United States Department of Labor
Employees' Compensation Appeals Board

T.P., Appellant	)	
and	)	**Docket No. 21-0735**
	)	**Issued: January 3, 2023**
U.S. POSTAL SERVICE, AMPTHILL POST OFFICE, Chesterfield, VA, 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:
ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On April 19, 2021 appellant, through counsel, filed a timely appeal from a March 10, 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 March 10, 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 her burden of proof to establish disability from work for the period October 24, 2020 through January 29, 2021 causally related to her accepted April 22, 2019 employment injury.

FACTUAL HISTORY

On April 30, 2019 appellant, then a 58-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on April 22, 2019 she injured her back, neck, left arm and hand, and right foot when a car struck the side of her work vehicle while in the performance of duty. On the reverse side of the claim form the employing establishment noted that her long-life vehicle (LLV) was hit by a passing car and that she had preexisting conditions that could have been aggravated.[4] Appellant did not stop work. OWCP accepted her claim for a sprain of the ligaments of the cervical spine and a contusion of the right foot.

In medical reports dated August 19 and September 16, 2020, Dr. Peyman Nazmi, Board-certified in pain management, noted that appellant was experiencing radiating pain into her right leg with increased numbness, paresthesia and occasional weakness. He reviewed an August 28, 2020 magnetic resonance imaging (MRI) scan and indicated that her symptoms interfered with her activities significantly. Dr. Nazmi diagnosed lumbosacral radiculopathy, lumbar post-laminectomy syndrome, chronic pain syndrome and cervical radiculopathy.

In a November 25, 2020 medical report, Jessica Womack, a physician assistant, evaluated appellant following a September 28, 2020 L2-3 laminectomy and discectomy. She diagnosed lumbar radiculitis and ordered additional diagnostic studies.

In medical reports dated November 4 to December 30, 2020, Dr. Nicolas Maxymiv, a Board-certified anesthesiologist, reviewed appellant's treatment for neck and low back pain, including a September 27, 2020 surgical procedure, and diagnosed cervical radiculopathy, chronic pain syndrome and degeneration of the cervical intervertebral disc. He administered injections to her cervical and lumbar spine regions.

In a December 30, 2020 duty status report (Form CA-17), Dr. Maxymiv diagnosed lumbar radiculopathy and advised that appellant could return to work on January 15, 2021 with restrictions.

[4] Appellant previously filed a traumatic injury claim on May 21, 2004 alleging that she sustained an injury to her back on January 13, 2004 when she fell on icy stairs while in the performance of duty under OWCP File No. xxxxxx005. On October 14, 2004 OWCP accepted her claim for a lumbar strain and left elbow contusion. Appellant filed a separate traumatic injury claim on March 14, 2005 indicating that she was involved in a car accident on March 7, 2005 under OWCP File No. xxxxxx342. On March 18, 2005 OWCP accepted her claim for a sprain/strain of the lumbar spine and a sprain/strain of the neck. Appellant then filed a traumatic injury claim on December 22, 2015 alleging that she injured herself when she fell down the stairs while delivering a parcel under OWCP File No. xxxxxx201. On June 29, 2016 OWCP accepted her claim for contusions of the lower back, pelvis, right elbow and right hand. It subsequently expanded acceptance of appellant's claim on July 18, 2018 to include right and left-sided sciatica. OWCP has not administratively combined the current claim with the aforementioned claims.

In a January 14, 2021 report, Dr. Joseph Kim, a Board-certified orthopedic surgeon, indicated that appellant underwent discectomy on September 28, 2020 to treat a disc extrusion at L2-3 on the right. He reviewed her diagnostic studies and, on examination, diagnosed lumbar radiculitis and spinal stenosis of the lumbar region.

In a January 18, 2021 Form CA-17, a physician assistant with an illegible signature diagnosed lumbar radiculopathy and advised that appellant could return to work on March 14, 2021 with restrictions.

On February 5, 2021 appellant submitted a claim for compensation (Form CA-7) for disability from work for the period October 24, 2020 through January 29, 2021. The form indicated that she was recovering from surgery.

In a development letter dated February 9, 2021, OWCP advised appellant that it required additional evidence supporting that she was disabled during the claimed period. It informed her of the evidence necessary to establish her claim for disability compensation, including a detailed report from her treating physician providing a history of the accepted employment injury and explain how her employment-related condition worsened such that she was unable to work beginning October 24, 2020. OWCP afforded appellant 30 days to submit the necessary evidence.

Appellant submitted a February 16, 2021 medical report in which Dr. Maxymiv reviewed her treatment for her back and neck pain and administered a bilateral lumbar injections.

By decision dated March 10, 2021, OWCP denied appellant's claim, finding that she had not established disability from work for the period October 24, 2020 through January 29, 2021 causally related to her accepted medical condition. It noted that her claim had not been accepted for lumbar radiculopathy and found that the medical evidence of record did not establish that she was disabled as a result of her accepted work-related medical conditions.

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] 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.[6] 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.[7] Whether a particular injury causes an employee to

[5] *Supra* note 2.

[6] *See C.B.*, Docket No. 20-0629 (issued May 26, 2021); *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); *see also Nathaniel Milton*, 37 ECAB 712 (1986).

[7] *Y.D.*, Docket No. 20-0097 (issued August 25, 2020); *D.P.*, Docket No. 18-1439 (issued April 30, 2020); *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

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.[8]

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.[9] 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.[10]

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 specific employment factors identified by the claimant.[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 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 for the period October 24, 2020 through January 29, 2021 causally related to the accepted April 22, 2019 employment injury.

In support of the claimed period of disability, appellant submitted medical evidence from Dr. Maxymiv dated November 4, 2020 to February 16, 2021 in which he reviewed her treatment for neck and low back pain, including a September 27, 2020 surgical procedure, and diagnosed cervical radiculopathy, chronic pain syndrome and degeneration of the cervical intervertebral disc. Dr. Maxymiv administered multiple injections to her lumbar and cervical region and, in his December 30, 2020 Form CA-17, advised that she could resume work with restrictions on January 15, 2021. However, the Board notes that OWCP accepted appellant's claim for a sprain of the ligaments of the cervical spine and a right foot contusion only. If an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.[13] Dr. Maxymiv's reports did not provide objective findings on physical examination or offer any

[8] 20 C.F.R. § 10.5(f); *J.M.*, Docket No. 18-0763 (issued April 29, 2020).

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

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

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

[12] *D.P.*, *supra* note 7; *Sandra D. Pruitt*, 57 ECAB 126 (2005).

[13] *S.H.*, Docket No. 19-1128 (issued December 2, 2019).

opinion that appellant was disabled due to the effects of her accepted employment-related conditions.[14] For these reasons, Dr. Maxymiv's reports are insufficient to establish appellant's disability claim.

Dr. Kim, in a medical report dated January 14, 2021, evaluated appellant for ongoing back pain and noted that she had underwent a discectomy on September 28, 2020. He diagnosed lumbar radiculitis and spinal stenosis of the lumbar region. Similarly, Dr. Nazmi noted appellant's complaints of radiating pain into her right leg with increased numbness, paresthesia and occasional weakness and diagnosed lumbosacral radiculopathy, lumbar post-laminectomy syndrome, chronic pain syndrome and cervical radiculopathy. However, as noted previously, OWCP only accepted appellant's claim for a sprain of the ligaments of the cervical spine and a right foot contusion. Additionally, as Drs. Kim and Nazmi did not offer an opinion regarding the cause of her claimed disability, their reports are of no probative value on the issue of causal relationship and are, therefore, insufficient to establish her claim.[15]

Appellant also submitted medical evidence consisting of medical reports and therapy reports signed by a nurse, a physician assistant, and physical therapists. The Board has consistently held that certain healthcare providers such as physician assistants, registered nurses, physical therapists, and social workers are not considered physicians as defined under FECA.[16] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing

As the medical evidence of record is insufficient to establish disability from work for the period October 24, 2020 through January 29, 2021, the Board, thus, finds that appellant 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 October 24, 2020 through January 29, 2021 causally related to the accepted April 22, 2019 employment injury.

[14] *S.K.*, Docket No. 19-0272 (issued July 21, 2020).

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

[16] 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). 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 Jan A. White*, 34 ECAB 515, 518 (1983). *See also A.M.*, Docket No. 20-1575 (issued May 24, 2021) (physical therapists are not physicians as defined by FECA); *A.C.*, Docket No. 20-1510 (issued April 23, 2021) (physician assistants are not physicians as defined by FECA).

ORDER

IT IS HEREBY ORDERED THAT the March 10, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 3, 2023
Washington, DC

Alec J. Koromilas, 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