

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

C.E., Appellant)	
)	
and)	Docket No. 22-0663
)	Issued: October 31, 2022
U.S. POSTAL SERVICE, SAN RAFAEL POST)	
OFFICE, San Rafael, CA, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On March 28, 2022 appellant filed a timely appeal from a February 22, 2022 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

ISSUE

The issue is whether appellant has met her burden of proof to establish disability from work beginning November 29, 2021 causally related to her accepted April 5, 2021 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the February 22, 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.*

FACTUAL HISTORY

On April 29, 2021 appellant, then a 53-year-old sales and services associate, filed a notice of recurrence (Form CA-2a) alleging that she experienced a recurrence of disability on April 5, 2021 from an original injury of May 19, 2014 under OWCP File No. xxxxxx616.³ She stopped work following the alleged recurrence on April 27, 2021. Appellant noted that she had returned to work on October 10, 2016 at limited duty and at full duty as of December 1, 2016. She further noted that, when she returned to work, she was initially assigned to a smaller office where she did not have to walk far, stand, or lift. Appellant alleged that when she returned to work in a larger office her pain was aggravated as she was on her feet most of the time. During the past two weeks, she stated that the pain was unbearable.

On May 10, 2021 OWCP determined that appellant's Form CA-2a was a claim for a new injury and, thus, a new case was created under OWCP File No. xxxxxx541. It converted appellant's Form CA-2a to a new claim for occupational disease (Form CA-2) with a date of injury of April 5, 2021.

OWCP received several reports dated June 2, 2021 from Dr. Zilue Tang, Board-certified in occupational medicine. He diagnosed left knee joint pain and osteoarthritis of appellant's left knee and noted that the underlying cause of appellant's symptoms was an old work-related condition. Dr. Tang related that appellant had a history of left knee surgeries in 2014 and 2015 and that, since April, appellant had to perform a lot of walking and standing on her feet after moving to work in a bigger office. He stated that appellant was to be placed on modified duty from June 2 through 23, 2021 with work restrictions of walking no more than 20 cumulative minutes per hour.

On June 9, 2021 OWCP accepted appellant's claim for unilateral primary osteoarthritis of the left knee.

In a report dated June 23, 2021, Dr. Tang diagnosed left knee joint pain and osteoarthritis of the left knee with a history of anterior cruciate ligament (ACL) tear reconstruction in 2015. He continued appellant's modified duty through July 14, 2021, noting that if modified activity was not accommodated by the employing establishment, appellant would be considered temporarily and totally disabled from her regular work.

In a work status report dated July 9, 2021, Dr. Tang diagnosed left knee joint pain and osteoarthritis of the left knee with a history of ACL tear reconstruction. He placed appellant on modified duty from June 23 through July 14, 2021, with work restrictions of walking no more than 20 consecutive minutes per hour.

In a progress report dated July 14, 2021, Dr. Tang diagnosed left knee joint pain and osteoarthritis of the left knee with a history of ACL tear reconstruction. He continued appellant's

³ In OWCP File No. xxxxxx616, appellant filed a traumatic injury claim (Form CA-1) alleging that she strained her left leg when she slid and fell from the second step of a stairway. OWCP accepted this claim for left knee contusion, derangement of the left medial meniscus, old disruption of the left anterior cruciate ligament, and internal derangement of the left knee.

modified work from July 14 through 28, 2021, with the same work restrictions. On July 28, 2021 Dr. Tang extended these restrictions through August 11, 2021.

In a progress report dated August 10, 2021, Dr. Joseph Centeno, a Board-certified general surgeon, diagnosed status post left knee ACL reconstruction and chronic pain syndrome. In a work status note dated August 25, 2021, he recommended that appellant return to work at limited duty with restrictions of walking no more than 20 minutes. Dr. Centeno reiterated appellant's diagnoses in a progress report of August 26, 2021. Appellant informed Dr. Centeno that she was working light duty at that time, but that, due to lack of staffing, she performed tasks outside of her work restrictions. Dr. Centeno recommended an update of her work restrictions to include one day off per week as needed if appellant had severe left knee pain and to continue the previous work restrictions as well.

OWCP paid appellant intermittent wage-loss compensation on the supplemental rolls from August 26 through November 2, 2021.

On September 28, 2021 Dr. Centeno diagnosed status post left knee ACL reconstruction and chronic pain syndrome. He continued appellant's work restrictions.

Appellant submitted a work status report dated November 2, 2021 by Benjamin Hubbard, a physician assistant.

In a progress report dated November 2, 2021, Dr. Centeno rendered the same diagnoses and noted that she continued to be symptomatic without significant change. He continued appellant's work restrictions. Appellant told Dr. Centeno that, while she attempted to follow her work restrictions, it was difficult to follow them with exactness due to low staffing at the employing establishment.

On December 23, 2021 appellant filed a claim for compensation (Form CA-7) for disability from work for the period November 29 through December 15, 2021.

OWCP continued to receive medical evidence. In a report dated November 30, 2021, Dr. Centeno diagnosed status post left knee ACL reconstruction in 2014. Appellant informed Dr. Centeno that two days prior, she was performing her home exercise program on her exercise bike when she felt as though she injured her left knee, which had become swollen. Dr. Centeno recommended that appellant remain off work for the next two weeks to rest and recover.

In a development letter dated December 29, 2021, OWCP requested that appellant submit medical evidence to support disability after November 29, 2021 causally related to the accepted employment injury. It afforded her 30 days to submit the requested evidence.

In a progress report dated December 16, 2021, Dr. Centeno diagnosed status post ACL reconstruction on the left knee in 2014 and chronic pain syndrome. He noted that appellant planned to file a compensation claim for her lower back, which had begun to bother her. Dr. Centeno speculated that her back issues could be related to an abnormal gait due to her left knee condition.

Appellant continued to submit CA-7 forms covering the period December 16, 2021 through February 11, 2022. She indicated in time analysis forms (Form CA-7a) that her claimed compensation was for temporary disability.

Appellant submitted a work status note dated December 16, 2021, signed by Kate Donnelly, a physician assistant. She also submitted progress reports dated January 5 and 12, 2022, signed by Mr. Hubbard and Ms. Donnelly, respectively.

In a work status note dated January 5, 2022, Dr. Teodoro Nissen, an orthopedic surgeon, recommended that appellant be off work. However, he also stated that appellant should have a work restriction of no walking or standing more than 20 minutes.

On February 1, 2022 Cynthia T. Keane, a nurse practitioner, recommended that appellant return to limited duty with a work restriction of walking or standing more than 20 minutes.

By decision dated February 22, 2022, OWCP denied appellant's claim for compensation for disability compensation for the period commencing November 29, 2021.

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.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 the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁷ 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 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.⁸

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

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 *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *D.W.*, Docket No. 18-0644 (issued November 15, 2018).

⁶ 20 C.F.R. § 10.5(f); *B.O., id.*; *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

⁷ *Id.* at § 10.5(f); see *B.K.*, Docket No. 18-0386 (issued September 14, 2018).

⁸ *Id.*

claimed. To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.⁹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work beginning November 29, 2021 causally related to her accepted April 5, 2021 employment injury.

Prior to November 29 2021, the evidence of record establishes that appellant was working modified duty, with restrictions regarding limited walking provided by Dr. Tang and Dr. Centeno.

In a report dated November 30, 2021, Dr. Centeno diagnosed status post left knee ACL reconstruction in 2014. Appellant apprised Dr. Centeno that two days prior, she was performing her home exercise program on her exercise bike when she felt as though she injured her left knee, which had become swollen. Dr. Centeno recommended that appellant remain off work for the next two weeks to rest and recover. However, he did not explain, with rationale, how or why appellant was unable to perform her modified work after November 29, 2021 due to the effects of her accepted conditions. 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.¹⁰ For these reasons, the Board finds that Dr. Centeno's report was insufficient to establish appellant's disability claim.

OWCP also received a progress report dated December 16, 2021 from Dr. Centeno. However, in this report, Dr. Centeno did not address whether appellant was totally disabled from work during the claimed periods due to the accepted employment injury. Medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.¹¹ As such, this report is of no probative value, with regard to the claimed period of disability.¹²

On January 5, 2022 Dr. Nissen recommended that appellant remain off work. However, he also noted that appellant had a work restriction of no walking or standing more than 20 minutes. This report from Dr. Nissen did not offer an opinion as to whether appellant's accepted employment injury was the cause of her disability. The Board has held that medical evidence that does not provide an opinion regarding whether a period of disability is due to an accepted

⁹ A.W., Docket No. 18-0589 (issued May 14, 2019).

¹⁰ 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).

¹¹ See L.B., Docket No. 18-0533 (issued August 27, 2018); D.K., Docket No. 17-1549 (issued July 6, 2018); see also Charles H. Tomaszewski, 39 ECAB 461 (1988).

¹² See Y.D., Docket No. 20-0097 (issued August 25, 2020); J.T., Docket No. 19-1813 (issued April 14, 2020).

employment injury is of no probative value and, thus, is insufficient to establish a claim.¹³ Consequently, Dr. Nissen's disability notes are insufficient to meet appellant's burden of proof.¹⁴

Appellant also submitted work status notes dated December 16, 2021 and January 5 and 12, 2022, by physician assistants. OWCP also received a February 1, 2022 report from a nurse practitioner. These reports, however, are of no probative value as physician assistants are not considered physicians as defined under FECA.¹⁵

As appellant has not submitted rationalized medical evidence establishing causal relationship between her claimed periods of disability and the accepted April 5, 2021 employment injury, the Board finds that she has not met her burden of proof.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish disability from work beginning November 29, 2021 causally related to her accepted April 5, 2021 employment injury.

¹³ See *S.D.*, Docket No. 20-1255 (issued February 3, 2021); *L.L.*, Docket No. 19-1794 (issued October 2, 2020); *C.R.*, Docket No. 19-1427 (issued January 3, 2020); *L.B.*, *supra* note 11; *D.K.*, *supra* note 11.

¹⁴ *Id.*

¹⁵ Section 8102(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 *K.C.*, Docket No. 19-0834 (issued October 28, 2019) and *E.T.*, Docket No. 17-0265 (issued May 25, 2018) (in which the Board held that physician assistants are not considered physicians under FECA); *B.V.*, Docket No. 21-0742 (issued December 14, 2021) (nurse practitioners are not considered physicians as defined under FECA).

ORDER

IT IS HEREBY ORDERED THAT the February 22, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 31, 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