that appellant had been off work and advised that if he returned to his regular work he would be required to engage in frequent lifting and bending, which would exacerbate his diagnosed conditions of lumbar spine spondylosis and right forearm tendinitis. He recommended that the acceptance of appellant's claim should be expanded to include lumbar spine spondylosis. However, Dr. Wong did not explain how the accepted conditions were competent to cause disability during the claimed period.¹⁴ Further, he did not explain how and why the additional conditions were causally related to the accepted employment injury. The Board notes that in his prior progress and form reports Dr. Wong had not diagnosed lumbar spine spondylosis, but rather he related appellant's diagnoses as lumbar sprain and right forearm strain/sprain. Where an employee claims conditions not accepted or approved by OWCP were due to an employment injury, appellant bears the burden of proof to establish that the condition is causally related to the work injury.¹⁵ A physician's opinion on causal relationship between a claimant's employment injury and additional conditions or disability is not conclusive simply because it is rendered by a physician. To be of probative value, the physician must provide rationale for the opinion reached. Where no such rationale is present, the medical opinion is of

¹¹ See S.S., Docket No. 21-0763 (issued November 12, 2021); A.G., Docket No. 21-0756 (issued October 18, 2021); T.S., Docket No. 20-1229 (issued August 6, 2021).

¹² *Id.*

¹³ A.A., Docket No. 21-0802 (issued December 27, 2021); C.S., Docket No. 18-1633 (issued December 30, 2019); D.S., Docket No. 17-1566 (issued December 31, 2018); *Gary J. Watling*, 52 ECAB 278 (2001).

¹⁴ *Id.*

¹⁵ *G.H.*, Docket No. 18-0288 (issued June 8, 2018); *L.N.*, Docket No. 16-0137 (issued October 14, 2016); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

diminished probative value.¹⁶ Moreover, medical limitations based solely on the fear of a possible future injury are also insufficient to support payment of compensation.¹⁷ For these reasons, the Board finds that Dr. Wong's letters are insufficient to establish the disability claim.

Dr. Wong's progress notes dated November 26, 2019 through July 8, 2020 and prescriptions dated February 6 and April 3, 2020 diagnosed the accepted conditions of lumbar sprain and right forearm and lumbar strain/sprain. However, he offered no opinion regarding appellant's disability status during the period commencing January 5, 2020. 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.¹⁸ Therefore, these progress notes and prescriptions are insufficient to establish appellant's disability claim.

Appellant also submitted Dr. Gleeson's June 4, 2020 report in which she noted the accepted conditions of lumbar and right forearm sprain and that appellant had been off work since November 26, 2019. Dr. Gleeson recommended a second opinion evaluation or review by a DMA to determine the extent of his employment-related disability. She did not, however, offer an opinion concerning appellant's disability status during the period commencing January 5, 2020. Thus, Dr. Gleeson's report is of no probative value and are insufficient to establish appellant's disability claim.¹⁹

The record also contains the February 10, 2020 lumbar spine and right forearm MRI scan reports of Dr. Duong and Dr. Kayes. However, the Board has long held, however, that diagnostic studies, standing alone, lack probative value as they do not address whether the employment injury caused any of the diagnosed conditions or associated disability.²⁰ For this reason, the diagnostic reports of record are insufficient to establish appellant's 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 as a result of the accepted employment injury.²¹ Because appellant has not submitted rationalized medical opinion evidence sufficient 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 to establish his claim.

¹⁶ *G.H., id.; L.N., id.*

¹⁷ *See B.L., Docket No. 20-1685 (issued May 25, 2021); V.G., Docket No. 18-0936 (issued February 6, 2019).*

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

¹⁹ *Id.*

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

²¹ *Supra* note 5.

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 commencing January 5, 2020, causally related to his accepted November 24, 2019 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the August 13, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 22, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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