

Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

ISSUE

The issue is whether appellant has met her burden of proof to establish disability from work commencing January 11, 2021 causally related to her accepted employment-related injury.

FACTUAL HISTORY

On November 2, 2020 appellant, then a 50-year-old administrative and office support student trainee, filed a traumatic injury claim form (Form CA-1) alleging that on August 3, 2020 her right hand and arm began to hurt as she was scheduling ultrasound examinations while in the performance of duty.

In a January 11, 2021 response to an OWCP development questionnaire, appellant asserted that working on computers scheduling magnetic resonance imaging (MRI) scans, ultrasounds, and computerized tomography (CT) scans contributed to her conditions. She noted that her pain began in May 2020.

On August 16, 2021 OWCP converted appellant's traumatic injury claim to an occupational disease claim and accepted the condition of right thumb trigger finger.

On November 4, 2021 appellant submitted multiple claims for compensation (Form CA-7) claiming intermittent disability for the period January 11, 2021 and continuing. The specific periods claimed, which the employing establishment certified, are as follows. For the period January 11 through 13, 2021, appellant claimed total disability; for the period January 14 through 26, 2021, appellant claimed four hours per day of leave without pay (LWOP); for the period January 27 through 29, 2021, appellant claimed total disability; for the period March 1 through 26, 2021, appellant claimed four hours per day of LWOP; for the period June 23 through 25, 2021, appellant claimed total disability; for the period July 1 through 24, 2021, appellant claimed four hours per day of LWOP; and for the period August 26 through October 23, 2021, appellant claimed total disability.

Documentation in the record for the period claimed included disability slips from a physician assistant regarding the period January 11 through 13, 2021, from a family nurse practitioner regarding the period August 26 through September 9, 2021, and a partial unreadable work status report from an illegible provider regarding appellant's work status through November 21, 2021.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that following the January 27, 2022 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.*

In a January 28, 2021 disability slip, Dr. Rodney Fawcett, an osteopath specializing in internal medicine, excused appellant from work for the period January 27 through 29, 2021 due to a painful right hand. He reported that appellant had a torn ligament that would require surgery by a hand specialist.

In a June 15, 2021 disability slip, Dr. James Lin, Board-certified in pain medicine, advised no data entry for appellant and light-duty work beginning June 21, 2021. A notation reading May 17, 2021 “after surgery” was also provided.

In a June 23, 2021 disability slip, Dr. Fawcett requested that appellant be excused from work from June 23 to 25, 2021.

In a July 20, 2021 disability slip, Dr. Lin released appellant to full-time, full-duty work effective July 21, 2021. In a disability slip dated September 12, 2021, he requested that appellant be kept off work for four weeks following surgery.

In a September 10, 2021 note, Dr. Lin indicated that appellant was cleared for surgery.

In a development letter dated November 9, 2021, OWCP advised appellant of the deficiencies in the evidence received. It also advised her of the necessary medical evidence to support disability during the periods claimed to include a complete and comprehensive narrative report from her physician which explained how her accepted condition worsened such that she was not able to perform the duties of her position when she stopped work on January 11, January 27, June 23 and August 26, 2021. For the periods that appellant worked four hours a day beginning January 14, February 28, and July 1, 2021, OWCP advised that her physician must provide the diagnosed condition for which she was given restrictions and the objective examination findings which supported her inability to work more than four hours per day. It noted that it was unclear whether appellant had surgery as the record was devoid of a surgical report.⁴ OWCP afforded her 30 days to respond.

In a November 23, 2021 note, Dr. Lin advised that, as of June 15, 2021, appellant’s diagnosis was right thumb and index finger flexor tenosynovitis and, as of September 10, 2021, her diagnosis was right carpal tunnel syndrome. He indicated that appellant was kept off work for surgery since her pain was so great.

OWCP received a Form CA-7 claiming disability from November 7 through November 20, 2021.

In a December 8, 2021 letter, OWCP indicated that the Form CA-7 claiming compensation for the period beginning November 7, 2021 and continuing appears to be a continuation of the claim for compensation previously filed on November 4, 2021. It indicated that appellant was

⁴ OWCP also noted that the CA-7 forms indicated that she was earning wages from a private employer during some of the periods claimed and requested that she clarify whether she was performing such duties prior to the August 3, 2020 injury date or after filing the claim.

advised in its letter dated November 9, 2021 of the evidence needed to support her claim for compensation and afforded her 30 days to submit the required evidence.

In a December 30, 2021 letter, Dr. Fawcett indicated that appellant's right hand injury was sustained during office work which caused right hand/thumb inflammation and edema. He indicated that her range of motion was severely diminished and caused great pain. Dr. Fawcett advised that he placed appellant off work from January 27 through 29, 2021 as examination of appellant's right hand revealed decreased mobility of the right hand, edema of the right thumb soft tissues and crepitance of the right thumb joint. He indicated that appellant ultimately required surgery and remained disabled from work due to ongoing right-hand incapacitation.

In a January 5, 2022 report, Dr. Lin noted that appellant had right thumb and index finger A-1 pulley release on May 27, 2021 for flexor tenosynovitis and was released to return to work on July 21, 2021. He indicated that when she was seen on September 10, 2021, she had been off work for two weeks due to hand swelling and pain. Dr. Lin indicated that appellant had a positive Phalen's test and positive Durkin test. He further indicated that he determined on examination that she needed a right carpal tunnel release.

By decision dated January 27, 2022, OWCP denied appellant's claim disability for the period January 11, 2021 and continuing causally related to her accepted employment-related condition of right thumb trigger finger as the medical evidence was insufficient to support either partial or total disability during the periods claimed.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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 accepted employment injury.⁶ 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.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 probative

⁵ *Supra* note 2.

⁶ *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).

⁷ 20 C.F.R. § 10.5(f); *C.T.*, Docket No. 20-0786 (issued August 20, 2021); *S.T.*, Docket No. 18-0412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

⁸ *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).

and reliable medical opinion evidence.⁹ The medical evidence required to establish causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. 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 claimed disability and the specific employment factors identified by the claimant.¹⁰

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.¹¹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work commencing January 11, 2021 causally related to her accepted employment injury.

In support of her January 27, 2021 work stoppage, appellant submitted Dr. Fawcett's January 28, 2021 disability slip which excused her from work for the period January 27 through 29, 2021. In a June 23, 2021 note, Dr. Fawcett found she was disabled from work from June 23, through 25, 2021. While he noted that appellant had a painful right hand and required surgery, he failed to provide a history of injury, a medical diagnosis, examination findings, or an opinion on causal relationship.¹² Dr. Fawcett also failed to provide an opinion as to whether the period of disability was due to the accepted employment-related condition. 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-related condition is of no probative value.¹³ While Dr. Fawcett subsequently provided a December 30, 2021 letter wherein he attempted to explain why he took appellant off work as of January 27, 2021, noting that appellant had edema of the right thumb soft tissues and crepitation of the right thumb joint, he did not explain why appellant's objective findings which would substantiate appellant's inability to work as of January 27, 2021.¹⁴ For these reasons, Dr. Fawcett's disability slips and letter of December 30, 2021 are of limited probative value.

⁹ *J.B.*, Docket No. 19-0715 (issued September 12, 2019); *William A. Archer*, 55 ECAB 674 (2004).

¹⁰ *T.L.*, Docket No. 20-0978 (issued August 2, 2021); *V.A.*, Docket No. 19-1123 (issued October 29, 2019).

¹¹ *See S.G.*, Docket No. 18-1076 (issued April 11, 2019); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹² *See P.F.*, Docket No. 18-0973 (issued January 22, 2019); *James Mack*, 43 ECAB 321 (1991).

¹³ *C.M.*, Docket No. 21-0004 (issued May 24, 2021); *R.J.*, Docket No. 19-0179 (issued May 26, 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).

¹⁴ *R.P.*, Docket No. 21-1189 (issued July 29, 2022). *See also S.G.*, Docket No. 18-1076 (issued April 11, 2019); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

Dr. Lin submitted a number of progress reports from June 15, 2021 through January 5, 2022. He clarified that appellant underwent a right thumb and index finger pulley release on May 27, 2021, that he was treating her for the diagnosis of right thumb and index finger tenosynovitis effective June 15, 2021, and that her diagnosis as of September 10, 2021 was right carpal tunnel syndrome. However, Dr. Lin failed to provide an opinion in support of either partial or total disability during the claimed periods due to the accepted right thumb trigger finger conditions. As such, the Board finds that this medical evidence is of no probative value and insufficient to establish appellant's disability claim.¹⁵

In support of her claim for compensation appellant submitted evidence from a d physician assistant and continuing disability forms from a nurse practitioner. The Board has held that certain healthcare providers such as physician assistants and nurse practitioners are not considered physicians as defined under FECA.¹⁶ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits. Thus, this evidence is of no probative value and is insufficient to establish appellant's claim for her work stoppage of January 11, 2021.

Evidence received in support of appellant's disability claim included an illegible work status report which appears to take appellant off work through November 21, 2021. The Board has held that a report that is unsigned or bears an illegible signature lacks proper identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.¹⁷ Thus, this report is insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical opinion evidence sufficient to establish employment-related disability for either partial or total disability commencing January 11, 2021 causally related to her accepted employment injury, the Board finds that she has not met her burden of proof to establish her 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(a) and 20 C.F.R. §§ 10.605 through 10.607.

¹⁵ Medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value. *See S.T.*, Docket No. 21-1060 (issued March 11, 2022); *see also L.B. and D.K.*, *supra* note 13.

¹⁶ 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. § 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.S.*, Docket No. 19-1231 (issued March 30, 2021) (a physician assistant and nurse practitioner are not considered physicians as defined under FECA).

¹⁷ *I.M.*, Docket No. 19-1038 (issued January 23, 2020); *T.O.*, Docket No. 19-1291 (issued December 11, 2019); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish disability from work commencing January 11, 2021 causally related to her accepted employment-related injury.

ORDER

IT IS HEREBY ORDERED THAT the January 27, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 21, 2022
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board