United States Department of Labor
Employees' Compensation Appeals Board

M.H., Appellant	)	
and	)	**Docket No. 22-1178**
U.S. POSTAL SERVICE, HUNTING PARK POST OFFICE, Philadelphia, PA, Employer	)	**Issued: April 25, 2023**

Appearances:
Thomas R. Uliase, Esq., for the appellant[1]
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 9, 2022 appellant, through counsel, filed a timely appeal from a May 16, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

[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.*

[3] The Board notes that, following the May 16, 2002 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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish disability from work commencing December 19, 2020, causally related to the accepted October 14, 2016 employment injury.

FACTUAL HISTORY

On October 15, 2016 appellant, then a 53-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that, on October 14, 2016, she injured her left foot, ankle, and knee when she slipped and fell while in the performance of duty. She stopped work on the date of injury. OWCP accepted appellant's claim for sprains of the left knee and ankle, and meniscus tear of the left knee. OWCP paid appellant wage-loss compensation on the supplemental rolls from December 5, 2016 through May 5, 2017, and again from November 2 through December 4, 2021. OWCP commenced payment of wage-loss compensation to appellant on the periodic rolls as of December 5, 2021.

OWCP received duty status reports (Form CA-17) dated October 2 and November 2, 2018 from Dr. Benjamin Kaplan, an attending physiatrist. Dr. Kaplan noted a history of the October 14, 2016 employment injury and diagnosed the accepted condition of left ankle sprain. Dr. Kaplan also diagnosed internal derangement and tendinitis of the left knee. He noted that these diagnoses were due to injury. Dr. Kaplan advised that appellant was disabled from regular work and he listed her restrictions. On December 22, 2018 appellant accepted the employing establishment's December 20, 2018 job offer for a full-time, modified-duty carrier position.

On January 21, 2021 appellant filed a claim for compensation (Form CA-7) for disability from work for the period December 19, 2020 through January 15, 2021.

OWCP, by development letter dated January 29, 2021, informed appellant of the deficiencies in her claim and requested that she submit medical evidence to support her reported disability during the claimed period causally related to the accepted October 14, 2016 employment injury. It afforded her 30 days to respond.

Appellant filed additional Form CA-7 claims for compensation for disability from work for the period January 16 through February 26, 2021.

In visit notes dated December 18, and 24, 2020, as well as January 21, 2021, Dr. Kaplan diagnosed unspecified internal derangement of left knee; sprain of unspecified ligament of left ankle, subsequent encounter; displaced spiral fracture of shaft of left tibia, subsequent encounter for closed fracture with routine healing; and sprain of unspecified site of left knee, subsequent encounter. He noted that appellant may return to regular work with previous restrictions. In a February 16, 2021 visit note, Dr. Kaplan advised that she was temporarily disabled from work until her next appointment.

On March 3, 2021 OWCP referred appellant, along with the medical record and a statement of accepted facts (SOAF) to Dr. Noubar A. Didizian, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine the status of appellant's current disability.

In a March 23, 2021 report, Dr. Didizian noted the SOAF and appellant's history of medical treatment. He related extensive physical examination findings and listed her diagnoses

for the accepted injury as left ankle sprain, left knee sprain, tear of the left knee medial meniscus, and progression of degenerative disease of the left knee. Dr. Didizian's recommendation was that appellant undergo total left knee replacement. He also noted that she could perform sedentary light duty. In an addendum dated April 1, 2021, Dr. Didizian related that he had reviewed appellant's modified job offer dated December 22, 2018, and that she could continue to work the modified position.

By decision dated April 14, 2021, OWCP expanded the acceptance of appellant's claim to include aggravation/acceleration of tricompartmental osteoarthritis of the left knee based on the March 23, 2021 report from second opinion physician, Dr. Didizian.

By decision dated April 15, 2021, OWCP denied appellant's claims for disability from work for the period commencing December 19, 2020. It found that the medical evidence of record was insufficient to establish disability.

Appellant continued to file CA-7 forms claiming compensation for disability from work for the period February 27 through April 23, 2021.

In visit notes dated March 25, April 13, May 11, and July 8, 2021, Dr. Kaplan reiterated his diagnoses of unspecified internal derangement of left knee; sprain of unspecified ligament of left ankle, subsequent encounter; displaced spiral fracture of shaft of left tibia, subsequent encounter for closed fracture with routine healing; and sprain of unspecified site of left knee, subsequent encounter. Additionally, he reiterated that appellant was temporarily, totally disabled from work.

In a July 28, 2021 report, Dr. Kaplan noted that appellant had been under his care since May 2018 following her October 2016 employment-related left knee injury. He indicated that she had been able to work with restrictions and reduced hours for two years, which, however, resulted in progressive damage to the knee joint. Dr. Kaplan related that she had not been cleared to return to work since December 9, 2020 due to severe damage to her left knee.

OWCP thereafter received a March 12, 2019 left knee magnetic resonance imaging scan report. Dr. Irene B. Darocha, a Board-certified diagnostic radiologist, provided impressions of tricompartmental degenerative osteoarthritis, most severe medially; no fracture or dislocation, complex tearing both menisci primarily in the posterior horns, absence of the anterior cruciate ligament indicating chronic injury with fibrosis of the posterior cruciate ligament; and joint effusion and posterior popliteal cyst.

On August 27, 2021 appellant requested reconsideration of the April 15, 2021 decision.

Hospital records indicated that appellant was treated on September 20, 2021 and diagnosed with having bilateral knee post-traumatic osteoarthritis.

In additional visit notes dated September 3, 2021, Dr. Kaplan restated his prior diagnoses and opinion that appellant was temporarily, totally disabled from work.

In a September 21, 2021 prescription, Dr. Kaplan ordered physical therapy to treat appellant's left knee condition. An October 18, 2021 physical therapy report was received by OWCP.

By decision dated November 19, 2021, OWCP denied modification of its April 15, 2021 decision, finding that the medical evidence failed to establish that appellant's accepted conditions had worsened as a result of her accepted conditions rather than being related to new intervening exposures at work. It advised appellant to file a new claim if she was claiming increased disability due to new work exposures.

Appellant filed an additional Form CA-7 dated November 24, 2021, claiming compensation for disability from work for the period November 6 through December 17, 2021.

In support of her claim, appellant submitted June 7 and October 1, 2021 visit notes from Dr. Randall Smith, a Board-certified orthopedic surgeon. Dr. Smith recommended total left knee replacement and related that appellant was unable to work.

OWCP also received a November 19, 2021 report from Dr. Neil P. Sheth, an orthopedic surgeon, who diagnosed left knee degenerative joint disease and recommended a bilateral knee replacement.

Appellant also submitted physical therapy reports dated October 19, 2021 through January 18, 2022.

In Form CA-17 reports dated October 1 and December 29, 2021, and February 22, 2022, Dr. Kaplan noted a date of injury as October 2, 2016. He diagnosed the accepted condition as meniscus tear due to injury and again advised that appellant was totally disabled from work.

In visit notes dated March 16, August 5, and December 1 and 29, 2021, and January 25, 2022, Dr. Kaplan reiterated his prior diagnoses, and conclusion that appellant was totally disabled from work.

On February 15, 2022 appellant, through counsel, requested reconsideration of the November 19, 2021 decision and submitted additional medical evidence.

In a January 28, 2022 letter, Dr. Smith noted his history of appellant's treatment, as well as appellant's treatment by his associate Dr. Kaplan, following her October 14, 2016 employment injury. He noted a worsening of her accepted left knee conditions which caused him and Dr. Kaplan to change her work restrictions. As of February 16, 2021, the physicians believed that appellant could not perform her work duties, not even her modified work duties.

Dr. Kaplan, in visit notes dated February 22, 2022, continued to provide his prior diagnoses, and conclusion that appellant was temporarily totally disabled from work.

OWCP also received additional physical therapy reports dated March 1 through 17, 2022.

Dr. Smith, in a March 14, 2022 attending physician's report (Form CA-20), noted appellant's history of injury on October 14, 2016 and diagnosed knee and ankle sprain. He checked a box marked "Yes" indicating that the diagnosed conditions were caused or aggravated by the described employment activity. Dr. Smith indicated that appellant was totally disabled commencing December 9, 2020. He also indicated that she was partially disabled from December 9, 2020 to March 14, 2023.

OWCP, by decision dated May 16, 2022, denied modification of its November 19, 2021 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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.[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]

Under FECA, the term "disability" means an incapacity because of an employment injury, to earn the wages the employee was receiving at the time of the injury.[8] When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, prevent the employee from continuing in his or her employment, he or she is entitled to compensation for any loss of wages.[9]

To establish causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such causal relationship.[10] The opinion of the physician must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment incident identified by the employee.[11]

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] *Supra* note 2.

[5] *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).

[6] *See L.F.*, Docket No. 19-0324 (issued January 2, 2020); *T.L.*, Docket No. 18-0934 (issued May 8, 2019); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

[7] *See* 20 C.F.R. § 10.5(f); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

[8] *Id.* at § 10.5(f); *see e.g.*, *G.T.*, 18-1369 (issued March 13, 2019); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

[9] *G.T.*, *id.*; *Merle J. Marceau*, 53 ECAB 197 (2001).

[10] *See S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

[11] *C.B.*, Docket No. 18-0633 (issued November 16, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.[12]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work commencing December 19, 2020, causally related to the accepted October 14, 2016 employment injury.

Appellant was evaluated by OWCP's second opinion physician, Dr. Didizian on March 23, 2021. In his initial report, Dr. Didizian related that appellant also had a left knee osteoarthritis condition causally related to the accepted employment injury. OWCP accepted this condition based on Dr. Didizian's opinion. In his addendum report, dated April 1, 2021, Dr. Didizian related that he had reviewed appellant's December 2018 modified job offer and that appellant could continue to perform the duties of the position. His reports therefore did not support a finding that appellant was totally disabled. As Dr. Didizian's reports were based on a proper factual history and provided findings and medical reasoning supporting his conclusions that appellant was not disabled from work due to the accepted employment injury, his opinion is therefore sufficient to carry the weight of the medical evidence.[13]

Dr. Kaplan's visit notes dated October 20, and December 18 and 24, 2020, and January 21, 2021 noted appellant's left ankle and left knee diagnoses. However, he did not provide an opinion that she had total disability during the claimed period causally related to an accepted employment condition. 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]

In support of her disability claims, appellant submitted a number of additional medical records from her physician, Dr. Kaplan. In his visit notes dated February 16, 2021 through February 22, 2022, Dr. Kaplan diagnosed left knee conditions including, unspecified internal derangement of left knee; sprain of unspecified ligament of left ankle, subsequent encounter; displaced spiral fracture of shaft of left tibia, subsequent encounter for closed fracture with routine healing; and sprain of unspecified site of left knee, subsequent encounter. He also opined that appellant was temporarily, totally disabled from work. Dr. Kaplan, however, did not explain how the October 14, 2016 employment injury caused her disability during the period claimed. As noted above, a report that does not provide an opinion explaining how a given medical condition/period of disability has an employment-related cause is of limited probative value.[15] Thus, Dr. Kaplan's reports are insufficient to establish appellant's disability claim.

[12] *See S.G.*, Docket No. 18-1076 (issued April 11, 2019); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, *supra* note 6.

[13] *See V.A.*, Docket No. 21-1023 (issued March 6, 2023).

[14] *See T.S.*, Docket No. 20-1229 (issued August 6, 2021); *J.M.*, Docket No. 19-1169 (issued February 7, 2020); *A.L.*, 19-0285 (issued September 24, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[15] *Id.*

In a July 28, 2021 report, Dr. Kaplan attributed the worsening and severe damage to appellant's left knee condition and her disability from work since December 9, 2020 to her modified work duties. The Board notes that Dr. Kaplan had previously found that appellant could perform her modified job duties until his report on February 16, 2021. Further, as noted, 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.[16] While Dr. Kaplan opined that appellant was totally disabled from work, he did not explain, with rationale, whether that disability was causally related to the accepted employment injury.[17] Therefore, his report was insufficient to establish appellant's disability claims.

Similarly, in his June 7 and October 1, 2021 visit notes, Dr. Smith recommended total knee replacement and opined that appellant was unable to work. However, he did not offer a rationalized medical opinion explaining why she was unable to perform her modified work and why her disability from work was causally related to the accepted employment injury.[18]

Likewise, in a January 28, 2022 report, Dr. Smith also attributed appellant's worsening left knee conditions to her work duties. He noted that her condition prompted both himself and Dr. Kaplan to change her work restrictions. While he noted that he and Dr. Kaplan found that appellant could no longer perform her work duties, including her modified work duties as of February 16, 2021, Dr. Smith did not provide medical rationale explaining how appellant's disability during the claimed period was causally related to the October 14, 2016 employment injury. Thus, this evidence is of limited probative value and is insufficient to establish appellant's disability claims.[19]

Dr. Smith, in a March 14, 2022 Form CA-20 report, diagnosed knee and ankle sprain and checked a box marked "Yes" indicating that the diagnosed conditions were caused or aggravated by the October 14, 2016 employment. He opined that appellant was totally disabled from work commencing December 9, 2020. The Board has held, however, that when a physician's opinion as to the cause of a period of disability consists only of a checkmark on a form, without further explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.[20] Thus, this report is insufficient to establish the claimed period of disability.

In support of her claim, appellant also submitted a November 19, 2021 report from Dr. Neil P. Sheth, an orthopedic surgeon, who diagnosed left knee degenerative joint disease. This evidence does not provide an opinion as to whether a period of disability is due to an accepted employment condition and, thus, is insufficient to meet appellant's burden of proof.[21]

The record also contains diagnostic reports. However, the Board has long held, that diagnostic studies, standing alone, lack probative value because they do not address whether the

[16] *Id*.

[17] *D.H.*, Docket No. 21-0102 (issued July 28, 2021).

[18] *Id.*

[19] *See S.Y.*, Docket No. 20-0347 (issued March 31, 2023); *T.B.*, Docket No. 20-0255 (issued March 11, 2022).

[20] *See C.G.*, Docket No. 20-1092 (issued September 22, 2021); *O.M.*, Docket No. 18-1055 (issued April 15, 2020).

[21] *Supra* note 13.

employment injury caused any of the diagnosed conditions or associated disability.[22] For this reason, the Board finds that the diagnostic reports of record are insufficient to establish appellant's disability claims.

Additionally, the record contains physical therapy reports. Certain healthcare providers such as physical therapists, nurses, physician assistants, and social workers are not considered physicians as defined under FECA. Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[23]

For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work during the claimed period as a result of the accepted employment injury.[24] Because appellant has not submitted rationalized medical opinion evidence sufficient to establish employment-related total disability during the claimed period due to her accepted employment conditions, 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 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 December 19, 2020, causally related to the accepted October 14, 2016 employment injury.

[22] *See M.D.*, Docket No. 21-1270 (issued March 21, 2022); *T.W.*, Docket No. 20-1669 (issued May 6, 2021); *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

[23] Section 8101(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 T.S.*, Docket No. 20-1229 (issued August 6, 2021) (physical therapists are not physicians as defined under FECA); *F.H.*, Docket No. 18-0160 (issued August 23, 2019) (physical therapists are not physicians as defined under FECA); *J.L.*, Docket No. 17-1207 (issued December 8, 2017) (a physical therapist is not considered a physician under FECA).

[24] *Supra* note 6.

ORDER

IT IS HEREBY ORDERED THAT the May 16, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 25, 2023
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