United States Department of Labor
Employees' Compensation Appeals Board

D.M., Appellant	)	
and	)	**Docket No. 21-0930**
	)	**Issued: February 8, 2023**
U.S. POSTAL SERVICE, OKLAHOMA WESTSIDE CARRIER ANNEX, Oklahoma City, OK, Employer	)	

Appearances:
Christopher L. Kannady, 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 June 2, 2021 appellant, through counsel, filed a timely appeal from an April 9, 2021 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 April 9. 2021 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 his burden of proof to establish disability from work commencing November 30, 2020 causally related to his accepted December 22, 2015 employment injury.

FACTUAL HISTORY

On January 16, 2016 appellant, then a 31-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 22, 2015 he injured his low back when lifting a letter tray while in the performance of duty. OWCP accepted the claim for lumbar sprain, lumbar intervertebral disc disorders with myelopathy, lumbar and lumbosacral radiculopathy, and cauda equina syndrome. Appellant stopped work on April 2, 2017 and returned to modified work on May 13, 2017. OWCP paid him wage-loss compensation for disability from work from April 2, 2016 through November 23, 2018.

On June 11, 2020 appellant accepted another position as a modified rural carrier. The duties consisted of walking up to five hours per day, performing simple grasping up to six hours per day, reaching above shoulders up to two hours per day, and no climbing or twisting.

A July 29, 2020 notification of personnel action (PS Form 50) indicated that appellant voluntarily resigned effective July 24, 2020 during a pending action to separate him for violation of employment establishment's "standards of conduct regulations."

On December 14, 2020 appellant filed a claim for compensation (Form CA-7) for disability from work for the period November 30 to December 11, 2020.

In a development letter dated December 17, 2020, OWCP requested that appellant explain why he had not continued working in his limited-duty assignment and submit a reasoned medical report addressing how his condition worsened such that he could no longer perform his employment duties. It afforded him 30 days to submit the requested evidence.

On December 2, 2020 Dr. Rico A. Guerra, a Board-certified anesthesiologist, performed a thoracic steroid injection. He diagnosed thoracic and thoracolumbar spondylosis without myelopathy and thoracic disc degeneration.

In a report dated January 4, 2021, Dr. John W. Ellis, Board-certified in family practice, discussed appellant's history of a December 22, 2015 injury at work. He noted that appellant also experienced back pain when lifting in February 2016. Dr. Ellis noted his review of the medical evidence and diagnosed lumbar sprain, intervertebral disc disorders with myelopathy, lumbar and lumbosacral radiculopathy, and cauda equina syndrome. He noted that appellant "continues to work under light[-]duty restrictions" and had periodically been temporarily totally disabled "on numerous occasions." Dr. Ellis attributed the diagnosed conditions and disability to appellant's employment.

In a duty status report (Form CA-17) dated January 4, 2021, Dr. Ellis found that appellant could work for six hours per day with restrictions.

On January 11, 2021 Dr. Guerra discussed appellant's complaints of pain in his lower and middle back, foot, groin, right sacroiliac joint, hip, thigh, and lower extremity. He provided

findings on examination and performed another thoracic steroid injection. Dr. Guerra diagnosed thoracic and lumbar intervertebral disc degeneration, thoracic, and thoracolumbar, and lumbar spondylosis without myelopathy or radiculopathy, and lumbar radiculopathy.

In Forms CA-17 dated February 1 and March 1, 2021, Dr. Ellis again found that appellant could work six hours per day with restrictions.

The record contains physical therapy reports dated January through March 2021.

By decision dated April 9, 2021, OWCP denied appellant's claim for disability from work commencing November 30, 2020 causally related to his accepted December 22, 2015 employment injury.

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]

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]

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.[10]

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[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] *Id.*; *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

[7] 20 C.F.R. § 10.5(f); *J.M.*, Docket No. 18-0763 (issued April 29, 2020).

[8] *Id.* at § 10.5(f); *see J.T.*, Docket No. 19-1813 (issued April 14, 2020); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

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

[10] *T.T.*, Docket No. 18-1054 (issued April 8, 2020).

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.[11]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish disability from work commencing November 30, 2020 causally related to his accepted December 22, 2015 employment injury.

In order to be entitled to compensation for disability from employment, appellant must establish that he was disabled from performing the duties of his modified position due to his accepted work injury.[12]

In a report dated January 4, 2021, Dr. Ellis reviewed appellant's history of a December 22, 2015 employment injury. He diagnosed lumbar sprain, intervertebral disc disorders with myelopathy, lumbar and lumbosacral radiculopathy, and cauda equina syndrome. Dr. Ellis indicated that appellant currently worked with restrictions and experienced intermittent episodes of total disability. He attributed the diagnosed conditions and need for restrictions to the accepted work injury. While Dr. Ellis noted that appellant had work restrictions and periodically experienced total disability, he did not specifically address whether appellant was disabled from work commencing November 30, 2020 due to the accepted employment injury his report is therefore of no probative value and insufficient to establish appellant's claim for compensation.[13]

On December 2, 2020 Dr. Guerra diagnosed thoracic and thoracolumbar spondylosis without myelopathy and thoracic disc degeneration. On January 11, 2021 he additionally diagnosed thoracic and lumbar intervertebral disc degeneration, lumbar spondylosis without myelopathy, and lumbar radiculopathy. However, as Dr. Guerra failed to address disability during the claimed period, his opinion is of no probative value and insufficient to establish appellant's disability claim.[14]

In Forms CA-17 dated January 4, February 1, and March 1, 2021, Dr. Ellis indicated that appellant could work six hours per day with restrictions. However, he did not provide an opinion as to whether the accepted employment injury caused disability from employment during the claimed period. Dr. Ellis' opinion is, therefore, of no probative value and insufficient to establish appellant's disability claim.[15]

Appellant also submitted physical therapy reports January through March 2021. The Board has held, however, that a medical report signed solely by a physical therapist is of no probative value as physical therapists are not considered physicians as defined under FECA and is not

[11] *J.B.*, Docket No. 19-0715 (issued September 12, 2019); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

[12] *H.H.*, Docket No. 16-1213 (issued September 11, 2017).

[13] *See A.G.*, Docket No. 21-0756 (issued October 18, 2021); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

[14] *Id.*

[15] *Id.*

competent to render a medical opinion.[16] Consequently, these reports are insufficient to establish the 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(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 commencing November 30, 2020 causally related to his accepted December 22, 2015 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the April 9, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 8, 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

[16] 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* 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 R.L.*, Docket No. 19-0440 (issued July 8, 2019) (nurse practitioners and physical therapists are not considered physicians under FECA).