

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

_____)
A.H., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
McConnelsville, OH, Employer)
_____)

Docket No. 21-1237
Issued: September 15, 2022

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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On August 12, 2021 appellant filed a timely appeal from a June 30, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

¹ The Board notes that, following the August 12, 2021 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.*

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish disability from work, commencing January 30, 2021, causally related to her accepted November 17, 2017 employment injury.

FACTUAL HISTORY

On November 20, 2017 appellant, then a 31-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 17, 2017 she sustained acute bilateral thoracic back pain, cervical strain, and chest wall contusion when her stopped vehicle was struck from behind by a dump truck while in the performance of duty. OWCP accepted the claim for strain of the muscle, fascia, and tendon at the neck and right shoulder and upper arm and contusion of the right front wall of the thorax. Appellant stopped work on November 17, 2017. OWCP paid her wage-loss compensation on the supplemental rolls beginning January 6, 2018, and on the periodic rolls beginning August 19, 2018. On September 4, 2018 appellant returned to a modified rural carrier position, working four hours per day. OWCP paid her wage-loss compensation on the supplemental rolls based on her actual earnings for the remaining four hours per day. Appellant returned to full-duty work on February 13, 2020.

On February 10, 2021 Tisha Wardrip, a nurse practitioner, noted that in December 2020 appellant's neck pain had increased with left-sided radiculopathy. She noted that appellant found it more difficult to perform full-duty work. In notes dated from February 10 through March 16, 2021 she continued to hold appellant off work.

In a March 1, 2021 note, Dr. Jed A. Bell, an osteopath specializing in physical medicine and rehabilitation, described appellant's November 17, 2017 accepted injuries and reported that, in December 2020, following the holiday mail season, she experienced increased neck pain and left arm paresthesias. He diagnosed cervical disc disorder and cervical radiculopathy and found that appellant was totally disabled through March 19, 2021.

On April 9, 2021 appellant filed claims for compensation (Form CA-7) for total disability from work beginning January 30, 2021.

In an April 12, 2021 development letter, OWCP informed appellant of the deficiencies of her claim for compensation. It advised her of the type of medical evidence required and afforded her 30 days to submit the necessary evidence.

In progress notes dated April 15 and 27, 2021, Ms. Wardrip diagnosed ongoing neck and left upper extremity pain.

On May 7, 2021 OWCP expanded the acceptance of appellant's claim to include cervical disc degeneration at C5-6, and cervical spinal stenosis.

OWCP continued to receive additional medical evidence. In a May 13, 2021 progress note, Ms. Wardrip diagnosed ongoing neck and left upper extremity pain.

In April 15 and 27, and May 11 and 13, 2021 reports, Dr. Bell described the November 17, 2017 employment injury and diagnosed neck and left upper extremity pain, and nerve root impingement. He again noted that appellant had returned to full-time work, but experienced additional symptoms in November/December 2020 during a busy season at work. Dr. Bell found that she was totally disabled until July 13, 2021. He noted that minimal use of the left upper extremity exacerbated appellant's symptoms significantly causing an increase in pain and numbness. Dr. Bell also noted in an April 19, 2021 form report that appellant was awaiting interventional pain management consultation.

By decision dated June 30, 2021, OWCP denied appellant's claim for compensation for disability, commencing January 30, 2021. It found that the medical evidence of record was insufficient to establish disability during the claimed period causally related to the accepted November 17, 2017 employment injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 Under FECA the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁵ 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.⁶ 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.⁷

To establish causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence.⁸ The opinion of the physician must be based on a complete factual and medical background, 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 employee.⁹

³ *Id.*

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 20 C.F.R. § 10.5(f); *J.S.*, Docket No. 19-1035 (issued January 24, 2020).

⁶ *T.W.*, Docket No. 19-1286 (issued January 13, 2020).

⁷ *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁸ *L.O.*, Docket No. 20-0170 (issued August 13, 2021); *S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

⁹ *V.A.*, Docket No. 19-1123 (issued October 29, 2019); *C.B.*, Docket No. 18-0633 (issued November 16, 2018).

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.¹⁰

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work, commencing January 30, 2021, causally related to her accepted November 17, 2017 employment injury.

In reports dated March 1, April 15 and 27, and May 11 and 13, 2021, Dr. Bell described the November 17, 2017 employment injury and diagnosed neck and left upper extremity pain, and nerve root impingement. He reported that minimal use of the left upper extremity exacerbated appellant's symptoms significantly causing an increase in pain and numbness. Dr. Bell also noted that in November and December 2020, corresponding with the Christmas mail season, she experienced increased neck pain and left arm paresthesias. He diagnosed cervical disc disorder and cervical radiculopathy and found that appellant was totally disabled through July 13, 2021. Dr. Bell's notes, however, are of no probative value regarding appellant's disability claim because they do not contain an opinion that she had disability from work during the claimed period causally related to her November 17, 2017 employment injury. The Board has held that 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

Appellant also submitted a series of progress notes from Ms. Wardrip, a nurse practitioner. The Board has long held that certain healthcare providers such as physician assistants, nurse practitioners, and physical therapists are not considered qualified physicians as defined under FECA.¹² Their medical findings, reports and/or opinions, unless cosigned by a qualified physician, will not suffice for purposes of establishing entitlement to FECA benefits.¹³ Consequently, this evidence is insufficient to meet her burden of proof.

¹⁰ See *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, *supra* note 7.

¹¹ See *R.C.*, Docket No. 20-1637 (issued September 24, 2021); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹² Section 8101(2) provides that under FECA the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by the applicable 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 *S.E.*, Docket No. 21-0666 (issued December 20, 2021) (physician assistants and nurse practitioners are not considered physicians under FECA).

¹³ *Id.*; *K.A.*, Docket No. 18-0999 (issued October 4, 2019); *K.W.*, 59 ECAB 271, 279 (2007).

As the medical evidence of record does not contain a rationalized opinion establishing causal relationship between appellant's claimed disability and the accepted November 17, 2017 employment injury, the Board finds that she 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, commencing January 30, 2021, causally related to her accepted November 17, 2017 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the June 30, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 15, 2022
Washington, DC

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

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

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