

ISSUE

The issue is whether appellant has met her burden of proof to establish disability from work for the period April 23 through May 10, 2021 causally related to her March 6, 2015 employment injury.

FACTUAL HISTORY

On March 17, 2015 appellant, then a 48-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on March 6, 2015 she sprained her lumbar spine when carrying a heavy parcel to a customer's doorstep while in the performance of duty. The employing establishment advised that at the time of her injury, appellant had less than one year of service and worked 24 hours per week in a temporary position. OWCP accepted the claim for lumbar sprain and thoracic sprain. It subsequently expanded its acceptance of the claim to include an aggravation of lumbar facet arthropathy at L2-5.

Appellant stopped work on June 8, 2015 and returned to modified part-time employment on January 25, 2016. OWCP paid her wage-loss compensation for intermittent time lost from work. On January 25, 2017 appellant underwent a lateral decompression at L4-5, greater on the right than the left. OWCP paid her wage-loss compensation on the supplemental rolls beginning January 21, 2017 and on the periodic rolls from February 21, 2017 to February 3, 2018 and from June 24, 2018 until February 29, 2020.

On March 9, 2020 appellant accepted a position with the employing establishment as a modified rural carrier associate working five hours per day with Sunday as her scheduled day off.³ The position required sitting for four hours per day, walking and standing for two hours per day, for a combined total of four hours, and lifting up to 20 pounds intermittently for four hours per day.

By decision dated July 21, 2020, OWCP denied appellant's request to expand the acceptance of her claim to include a left leg or foot condition as a consequence of her accepted March 6, 2015 employment injury. By decision dated January 4, 2021, an OWCP hearing representative affirmed the July 21, 2020 decision.

In a return to work note dated April 23, 2021, Dr. Gregory Petro, Board-certified in cardiovascular disease, advised that appellant required two weeks off for a cardiac evaluation because her "back pain and stress level is affecting her cardiovascular health...." On May 7, 2021 he advised that appellant could return to work on May 11, 2021 performing desk work and no heavy lifting.

In a May 12, 2021 memorandum of telephone call (Form CA-110), appellant advised that she had been off work for two weeks due to stress. OWCP informed her that she could not receive compensation for stress as it was not an injury-related condition. Appellant further indicated that

³ By decision dated July 8, 2019, OWCP terminated appellant's wage-loss compensation and entitlement to a schedule award effective July 10, 2019 as she had refused an offer of suitable work under 5 U.S.C. § 8106(c)(2). By decision dated October 8, 2019, it vacated its July 8, 2019 decision.

she could work eight hours per day, but that the employing establishment had only offered her work for four hours per day.

On May 21, 2021 appellant filed a claim for compensation (Form CA-7) for disability from work for the period April 23 to May 10, 2021.

On June 2, 2021 appellant advised that she was only working 24 hours per week and asserted that the employing establishment had not provided her with work in accordance with her accommodations.

In a development letter dated June 3, 2021, OWCP requested that appellant submit additional factual and medical evidence, including a report from her physician explaining how her accepted condition had worsened such that she was unable to work beginning April 23, 2021. It afforded her 30 days to submit the requested information.

In a certification of health care provider form dated June 15, 2021, Dr. Petro advised that appellant required leave under the Family and Medical Leave Act (FMLA) for stress on the heart, chronic low back problems, severe headaches, medical visits, and psychotherapy. He advised that she had been incapacitated from April 23 to May 10, 2021. Dr. Petro further found that appellant should work at a desk and that she could not perform heavy lifting.

In a June 2, 2021 report of a telehealth appointment, Dr. Jamie Jiao, a physiatrist, evaluated appellant for chronic low back pain. He reviewed a magnetic resonance imaging (MRI) scan obtained on February 25, 2021 and found that it demonstrated multilevel spondylosis, degenerative disc disease at L3-4 and L4-5, and mild bilateral foraminal stenosis at L4-5. Dr. Jiao further found that electrodiagnostic testing performed on March 2, 2021 showed mild-to-moderate bilateral demyelinating axonal polyneuropathy of the lower extremities. He noted that appellant worked part time at the employing establishment. Dr. Jiao advised that she had been referred by her spinal surgeon for chronic low back pain arising from a 2015 work injury, diagnosed as lumbar strain. He recommended medication. Dr. Olabisi Lane, a Board-certified anesthesiologist, reviewed and cosigned the report.

Appellant submitted physical therapy reports dated June 16 and July 2, 2021.

By decision dated July 2, 2021, OWCP denied appellant's claim for disability from work for the period April 23 through May 10, 2021 causally related to her accepted March 6, 2015 employment injury.

On July 16, 2021 appellant requested reconsideration.

In an e-mail received by OWCP on July 16, 2021, appellant maintained that her injury had caused lumbar stenosis and damage to her sciatic nerves. She asserted that the employing establishment was harassing her and retaliating against her.

In a statement dated July 16, 2021, appellant advised that she had submitted medical reports supporting her request for wage-loss compensation from April 23 through May 10, 2021 due to her lumbar condition. She asserted that she was not being paid compensation for time lost for medical appointments and that she was not receiving proper care for her injury.

By decision dated August 16, 2021, OWCP denied modification of its July 2, 2021 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim including the fact that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁴

Under FECA, the term disability means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁵ Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.⁶ An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.⁷ When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for loss of wages.⁸

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work for the period April 23 through May 10, 2021 causally related to her accepted March 6, 2015 employment injury.

At the time of her injury, appellant worked 24 hours per week. After experiencing the period of disability, she returned to work in March 2020 as a part-time modified rural carrier associate working five hours per day with Sundays as an unscheduled day. Appellant stopped work and requested wage-loss compensation for disability from employment for the period April 23 through May 10, 2021.

In a note dated April 23, 2021, Dr. Petro advised that appellant should not work for two weeks because stress and back pain had affected her cardiovascular health. On May 7, 2021 he released appellant to resume work on May 11, 2021. In a form report dated June 15, 2021, Dr. Petro asserted that she required leave under the FMLA due to stress on the heart, a chronic low back condition, severe headaches, medical visits, and psychotherapy. He indicated that appellant had been unable to work from April 23 through May 10, 2021. In his reports, however, Dr. Petro

⁴ *A.R.*, Docket No. 20-0583 (issued May 21, 2021); *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994).

⁵ 20 C.F.R. § 10.5(f); *see J.M.*, Docket No. 18-0763 (issued April 29, 2020); *Bobbie F. Cowart*, 55 ECAB 746 (2004).

⁶ *D.W.*, Docket No. 20-1363 (issued September 14, 2021); *L.W.*, Docket No. 17-1685 (issued October 9, 2018).

⁷ *See M.W.*, Docket No. 20-0722 (issued April 26, 2021); *D.G.*, Docket No. 18-0597 (issued October 3, 2018).

⁸ *See A.R.*, *supra* note 3; *D.R.*, Docket No. 18-0323 (issued October 2, 2018).

did not address the cause of the diagnosed conditions or his disability determination. The Board has held medical evidence that does not address whether a period of disability is due to an accepted employment condition is insufficient to establish a claim.⁹

The remaining evidence does not address the relevant issue of disability from employment. On June 2, 2021 Dr. Jiao reviewed the results of an MRI scan demonstrating multilevel spondylosis, degenerative disc disease at L3-4 and L4-5, and mild bilateral foraminal stenosis at L4-5 and electrodiagnostic testing showing mild-to-moderate bilateral demyelinating axonal polyneuropathy of the lower extremities. He noted that appellant worked part time. Dr. Lane reviewed and cosigned the report. Neither physician, however, addressed the relevant issue of whether appellant was disabled from employment for the period April 23 to May 10, 2021. 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 their disability and entitlement to compensation.¹⁰

Appellant further submitted physical therapy reports from June and July 2021, however, this is subsequent to the claimed period of disability. As such, these reports are insufficient to establish her claim.¹¹

On appeal appellant asserts that the medical evidence establishes that her care is causally related to her accepted employment injury.¹² However, as discussed, the medical evidence of record does not contain a rationalized opinion establishing causal relationship between her claimed disability and her accepted employment injury and, thus, she has not met her burden of proof.¹³

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 April 23 through May 10, 2021 causally related to her March 6, 2015 employment injury.

⁹ See *C.P.*, Docket No. 19-1716 (issued March 11, 2020); *C.R.*, Docket No. 19-1427 (issued January 3, 2020).

¹⁰ See *J.K.*, Docket No. 19-0488 (issued June 5, 2020); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

¹¹ See *Deborah Y. Matthews*, 04-312 (issued April 9, 2004).

¹² While an employee may receive compensation for any time lost for a authorized treatment for an employment injury, in this case there is no evidence that appellant's treatment on April 23 and May 7, 2021 by Dr. Petro was causally related to her accepted employment injury. 5 U.S.C. § 8103; see also *A.F.*, Docket No. 20-0522 (issued November 4, 2020).

¹³ *J.W.*, Docket No. 19-1688 (issued March 18, 2020).

ORDER

IT IS HEREBY ORDERED THAT the August 16 and July 2, 2021 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 8, 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