

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

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F.S., Appellant)	
)	
and)	
)	Docket No. 23-0112
)	Issued: April 26, 2023
DEPARTMENT OF JUSTICE, FEDERAL)	
BUREAU OF PRISONS, COLEMAN FEDERAL)	
CORRECTIONAL COMPLEX, Coleman, FL,)	
Employer)	
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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
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On November 1, 2022 appellant filed a timely appeal from an October 4, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the October 4, 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 intermittent disability from work during the period February 29 through May 19, 2020, causally related to her accepted January 4, 2020 employment injury.

FACTUAL HISTORY

This case has been previously before the Board.³ The facts and circumstances of the case as set forth in the Board's prior order are incorporated herein by reference. The relevant facts are as follows.

On January 7, 2020 appellant, then a 42-year-old correctional officer, filed a traumatic injury claim (Form CA-1) alleging that on January 4, 2020 she injured her left knee when removing property from a cell while in the performance of duty.⁴ She did not stop work.

In an emergency room report dated January 10, 2020, Gregory Cobb, an advanced practiced registered nurse, noted that appellant related complaints of left knee pain, which she attributed to twisting her knee at work on January 4, 2020. He noted a history of prior left knee surgery in 2011 and performed a physical examination, which revealed pain with palpation of the left knee. Mr. Cobb reviewed x-rays of the left knee, which were negative for acute injury, and diagnosed left knee pain. He recommended that appellant be evaluated by orthopedics to determine her work capabilities. The report was cosigned by Dr. Ryan Day, a Board-certified transplant and abdominal surgeon.

Hospital records dated February 19, 2020 indicate that appellant was evaluated and treated for bronchitis.

In a May 4, 2020 medical report, Dr. Derek Farr, an orthopedic surgeon, indicated that appellant related complaints of left knee pain, which she attributed to the January 4, 2020 employment injury. He noted a history of two prior meniscus repair surgeries to the left knee. Dr. Farr performed a physical examination and diagnosed left knee pain and a tear of the medial meniscus. He recommended a magnetic resonance imaging (MRI) scan. In a form report of even date, Dr. Farr released appellant to return to work with a restriction of sitting as needed.

An employing establishment health clinic incident report form dated May 22, 2020 indicated that appellant reported that her left knee twisted and gave out while she was arising from a chair, which caused her to fall to the ground.

³ *Order Remanding Case*, Docket No. 21-0428 (issued October 28, 2021).

⁴ OWCP assigned the present claim File No. xxxxxx829. Appellant subsequently filed a claim for a May 22, 2020 traumatic injury to the left knee under File No. xxxxxx813, which OWCP denied. OWCP previously accepted a September 5, 2010 traumatic injury claim for a left knee sprain under File No. xxxxxx882 and a November 30, 2010 traumatic injury claim for a left knee sprain and derangement of lateral meniscus under File No. xxxxxx398. Appellant also has a prior claim for an October 21, 2011 traumatic injury to left knee under File No. xxxxxx304, which OWCP denied.

A report of MRI scan of the left knee dated May 22, 2020 revealed mild chondromalacia changes in the patellofemoral compartment, a sprain of the anterior cruciate ligament (ACL), partial meniscectomy changes in the medial meniscus, and mild joint effusion.

In reports dated May 27, 2020, Dr. Farr diagnosed a left knee ACL tear and recommended that appellant remain out of work and undergo ACL reconstruction surgery.

By decision dated June 2, 2020, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the January 4, 2020 incident occurred, as alleged.

On June 14, 2020 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

In a narrative report dated August 3, 2020, Dr. Farr described the January 4 and May 22, 2020 employment incidents, reviewed the May 22, 2020 MRI scan results, and reiterated his recommendation for surgery to the left knee.

By decision dated August 24, 2020, OWCP's hearing representative modified the June 2, 2020 decision to find that the January 4, 2020 employment incident occurred as alleged and that a condition had been diagnosed. However, it denied her claim, finding that the medical evidence of record was insufficient to establish causal relationship between the accepted employment incident and the diagnosed condition.

On September 9, 2020 appellant requested reconsideration of the August 24, 2020 decision.

By decision dated December 14, 2020, OWCP denied modification of the August 24, 2020 decision.

Appellant appealed to the Board. By order dated October 28, 2021, the Board remanded the case to OWCP to administratively combine File Nos. xxxxxx882, xxxxxx398, xxxxxx304, and xxxxxx829 and issue a *de novo* merit decision on her traumatic injury claim.⁵

OWCP subsequently administratively combined OWCP File Nos. xxxxxx882, xxxxxx398, xxxxxx304, xxxxxx829, and xxxxxx813, with the latter serving as the master file.

On March 9, 2022 OWCP accepted the January 4, 2020 claim for sprain of the left ACL and complex tear of medial meniscus of the left knee. It paid appellant wage-loss compensation on the supplemental rolls from May 27 through November 30, 2020.

⁵ *Supra* note 3.

On July 28, 2022 under OWCP File No. xxxxxx829, appellant filed a claim for compensation (Form CA-7) for intermittent disability during the period February 29 through May 19, 2020.⁶

In a compensation claim development letter dated August 18, 2022, OWCP informed appellant that the evidence submitted was insufficient to establish entitlement to compensation for the specific periods of compensation claimed from February 29 through May 19, 2020. It requested that she submit medical evidence from her physician explaining how her employment-related conditions caused or contributed to her inability to work during the claimed period.

OWCP thereafter received a June 17, 2021 note by Dr. Robert Hood, an emergency medicine specialist, who opined that appellant's left knee pain was a direct result of occupational factors and a prior altercation at work.

In a May 12, 2022 medical report, Dr. Karl F. Siebuhr, a Board-certified orthopedic surgeon, noted appellant's ongoing left knee complaints and examination findings. He recommended an updated MRI scan and indicated that she had no functional limitations or restrictions as of that date.

In an August 30, 2022 note, Stacy Cruz, a registered nurse, indicated that appellant had been treated in her office since February 9, 2021 for left knee pain that she developed as a direct result of her work duties.

By decision dated October 4, 2022, OWCP denied appellant's claim for compensation, finding that she had not submitted sufficient medical evidence to establish intermittent disability from work during the period February 29 and May 19, 2020 due to the accepted conditions.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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.⁷ 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.⁸ Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.⁹ 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

⁶ Appellant submitted a time analysis form (Form CA-7a) noting specific periods of compensation claimed, as follows: 8 hours leave without pay (LWOP) on February 29, 2020; 16 hours LWOP from April 9 through 10, 2020; 8 hours LWOP on April 21, 2020; 8 hours LWOP on April 19, 2020; 8 hours LWOP on May 6, 2020; 3 hours LWOP on May 15, 2020; and 8 hours LWOP on May 19, 2020.

⁷ *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

⁸ 20 C.F.R. § 10.5(f).

⁹ *See H.B.*, Docket No. 20-0587 (issued June 28, 2021); *L.W.*, Docket No. 17-1685 (issued October 9, 2018).

no disability as that term is used in FECA.¹⁰ 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.¹¹

The medical evidence required to establish causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 accepted employment injury.¹²

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.¹³

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish intermittent disability from work during the period February 29 through May 19, 2020, causally related to her accepted January 4, 2020 employment injury.

In support of her claim for compensation, appellant submitted reports of Dr. Farr dated May 4 and 27 and August 3, 2020, where he described the January 4, 2020 employment injury, conducted examinations, reviewed MRI scan results, and recommended surgery. He further indicated that she was totally disabled from all work effective May 27, 2020. Appellant also submitted hospital records dated February 19, 2020 regarding treatment for bronchitis and additional treatment notes pertaining to her left knee, including emergency room records dated January 10, 2020; a June 17, 2021 note by Dr. Hood; and a May 12, 2022 report by Dr. Siebuhr. However, none of these reports offered an opinion as to whether appellant was disabled from work during the claimed period due to the accepted employment-related conditions. Therefore, this evidence is of no probative value and is insufficient to establish appellant's claim for compensation.¹⁴

¹⁰ See *H.B., id.; K.H.*, Docket No. 19-1635 (issued March 5, 2020).

¹¹ See *D.R.*, Docket No. 18-0323 (issued October 2, 2018).

¹² *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

¹³ *J.B.*, Docket No. 19-0715 (issued September 12, 2019).

¹⁴ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

Appellant also submitted a note from a registered nurse. Certain healthcare providers such as physician assistants, nurse practitioners, and physical therapists are not considered qualified 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

The remainder of the evidence of record consists of diagnostic study reports. The Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address whether the accepted employment injury caused any of the additional diagnosed conditions.¹⁷

As the medical evidence of record is insufficient to establish intermittent disability during the claimed period causally related to the accepted January 4, 2020 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 intermittent disability from work during the period February 29 through May 19, 2020, causally related to her accepted January 4, 2020 employment injury.

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); *C.G.*, Docket No. 20-0957 (issued January 27, 2021); *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 *K.A.*, Docket No. 18-0999 (issued October 4, 2019); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, *id.*

¹⁷ *F.D.*, Docket No. 19-0932 (issued October 3, 2019); *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

ORDER

IT IS HEREBY ORDERED THAT the October 4, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 26, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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