

ISSUE

The issue is whether appellant has met her burden of proof to establish disability from work for the period February 26 through March 11, 2022 causally related to her March 6, 2015 employment injury.

FACTUAL HISTORY

This case has previously been before the Board.⁴ The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On March 17, 2015 appellant, then a 48-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on March 6, 2015 she sprained her lumbar spine carrying a large and heavy parcel to a customer's doorstep while in the performance of duty. The employing establishment advised that, at the time of her injury, she worked 24 hours per week in a temporary position. OWCP accepted the claim for lumbar sprain and thoracic sprain. It subsequently expanded its acceptance of the claim to include an aggravation of lumbar facet arthropathy at L2-L5.

Appellant stopped work on June 8, 2015 and returned to modified part-time employment on January 25, 2016. OWCP paid her wage-loss compensation for intermittent time lost from work. On January 25, 2017 appellant underwent a lateral decompression at L4-5, greater on the right than the left. OWCP paid her wage-loss compensation on the supplemental rolls beginning January 21, 2017 and on the periodic rolls from February 21, 2017 to February 3, 2018 and from June 24, 2018 until February 29, 2020. Appellant accepted a modified position working five hours per day on March 9, 2020.

On May 21, 2021 appellant filed a claim for wage-loss compensation (Form CA-7) for disability from work for the period April 23 to May 10, 2021.

By decision dated July 2, 2021, OWCP denied appellant's claim for wage-loss compensation due to disability from work for the period April 23 through May 10, 2021 causally related to her accepted March 6, 2015 employment injury.⁵

On July 16, 2021 appellant requested reconsideration.

By decision dated August 16, 2021, OWCP denied modification of its July 2, 2021 decision.

Appellant appealed to the Board. By decision dated February 8, 2022, the Board affirmed July 2 and August 16, 2021 OWCP decisions, finding that appellant had not met her burden of

⁴ Docket No. 21-1256 (issued February 8, 2022).

⁵ By decision dated July 21, 2020, OWCP denied appellant's request to expand the acceptance of her claim to include a left leg or foot condition as a consequence of her accepted March 6, 2015 employment injury. By decision dated January 4, 2021, an OWCP hearing representative affirmed the July 21, 2020 decision.

proof to establish disability from work for the period April 23 through May 10, 2021 causally related to her March 6, 2015 employment injury.⁶

In a form report dated February 18, 2022, Dr. Charles Proctor, a Board-certified general surgeon, advised that appellant required surgery and could not work during the postoperative period from February 16 to March 17, 2022.

On March 13, 2022 appellant filed a claim for compensation (Form CA-7) requesting wage-loss compensation from February 26 to March 11, 2022 due to disability from employment.

In a development letter dated March 17, 2022, OWCP advised appellant that the evidence received was currently insufficient to support her claim and requested that she provide a reasoned medical report explaining why she was unable to work during the claimed period due to her accepted March 6, 2015 employment injury. It afforded her 30 days to submit the requested evidence.

Thereafter, OWCP received January 31 and February 7, 2022 reports from a nurse practitioner.

On March 15, 2022 a licensed professional counselor discussed appellant's depression and anxiety and provided work restrictions, including intermittent time off work. In a March 20, 2021 FMLA form, the counselor found that she was unable to work during flareups of her anxiety and depression.⁷

By decision dated April 19, 2022, OWCP denied appellant's claim for compensation for disability from work for the period February 26 through March 11, 2022 causally related to her accepted March 6, 2015 employment injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁸ has the burden of proof to establish the essential elements of his or her claim including the fact that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁹

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.¹⁰ Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn

⁶ *Supra* note 4.

⁷ Appellant also submitted an unsigned and incomplete report dated March 20, 2022 from a health care provider who diagnosed anxiety and depression.

⁸ *Supra* note 2.

⁹ *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).

¹⁰ 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).

wages.¹¹ 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.¹² When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for loss of wages.¹³

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work for the period February 26 through March 11, 2022 causally related to her March 6, 2015 employment injury.

In a February 18, 2022 form report, Dr. Proctor indicated that appellant required surgery. He opined that she would be unable to work following surgery from February 16 to March 17, 2022. However, Dr. Proctor did not offer an opinion on the cause of her disability. 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.¹⁴ Thus, this form report is of no probative value and is insufficient to establish the disability claim.

Appellant further submitted January 31 and February 7, 2022 reports from a nurse practitioner. Certain healthcare providers, such as physician assistants, nurse practitioners, and physical therapists are not considered physicians as defined under FECA.¹⁵ Their medical findings, reports and/or opinions, unless cosigned by a qualified physician, will not suffice for purposes of establishing entitlement to FECA benefits.¹⁶ Consequently, this additional evidence is insufficient to meet appellant's burden of proof.

Appellant further submitted reports from a licensed professional counselor. A licensed professional counselor is not a clinical psychologist and, therefore, does not satisfy the definition

¹¹ *D.W.*, Docket No. 20-1363 (issued September 14, 2021); *L.W.*, Docket No. 17-1685 (issued October 9, 2018).

¹² *See M.W.*, Docket No. 20-0722 (issued April 26, 2021); *D.G.*, Docket No. 18-0597 (issued October 3, 2018).

¹³ *See A.R.*, *supra* note 9; *D.R.*, Docket No. 18-0323 (issued October 2, 2018).

¹⁴ *See C.S.*, Docket No. 21-1048 (issued April 20, 2022); *R.O.*, Docket No. 20-1243 (issued May 28, 2021); *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁵ Section 8101(2) of FECA provides that 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); *A.Z.*, Docket No. 21-1355 (issued May 19, 2022) (nurse practitioners are not physicians under FECA); *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).

¹⁶ *Id.*

of “physician” as defined by FECA.¹⁷ Thus, this evidence is also insufficient to meet appellant’s burden of proof.

As appellant has not submitted rationalized medical evidence establishing disability during the claimed period causally related to the accepted March 6, 2015 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 for the period February 26 through March 11, 2022 causally related to her March 6, 2015 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the April 19, 2022 decision of the Office of Workers’ Compensation Programs is affirmed.

Issued: September 19, 2022
Washington, DC

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

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

Janice B. Askin, Judge
Employees’ Compensation Appeals Board

¹⁷ See *supra* note 16; see also *C.M.*, Docket No. 18-1166 (issued July 9, 2019); *L.H.*, Docket No. 18-1217 (issued May 3, 2019).