United States Department of Labor
Employees' Compensation Appeals Board

C.G., Appellant	)	
and	)	**Docket No. 23-0079**
	)	**Issued: April 5, 2023**
U.S. POSTAL SERVICE, POST OFFICE, Austin, TX, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
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 October 12, 2022 appellant, through counsel, filed a timely appeal from a May 6, 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 6, 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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish disability from work for the period April 26 through October 5, 2021 causally related to her accepted January 11, 2016 employment injury.

FACTUAL HISTORY

On January 12, 2016 appellant, then a 38-year-old city letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 11, 2016 she injured her right leg when she stepped in a hole while in the performance of duty. OWCP accepted the claim for lumbar radiculopathy and lumbar intervertebral disc disorders with radiculopathy. It subsequently expanded its acceptance of the claim to include a strain of the right Achilles tendon, right ankle sprain, and traumatic arthropathy and other instability of the right ankle and foot. On April 27, 2017 appellant underwent an OWCP-authorized right microdiscectomy at L5-S1, which was redone at L5-S1 on August 24, 2017.

Appellant stopped work on January 12, 2016 and returned to part-time employment on January 24, 2018 and to full-time modified duty in April 2018. She again stopped work on June 14, 2018 and resumed part-time modified employment on November 23, 2019. OWCP paid appellant wage-loss compensation for disability from work on the supplemental rolls from February 26, 2016 through May 27, 2017, and on the periodic rolls from May 28, 2017 through November 9, 2019.

On May 15, 2019 Dr. Ryan P. Shock, a podiatrist, performed an OWCP-authorized right gastrocnemius recission, right lateral ankle peroneal repair with extensive debridement and synovitis, and a right lateral ankle stabilization. Appellant resumed part-time modified employment on November 23, 2019. On February 1, 2020 she accepted a full-time modified position with the employing establishment.

In a report dated May 13, 2021, Dr. Shock related that a magnetic resonance imaging (MRI) scan of the ankle showed a cyst on the posterior tibial tendon. He diagnosed traumatic arthropathy of the right foot and ankle, a strain of the right Achilles tendon, disorder of the right ankle joint, and a sprain of the ligament of the right ankle. Dr. Shock found that appellant had degeneration of the right hindfoot, neuritis due to muscle hypertrophy, and compression of the tibial nerve that was directly related to her employment. He requested that OWCP expand acceptance of the claim to include those conditions. Dr. Shock provided a similar report on May 25, 2021.

In a duty status report (Form CA-17) dated May 20, 2021, an unidentifiable physician found that appellant could work eight hours per day with restrictions.

An MRI scan of the right tibia fibula, performed on May 22, 2021, revealed a small non-dissecting Baker's cyst, scarring of the medial gastrocnemius aponeurosis and medial soleus at the mid-calf and medial Achilles junction compatible with the prior injury, and a lipoma within the anterior medial head of the gastrocnemius muscle at the proximal level.

On May 25, 2021 appellant filed a claim for compensation (Form CA-7) requesting wage-loss compensation for intermittent disability from February 4, 2016 to May 19, 2021. In an accompanying May 25, 2021 time analysis (Form CA-7a), the employing establishment advised that her claimed compensation for wage loss from April 26 to May 19, 2021 due to doctor's visits, the inability to wear shoes, and pending surgery. It further indicated that appellant claimed wage-loss compensation in 2016.

In a development letter dated June 3, 2021, OWCP indicated that appellant had claimed compensation beginning April 26, 2021 and noted that it had previously paid her wage loss for the period February 26 through March 16, 2016. It advised her of the deficiencies of her claim and the evidence required to establish disability from work. OWCP afforded appellant 30 days to submit the necessary evidence.

In a progress report dated June 8, 2021, Dr. Shock discussed appellant's complaints of continued pain in the right hindfoot, midfoot, and posterior calf. He again diagnosed traumatic arthropathy of the right foot and ankle, a strain of the right Achilles tendon, a disorder of the right ankle joint, and a sprain of the ligament of the right ankle, and further found employment-related degeneration of the right hindfoot, neuritis due to muscle hypertrophy, and compression of the tibial nerve. Dr. Shock provided similar progress reports dated June 22 and July 13 and 26, 2021.

On June 28, 2021 Dr. Shock requested authorization to perform a repair of the leg tendon and revision of the calf tendon.

A physician assistant evaluated appellant on July 1, 2021.

On Form CA-17s dated July 1 and 21, 2021, an unidentifiable physician indicated that appellant could work full time with restrictions.

On July 20 and 27, 2021 Dr. Shock requested that acceptance of appellant's claim be expanded to include a strain of the muscles and tendons of the posterior muscle group of the lower right leg, and contracture of the right lower leg muscles.

A physician assistant evaluated appellant on August 9, 2021 and September 13, 2021. In a Form CA-17 August 9, 2021, an unidentifiable physician provided work restrictions.

In a Form CA-17 dated August 3, 2021, Dr. Shock indicated that appellant could work eight hours per day with restrictions. He provided progress reports dated August through October 2021. In a progress report dated September 20, 2021, Dr. Shock indicated that appellant was requesting surgery for her condition and that she had failed conservative care.

On October 8, 2021 appellant underwent a lengthening of the Achilles tendon and a right peroneal repair.

By decision dated November 2, 2021, OWCP denied appellant's claim for wage-loss compensation beginning April 26, 2021 causally related to her accepted January 11, 2016 employment injury.

On November 9, 2021 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

On January 25, 2022 OWCP paid appellant wage-loss compensation on the supplemental rolls for total disability beginning October 6, 2021. Appellant returned to part-time modified work on January 10, 2022.

A telephonic hearing was held on March 3, 2022. Counsel for appellant related that she was requesting intermittent compensation for disability from work for the period April 26 through October 2021. Appellant related that during this period she was unable to work pending surgery, and that on some days she was unable to wear shoes due to swelling of her foot and her inability to walk with a shoe on her foot. She described her history of surgical treatment.

By decision dated May 6, 2022, OWCP's hearing representative affirmed in part and reversed in part the November 2, 2021 decision. She found that appellant was entitled to wage-loss compensation for four hours of time lost to attend a medical appointment on May 13, 2021. The hearing representative affirmed the denial of the remaining dates and hours claimed from April 26 through October 5, 2021.

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 the fact that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[5]

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.[6] Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.[7] 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] 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.[9]

[4] *Supra* note 2.

[5] *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).

[6] 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).

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

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

[9] *See A.R.*, *supra* note 5; *D.R.*, Docket No. 18-0323 (issued October 2, 2018).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work for the period April 26 through October 5, 2021 causally related to her accepted January 11, 2016 employment injury.

In progress reports dated May 13 through October 6, 2021, Dr. Shock diagnosed traumatic arthropathy of the right foot and ankle, a strain of the right Achilles tendon, a disorder of the right ankle joint, and a sprain of the ligament of the right ankle. He further found that appellant had degeneration of the right hindfoot, neuritis due to muscle hypertrophy, and compression of the tibial nerve that was directly related to her employment. Dr. Shock requested that OWCP expand its acceptance of the claim to include the additional diagnosed conditions. He did not, however, address whether appellant was disabled from work for the period in question. Medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value.[10] Accordingly, these reports are insufficient to establish appellant's claim for compensation.

In an August 3, 2021 Form CA-17, Dr. Shock found that appellant could work eight hours per day with restrictions. However, the Form CA-17 does not contain an opinion as to whether the accepted employment injury caused disability from employment during the claimed periods. It is, therefore, of no probative value on the issue of causal relationship between the accepted employment conditions and the periods of claimed disability.[11]

Appellant further submitted CA-17 forms from a physician with an illegible signature. The Board has held that reports that are unsigned or lack proper identification cannot be considered probative medical evidence as the author cannot be identified as a physician.[12] Thus, these form reports are insufficient to meet appellant's burden of proof.

A physician assistant evaluated appellant in July, August, and September 2021. Certain healthcare providers such as physician assistants, physical therapists, nurse practitioners, and social workers are not considered "physician[s]" as defined under FECA.[13] Consequently, their

[10] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[11] *Id.*

[12] *See D.F.*, Docket No. 22-0904 (issued October 31, 2022); *R.C.*, Docket No. 19-0376 (issued July 15, 2019); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[13] 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 id.* at 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 C.P.*, Docket No. 19-1716 (issued March 11, 2020) (a physician assistant is not considered a physician as defined under FECA).

medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[14]

Appellant submitted the results of an MRI scan of the right tibia/fibula. The Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion as to whether the employment incident caused any of the diagnosed conditions.[15] This evidence is therefore insufficient to establish appellant's claim.

As appellant has not submitted any rationalized medical evidence establishing disability from work for the period April 26 through October 5, 2021 causally related to her accepted January 11, 2016 employment injury, 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 April 26 through October 5, 2021 causally related to her accepted January 11, 2016 employment injury.

[14] *D.P.*, Docket No. 19-1295 (issued March 16, 2020); *G.S.*, Docket No. 18-1696 (issued March 26, 2019); *see M.M.*, Docket No. 17-1641 (issued February 15, 2018); *K.J.*, Docket No. 16-1805 (issued February 23, 2018); *David P. Sawchuk, id.*

[15] *See T.T.*, Docket No. 22-0632 (issued November 16, 2022); *C.B.*, Docket No. 20-0464 (issued July 21, 2020).

ORDER

IT IS HEREBY ORDERED THAT the May 6, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 5, 2023
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