

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

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P.L., Appellant)	
)	
and)	Docket No. 22-0337
)	Issued: September 9, 2022
DEPARTMENT OF THE AIR FORCE, TINKER)	
AIR FORCE BASE, OK, Employer)	
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Appearances:
Alan J. Shapiro, Esq., for the appellant¹
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 5, 2022 appellant, through counsel, filed a timely appeal from a December 14, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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.*

ISSUE

The issue is whether appellant has met his burden of proof to establish disability from work for the period October 1, 2018 through February 24, 2020 causally related to his accepted March 5, 2018 employment injury.

FACTUAL HISTORY

On March 13, 2018 appellant, then a 29-year-old aircraft mechanic, filed a traumatic injury claim (Form CA-1) alleging that on March 5, 2018 he broke a screw from a previous ankle surgery when he tripped and twisted his ankle while in the performance of duty. He stopped work on March 5, 2018 and returned to work on March 6, 2018. OWCP accepted the claim for a right ankle sprain and a stress fracture of the right ankle, subsequent encounter for fracture with routine healing. It paid appellant wage-loss compensation on the supplemental rolls from May 14 to June 23, 2018 and on the periodic rolls from June 24 to August 18, 2018.

On February 25, 2020 appellant filed a claim for compensation (Form CA-7) for disability from work for the period October 1, 2018 to February 24, 2020.

In a development letter dated March 4, 2020, OWCP requested that appellant submit a comprehensive report from his attending physician addressing how his condition worsened such that he was unable to work for the period October 1, 2018 through February 24, 2020 due to his accepted employment injury. It afforded him 30 days to provide the requested evidence. No evidence was received.

By decision dated April 16, 2020, OWCP denied appellant's claim for wage-loss compensation due to disability from work for the period October 1, 2018 through February 24, 2020 causally related to the March 5, 2018 employment injury.

On April 24, 2020 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

A telephonic hearing was held on August 12, 2020. Counsel related that appellant had sustained a right ankle injury that necessitated hardware. Appellant subsequently sustained a work injury that displaced a portion of his hardware. He underwent a removal of the hardware, but developed necrosis, which was treated with a below-the-knee amputation and subsequent revision amputation.

By decision dated October 26, 2020, OWCP's hearing representative affirmed the April 16, 2020 decision.

Thereafter, OWCP received an undated work status report from Dr. Ertl. Dr. Ertl discussed appellant's history of a right transtibial amputation in August 2018 and revision on February 19, 2020. He advised that his recovery and transition back to a prosthesis required him to be off work. Dr. Ertl noted that appellant had also experienced a depressed right lateral tibial plateau fracture in June, which "required him not to wear his prosthesis and not work, causing increased anxiety and depression." He opined that he could likely resume work around

September 23, 2020. Dr. Ertl diagnosed a right transtibial amputation and a right depressed lateral tibial plateau fracture.

In a report dated March 1, 2021, Dr. David Dawson, who specializes in family medicine, provided a history of appellant tripping at work on an uneven surface on March 5, 2018 fracturing an ankle that had previously been surgically repaired. He noted that, after multiple subsequent surgeries, appellant developed bony necrosis of the talus treated with a below-the-knee amputation in July 2018. Dr. Dawson advised that appellant had difficulty with his prosthetic and had also fractured his tibia in 2019. He related that appellant was “unable to work because of these complications since March 5, 2018” and was applying for disability retirement. Dr. Dawson diagnosed status post fracture of the ankle with a right below-the-knee amputation. He recommended approval of medical retirement.

On November 9, 2021 appellant, through counsel, requested reconsideration. He asserted that the March 1, 2021 report from Dr. Dawson was sufficient to require further development of the medical evidence.

By decision dated December 14, 2021, OWCP denied modification of its October 26, 2020 decision.

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 the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁵ Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.⁶ 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.⁷ When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical

³ *Id.*

⁴ *A.R.*, Docket No. 20-0583 (issued May 21, 2021); *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989); *see also Nathaniel Milton*, 37 ECAB 712 (1986).

⁵ 20 C.F.R. § 10.5(f); *see J.M.*, Docket No. 18-0763 (issued April 29, 2020); *Bobbie F. Cowart*, 55 ECAB 746 (2004).

⁶ *D.W.*, Docket No. 20-1363 (issued September 14, 2021); *L.W.*, Docket No. 17-1685 (issued October 9, 2018).

⁷ *See M.W.*, Docket No. 20-0722 (issued April 26, 2021); *D.G.*, Docket No. 18-0597 (issued October 3, 2018).

standpoint, they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for loss of wages.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 claimed. To do so, would essentially allow an employee to self-certify his or her disability and entitlement to compensation.⁹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish disability from work for the period October 1, 2018 through February 24, 2020 causally related to his accepted March 5, 2018 employment injury.

On March 1, 2021 Dr. Dawson discussed appellant's history of an employment injury on March 5, 2018 when he tripped and fractured an ankle after a surgical repair. He noted that, following surgeries, appellant underwent a below-the-knee amputation to treat bony necrosis of the talus in July 2018. Appellant subsequently had difficulty with his prosthetic and fractured his tibia in 2019. Dr. Dawson opined that he was totally disabled from employment as of March 5, 2018 due to complications. He diagnosed status post fracture of the ankle with a right below-the-knee amputation and recommended medical retirement. However, Dr. Dawson did not provide sufficient rationale explaining how the work-related disability related to the claimed period. He failed to differentiate between the effects of appellant's accepted employment injury and the nonoccupational motorcycle accident.¹⁰ Consequently, Dr. Dawson's opinion is of limited probative value regarding whether he had work-related disability for the period October 1, 2018 through February 24, 2020.¹¹

In an undated report, Dr. Ertl discussed appellant's history of a right transtibial amputation in August 2018 and revision on February 19, 2020. He advised that his recovery required him to be off work. Dr. Ertl also noted that appellant had fractured his right lateral tibial plateau in June which "required him not to wear his prosthesis and not work, causing increased anxiety and depression." He opined that appellant could likely resume work around September 23, 2020. Dr. Ertl diagnosed a right transtibial amputation and a right depressed lateral tibial plateau fracture. He, however, failed to explain how or why appellant was unable to perform his work duties during the claimed period of disability as a result of his accepted employment 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

⁸ See *A.R.*, *supra* note 4; *D.R.*, Docket No. 18-0323 (issued October 2, 2018).

⁹ See *M.J.*, Docket No. 19-1287 (issued January 13, 2020); *C.S.*, Docket No. 17-1686 (issued February 5, 2019); *William A. Archer*, 55 ECAB 674 (2004).

¹⁰ See *A.P.*, Docket No. 21-0300 (issued April 6, 2022); *R.J.*, Docket No. 18-1701 (issued May 18, 2020).

¹¹ *Id.*

employment-related cause.¹² Therefore, Dr. Ertl's report is insufficient to establish appellant's disability claim.

On February 13, 2019 Dr. Ertl noted that appellant had undergone a stability of the right talus after a motorcycle accident. He later experienced a rotational injury, had surgery to remove hardware in his ankle, and developed osteonecrosis of the talus treated with a transtibial amputation in July 2018. Dr. Ertl discussed appellant's complaints of pain using his prosthesis and recommended surgical revision. He did not, however, address the issue of disability from employment. The Board has held that medical evidence that does not address whether a period of disability is due to an accepted employment condition is of no probative value on the issue of disability and insufficient to establish a claim.¹³

The record contains progress reports from Dr. Uhland discussing appellant's condition following his below-the-knee amputation. Dr. Uhland did not address his disability status or causation. 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.¹⁴

Appellant also submitted the results of diagnostic studies. However, diagnostic studies, standing alone, lack probative value as they do not address whether the accepted employment injury caused appellant to be disabled from work during the claimed periods.¹⁵

As the medical evidence of record does not contain a rationalized opinion establishing causal relationship between appellant's claimed disability and his accepted employment injury, the Board finds that he has not met his 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 his burden of proof to establish disability from work for the period October 1, 2018 through February 24, 2020 causally related to his accepted March 5, 2018 employment injury.

¹² *A.P.*, *supra* note 10; *S.S.*, Docket No. 21-0763 (issued November 12, 2021).

¹³ *See C.S.*, Docket No. 21-1048 (issued April 20, 2022); *C.P.*, Docket No. 19-1716 (issued March 11, 2020); *C.R.*, Docket No. 19-1427 (issued January 3, 2020).

¹⁴ *K.F.*, Docket No. 19-1846 (issued November 3, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁵ *C.S.*, Docket No. 19-1279 (issued December 30, 2019).

ORDER

IT IS HEREBY ORDERED THAT the December 14, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 9, 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