United States Department of Labor
Employees' Compensation Appeals Board

A.J., Appellant	)	
and	)	**Docket No. 21-1211**
	)	**Issued: May 4, 2022**
U.S. POSTAL SERVICE, PETER STUYVESANT POST OFFICE, New York, NY, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 2, 2021 appellant filed a timely appeal from an April 26, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 OWCP received additional evidence following the April 26, 2021 decision. 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 her burden of proof to establish disability from work for the period July 27 through September 27, 2019 causally related to her accepted June 10, 2019 employment injury.

FACTUAL HISTORY

On June 21, 2019 appellant, then a 42-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on June 10, 2019 she sustained contusions to the right side of her jaw and lip when a mailbox door fell off and struck her in the face while in the performance of duty. She stopped work on the date of injury. On the reverse side of the claim form, the employing establishment controverted the claim.

In a June 10, 2019 letter, Marjory Desalme, a nurse practitioner, noted that appellant received treatment in an emergency department that day. She held appellant off work through June 11, 2019.

In a letter dated June 19, 2019, Dr. Matthew Jackson, an osteopath Board-certified in internal medicine, noted that he examined appellant that day. He provided after-visit instructions for temporomandibular disorder.

In a July 3, 2019 attending physician's report (Form CA-20), Dr. Ranga C. Krishna, a Board-certified neurologist, noted a history of a June 10, 2019 work-related accident to the head and neck. He diagnosed cervical radiculopathy and found her totally disabled from work.

In a development letter dated July 29, 2019, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to provide the necessary evidence.

In response, appellant provided physical therapy treatment notes dated July 9 through 24, 2019.

By decision dated September 3, 2019, OWCP accepted that the June 10, 2019 employment incident occurred as alleged and that a medical condition had been diagnosed. However, it denied appellant's claim, finding that the medical evidence of record was insufficient to establish that the diagnosed medical condition was causally related to the accepted employment incident.

On September 10, 2019 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review. She provided a June 10, 2019 description of the accepted employment incident.

Appellant submitted a July 3, 2019 urine toxicology screen, and physical therapy treatment notes dated July 26 and 30, August 7, 9, 13, 15, 21, and 27, September 12, 13, 18, 23, and 29, 2019.

Appellant also submitted an August 9, 2019 report by Dr. Krishna, who noted a history of injury. On examination, he observed mild-to-moderate suboccipital tenderness along the cervical

spine, cervical paraspinal muscle spasm with limited range of motion, lumbosacral tenderness to palpation from L1 to L5 with paraspinal spasm, and a normal motor, sensory, and neurological examination.[3] Dr. Krishna diagnosed cervical sprain/strain, headaches, and facial pain. He opined that the June 10, 2019 employment incident was the "competent provocative cause of the impairment and disability." Dr. Krishna found appellant totally disabled from work.

In an August 21, 2019 report, Dr. Krishna diagnosed a jaw contusion and cervical radiculopathy. He held appellant off work pending a reevaluation in four to six weeks.[4]

By decision dated November 27, 2019, an OWCP hearing representative affirmed, in part, and reversed, in part, the September 3, 2019 decision. The hearing representative found that appellant had established that she sustained a right jaw contusion in the performance of duty on June 10, 2019 as alleged. However, the claim remained denied as the medical evidence was insufficient to establish cervical strain/sprain, cervical radiculopathy, headaches, temporomandibular disorder, and carpal tunnel syndrome.

Appellant remained under medical treatment. In a November 27, 2019 report, Dr. Jacob Peacock, Board-certified in pain management, diagnosed C4-5 disc disorder with radiculopathy causally related to the accepted June 10, 2019 employment injury. He found appellant totally disabled from work pending additional evaluation by an orthopedic spine specialist.

In a December 5, 2019 report, Dr. Vagmin Vora, a Board-certified orthopedic surgeon, found appellant disabled from work for the period December 5, 2019 through January 23, 2020.

By decision dated December 10, 2019, OWCP formally accepted appellant's claim for contusion of the jaw.

In an October 30, 2019 report, received by OWCP on December 11, 2019, Dr. Krishna held appellant off from work due to a cervical sprain/strain with continued head and neck pain. He found appellant totally disabled from work.

In a December 17, 2019 report, Dr. Peacock diagnosed a C4-5 disc disorder with radiculopathy and neck pain. He recommended a cervical epidural steroid injection.

On December 20, 2019 appellant filed a claim for compensation (Form CA-7) for disability from work for the period July 1, 2019 and continuing.

[3] An August 9, 2019 electromyography/nerve conduction velocity (EMG/NGV) study of the upper extremities demonstrated right C5-6 radiculopathy and bilateral carpal tunnel syndrome at the wrists.

[4] An October 17, 2019 magnetic resonance imaging (MRI) scan of the brain demonstrated that the distal right vertebral artery crossed the midline and abutted the right anterior medulla. An October 17, 2019 MRI scan of the cervical spine demonstrated straightening of the cervical lordosis, slight levoscoliosis at the cervicothoracic junction, and disc herniations at C2-3, C3-4, C4-5, C5-6, and C6-7 impinging the thecal sac.

In a January 2, 2020 report,[5] Dr. Peacock opined that appellant required cervical epidural steroid injections for cervical radiculopathy secondary to a C4-5 disc herniation, as she had failed conservative management.

On January 2, 2020 appellant filed a notice of recurrence (Form CA-2a), indicating that on November 26, 2019 she experienced a recurrence of pain in the right arm. In a supporting statement, she explained that she had returned to work on September 28, 2019. After several weeks of repetitive lifting and pushing, appellant began to feel sharp pains radiating into her right arm.

In a development letter dated February 5, 2020, OWCP advised appellant of the type of additional evidence needed to establish her recurrence claim. It afforded her 30 days to submit the necessary evidence.

In response, appellant submitted reports by Dr. Peacock dated November 6, 2019 through January 22, 2020, and by Dr. Vagmin dated January 23, 2020, recommending cervical epidural steroid injections to treat a C4-5 disc herniation with radiculopathy.

By decision dated March 12, 2020, OWCP denied appellant's recurrence claim.

On April 18, 2020 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. She submitted a March 11, 2020 report by Dr. Krishna finding her totally disabled from work due to cervical radiculopathy caused by the June 10, 2019 employment injury. Appellant also submitted a letter of even date and an April 29, 2020 report by Dr. Peacock who opined she could return to light-duty work on May 4, 2020.

By decision dated June 1, 2020, OWCP denied appellant's April 18, 2020 request for an oral hearing. It explained that she was not entitled to a hearing as a matter of right as her request was not made within 30 days of the March 12, 2020 decision. OWCP further exercised its discretion and determined that the issue in this case could equally well be addressed by a request for reconsideration before OWCP along with the submission of new evidence.

In an appeal request form postmarked on May 6, 2020 and received by OWCP on June 29, 2020, appellant again requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated July 9, 2020, OWCP denied appellant's May 6, 2020 request for an oral hearing. It explained that she was not entitled to a hearing as a matter of right as her request was not made within 30 days of the March 12, 2020 decision. OWCP further exercised its discretion and determined that the issue in this case could equally well be addressed by a request for reconsideration before OWCP along with the submission of new evidence.

[5] The report is dated January 2, 2019, however, this appears to be a typographical error as the report references appellant's prior treatment by Dr. Peacock.

Appellant submitted additional evidence. In a June 9, 2020 report, Dr. Peacock returned appellant to light-duty work effective May 4, 2020.

On August 7, 2020 appellant filed a Form CA-7 claiming disability from work for the period July 27 through September 27, 2019.

In a development letter dated February 5, 2021, OWCP noted its receipt of a Form CA-7 claim for compensation for the period July 27 through September 27, 2019.[6] It advised appellant of the type of medical evidence needed to establish disability from work during the claimed period due to the accepted jaw contusion. OWCP afforded her 30 days to submit the requested evidence. Appellant did not submit additional medical evidence.

By decision dated April 26, 2021, OWCP denied the claim for compensation, finding that the medical evidence of record was insufficient to establish disability from July 27 through September 27, 2019 due to the accepted injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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.[7] 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.[8] 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.[9] Findings on examination are generally needed to support a physician's opinion that an employee is disabled from work.[10]

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.[11] Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment

[6] On its face, the February 5, 2021 development letter refers to a Form CA-7 for disability for the period July 27 through September 27, 2020. The Board notes that the error in the year is a typographical error.

[7] *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).

[8] *Id.*; *William A. Archer*, 55 ECAB 674 (2004).

[9] 20 C.F.R. § 10.5(f); *L.M.*, Docket No. 21-0063 (issued November 8, 2021); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

[10] *C.S.*, Docket No. 20-1621 (issued June 28, 2021); *Dean E. Pierce*, 40 ECAB 1249 (1989).

[11] *Id.* at § 10.5(f); *see B.K.*, Docket No. 18-0386 (issued September 14, 2018); *S.M.*, 58 ECAB 166 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004).

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.[12]

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.[13] Rationalized medical evidence is medical evidence that includes a physician's detailed medical opinion on the issue of whether there is a causal relationship between the claimant's claimed disability and the accepted employment injury. 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 supported by medical rationale explaining the nature of the relationship between the accepted employment injury and the claimed period of disability.[14]

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.[15]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work for the period July 27 through September 27, 2019 causally related to her accepted June 10, 2019 employment injury.

In support of her claim for compensation, appellant submitted an August 9, 2019 report from Dr. Krishna, who noted findings of suboccipital tenderness, and cervical and lumbar paraspinal spasm. He opined that the June 10, 2019 employment injury caused a cervical sprain/strain, facial pain, and headaches. Dr. Krishna found appellant totally disabled for work. Although he 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 her regular work during the claimed period of disability due to the effects of her accepted injury. The Board 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.[16] Therefore, Dr. Krishna's report is insufficient to establish appellant's disability claim.

[12] *Id*.

[13] *J.M.*, Docket No. 19-0478 (issued August 9, 2019).

[14] *L.M.*, *supra* note 9; *K.H.*, Docket No. 19-1635 (issued March 5, 2020); *V.A.*, Docket No. 19-1123 (issued October 29, 2019); *R.H.*, Docket No. 18-1382 (issued February 14, 2019).

[15] *M.A.*, Docket No. 20-0033 (issued May 11, 2020); *A.W.*, Docket No. 18-0589 (issued May 14, 2019).

[16] *S.S.*, Docket No. 21-0763 (issued November 12, 2021); *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).

Appellant also submitted a June 19, 2019 report from Dr. Jackson, who found appellant disabled from work commencing June 10, 2019 due to temporomandibular disorder. However, Dr. Jackson did not opine that the accepted injury had disabled appellant from work during the claimed period of disability. Therefore, his report is of no probative value and, thus, is insufficient to establish appellant's disability claim.[17]

Additionally, appellant provided reports from Dr. Peacock dated from November 27, 2019 through June 9, 2020, and from Dr. Vora dated December 5, 2019. As these reports do not address the claimed period of disability, they are of no probative value and insufficient to establish appellant's disability claim.[18]

Appellant also submitted a June 10, 2019 work excuse slip by Ms. Desalme, a nurse practitioner, which does not address the claimed period of disability. The Board has held that medical reports signed solely by a nurse practitioner are of no probative value as nurse practitioners are not considered physicians as defined under FECA.[19] As such, this evidence is of no probative value and is insufficient to establish appellant's claim.

Finally, appellant submitted results from diagnostic testing. The Board has held 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.[20] These reports are, therefore, insufficient to establish the claim.

As the medical evidence of record is insufficient to establish causal relationship between the claimed period disability and the accepted employment injury, the Board finds that appellant has not met her burden of proof.

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.

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

[18] *Id*.

[19] 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 L.T.*, Docket No. 20-0582 (issued November 15, 2021); *S.E.*, Docket No. 21-0666 (issued December 28, 2021) (nurse practitioners are not considered physicians under FECA).

[20] *A.D.*, Docket No. 21-0143 (issued November 15, 2021); *see J.S.*, Docket No. 17-1039 (issued October 6, 2017).

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish disability from work for the period July 27 through September 27, 2019 causally related to her accepted June 10, 2019 employment injury.[21]

ORDER

IT IS HEREBY ORDERED THAT the April 26, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 4, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

[21] Upon return of the case record, OWCP should consider payment of up to four hours of compensation to appellant for lost time from work due to medical appointments to assess or treat symptoms related to the employment injury. *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Compensation Claims*, Chapter 2.901.19(c) (February 2013); *J.E.*, Docket No. 19-1758 (issued March 16, 2021); *A.V.*, Docket No. 19-1575 (issued June 11, 2020). *See also K.A.*, Docket No. 19-0679 (issued April 6, 2020); *William A. Archer*, 55 ECAB 674 (2004).