United States Department of Labor
Employees' Compensation Appeals Board

G.S., Appellant	)	
and	)	**Docket No. 22-0445**
	)	**Issued: November 15, 2022**
U.S. POSTAL SERVICE, CHICAGO INTERNATIONAL SERVICE CENTER, Chicago, IL, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On January 31, 2022 appellant, through counsel, filed a timely appeal from a December 28, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 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 December 28, 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 her burden of proof to establish disability from work for the period January 21, 2017 through February 12, 2021 causally related to her accepted November 11, 2016 employment injury.

FACTUAL HISTORY

On November 14, 2016 appellant, then a 61-year-old temporary casual employee, filed a traumatic injury claim (Form CA-1) alleging that on November 11, 2016 she injured her right shoulder and arm when she tripped and fell over a package while in the performance of duty. She did not immediately stop work. OWCP accepted appellant's claim for tear of the rotator cuff of the right shoulder and contusion of the upper right arm.

In a January 20, 2017 report, William Hayduk, a physician assistant, returned appellant to work with no use of the right arm. He noted that, if the employing establishment could not accommodate the restrictions, appellant would be off work.

In a duty status report (Form CA-17) dated August 26, 2020, Dr. Lewis L. Shi, a Board-certified orthopedist, reported clinical findings of right shoulder pain and diagnosed rotator cuff tear. He noted appellant's physical restrictions and indicated by checkmark that appellant was totally disabled from work.

On February 17, 2021 appellant filed a claim for compensation (Form CA-7) for disability from work for the period January 21, 2017 through February 12, 2021.[4]

In a March 1, 2021 development letter, OWCP informed appellant of the deficiencies of her claim for wage-loss compensation. It advised her of the type of additional factual and medical evidence required and afforded her 30 days to submit the necessary evidence.

OWCP received an April 7, 2021 work status report from Dr. Shi who noted that appellant sustained a right shoulder injury on November 11, 2016. Dr. Shi indicated that conservative treatment had failed and that she required surgery on March 15, 2018. He noted persistent pain and weakness despite ongoing therapies and injections. Dr. Shi opined that appellant reached maximum medical improvement (MMI) and had permanent restrictions of no overhead activities and no lifting over three pounds.

By decision dated June 3, 2021, OWCP denied appellant's claim for wage-loss compensation, finding that the medical evidence of record was insufficient to establish disability from work for the period January 21, 2017 through February 12, 2021 causally related to the accepted November 11, 2016 employment injury.

On January 31, 2020 Dr. Shi treated appellant for right shoulder and right knee pain. He administered an intra-articular injection and gave her a prescription for physical therapy.

[4] On February 22, 2021 the employing establishment contended that appellant was hired during the 2016 holiday season as a casual employee. Appellant was separated from service, effective January 20, 2017.

In a June 19, 2020 report, Dr. Shi noted that appellant was status post right shoulder rotator cuff repair in March 2018 and opined that she reached MMI and provided permanent work restrictions. He administered an intra-articular injection into the right shoulder.

On August 21, 2020 Dr. Shi treated appellant in follow up for right knee pain and right shoulder pain radiating down her shoulder to her elbow. He administered an intra-articular injection.

In a work status note dated June 23, 2021, Dr. Shi related a history of treatment for a November 11, 2016 employment injury commencing January 20, 2017 through April 7, 2021. He performed treatment modalities including physical therapy, injections, and arthroscopic surgery. Dr. Shi noted that after surgery appellant developed a frozen shoulder. He performed intra-articular injections on July 11 and September 21, 2018, January 21, 2019, January 21, June 19, and August 21, 2020, and April 7, 2021. Dr. Shi returned appellant to work with permanent restrictions of no overhead activities and no lifting over three pounds.

On June 14, 2021 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on October 7, 2021.

By decision dated December 28, 2021, OWCP's hearing representative affirmed the June 3, 2021 decision.[5]

LEGAL PRECEDENT

An employee seeking benefits under FECA[6] 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 be disabled from employment and the duration of that disability are medical issues, which must be proven by a preponderance of the reliable, probative, and substantial medical evidence.[9]

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.[10] Disability is, thus, not

[5] OWCP noted that it "affirmed with modification" the June 3, 2021 decision; however, it does not appear that there was a modification of the prior decision.

[6] 5 U.S.C. § 8101 *et seq*.

[7] *M.C.*, Docket No. 18-0919 (issued October 18, 2018); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

[9] *V.H.*, Docket No. 18-1282 (issued April 2, 2019); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

[10] 20 C.F.R. § 10.5(f); *S.T.*, Docket No. 18-0412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

synonymous with physical impairment, which may or may not result in an incapacity to earn wages.[11]

The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence 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 her burden of proof to establish disability from work for the period January 21, 2017 through February 12, 2021 causally related to the accepted November 11, 2016 employment injury.

Dr. Shi treated appellant on January 20, 2017 for right shoulder pain and weakness after a fall at work on November 11, 2016. He diagnosed possible right rotator cuff tear and administered an intra-articular injection into the subacromial space. In reports dated, January 31 through June 19, 2020, Dr. Shi diagnosed right shoulder pain, full-thickness rotator cuff tear by MRI scan, and frozen shoulder and administered intra-articular injections. The Board finds that these reports do not provide an opinion on appellant's disability from work during the claimed period and thus these reports are of no probative value.[13] Therefore, these reports are insufficient to establish her claim.

In work status notes dated April 7 and June 23, 2021, Dr. Shi related a history of treatment for a November 11, 2016 employment injury commencing on January 20, 2017 through April 7, 2021. He noted persistent pain and weakness despite ongoing therapies and injections. Dr. Shi opined that appellant reached MMI and had permanent restrictions of no overhead activities and no lifting over three pounds. However, these reports are of no probative value because they do not provide an opinion that she was disabled from work or working limited duty during the claimed period, from January 21, 2017 through February 12, 2021, causally related to the accepted November 11, 2016 work injury.[14] Therefore, these reports are also insufficient to establish her claim.

On August 21, 2020 Dr. Shi treated appellant in follow up for right shoulder pain radiating down her shoulder to her elbow. He administered an intra-articular injection. Similarly, in a Form CA-17 dated August 26, 2020, Dr. Shi diagnosed rotator cuff tear and noted that appellant was totally disabled from work. While he noted that she was totally disabled, he did not offer a rationalized medical explanation to support his opinion. Medical evidence that provides a conclusion, but does not offer a rationalized medical explanation regarding the cause of an

[11] *G.T.*, Docket No. 18-1369 (issued March 13, 2019); *Robert L. Kaaumoana*, 54 ECAB 150 (2002).

[12] *See B.K.*, Docket No. 18-0386 (issued September 14, 2018); *Amelia S. Jefferson*, *supra* note 9; *see also C.S.*, Docket No. 17-1686 (issued February 5, 2019).

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

[14] *Id*.

employee's condition or disability is of limited probative value on the issue of causal relationship.[15] Thus, these reports are insufficient to establish appellant's claim.

Appellant submitted reports from a physician's assistant and a nurse practitioner. The Board has held that medical reports signed solely by a physician assistant[16] or nurse practitioner[17] are of no probative value as such health care providers are not considered physicians as defined under FECA and are therefore not competent to provide medical opinions.[18]

As the medical evidence of record is insufficient to establish disability from work commencing January 21, 2017 through February 12, 2021 causally related to the accepted November 11, 2016 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.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish disability from work for the period January 21, 2017 through February 12, 2021 causally related to her accepted November 11, 2016 employment injury.

[15] *C.V.*, Docket No. 18-1106 (issued March 20, 2019); *M.E.*, Docket No. 18-0330 (issued September 14, 2018); *A.D.*, 58 ECAB 149 (2006).

[16] *C.P.*, Docket No. 19-1716 (issued March 11, 2020) (a physician assistant is not a physician as defined under FECA).

[17] *S.J.*, Docket No. 17-0783, n. 2 (issued April 9, 2018) (nurse practitioners are not considered physicians under FECA).

[18] Section 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. 5 U.S.C. § 8102(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.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).

ORDER

IT IS HEREBY ORDERED THAT the December 28, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 15, 2022
Washington, DC

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

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

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