

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

J.P., Appellant

and

**U.S. POSTAL SERVICE, BROCKTON
PROCESSING & DISTRIBUTION CENTER,
Brockton, MA, Employer**

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**Docket No. 22-0061
Issued: January 13, 2023**

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 21, 2021 appellant, through counsel, filed a timely appeal from a June 14, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP).² Pursuant to the

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 an 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 The Board notes that, following the June 14, 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.*

Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish disability from work for the period February 13 through March 26, 2021 causally related to his accepted November 14, 2020 employment injury.

FACTUAL HISTORY

On November 20, 2020 appellant, then a 58-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on November 14, 2020 he injured his right ring and middle fingers when he tripped on a fatigue mat and fell while in the performance of duty. He stopped work on November 15, 2020. Appellant received continuation of pay from December 19 through 29, 2020. On January 19, 2021 OWCP accepted the claim for sprain of the right wrist and hand. It paid appellant wage-loss compensation on the supplemental rolls from December 30, 2020 through February 12, 2021.

In November 25 and December 18, 2020 notes, Dr. Michael Daly, an orthopedic surgeon, recounted appellant's history of tripping and falling at work and diagnosed right long finger sprain and right ring finger radial collateral ligament (RCL) avulsion fracture.

Appellant treated from December 16, 2020 through February 16, 2021 with John Henesey, an occupational therapist, for right scapholunate ligament tear.

Dr. Daly completed a note dated January 20, 2021 in which he repeated appellant's history of injury and diagnoses, and observed the full range of motion (ROM) of the upper extremities with intact radial, median, and ulnar sensation. He noted that the work-related injury of fracture at the middle phalanx was a progressive condition that may eventually require surgical treatment. In a separate note of even date, Dr. Daly determined that appellant was totally disabled and awaiting electrodiagnostic studies. On February 18, 2021 electromyogram and nerve conduction velocity (EMG/NCV) testing demonstrated bilateral carpal tunnel syndrome, chronic right lower cervical radiculopathy, and Martin-Gruber anastomosis. On February 25, 2021 Dr. Daly opined that appellant was totally disabled pending surgery.

Beginning on March 12, 2021 appellant filed claims for compensation (Form CA-7) for total disability from work for the period February 13 through March 26, 2021.

In a March 22, 2021 development letter, OWCP advised appellant that the evidence submitted was insufficient to establish disability beginning February 13, 2021 and requested that he submit additional factual and medical evidence to establish that he was unable to work during the period claimed due to his November 14, 2020 employment injury. It provided a questionnaire for his completion and afforded him 30 days to respond.

³ 5 U.S.C. § 8101 *et seq.*

OWCP received additional medical evidence. Dr. Daly authored notes dated November 25 and December 9, 2020, recounting appellant's history of tripping and falling at work and diagnosing right long finger sprain and right ring finger RCL avulsion fracture. In a February 25, 2021 note, he again noted appellant's history of injury and reviewed EMG/NCV testing results and documented his symptoms of numbness and tingling in the right thumb, index, and long fingers which began after the November 14, 2020 employment injury. Dr. Daly reported digital swelling and ecchymosis, diminished sensation of the right medial nerve distribution, and weakness of the right abductor pollicis brevis muscle. He found a negative Tinel's sign on the right. Dr. Daly recommended right carpal tunnel release surgery.

On March 23, 2021 Dr. Daly requested authorization for right carpal tunnel surgical release. He noted that a finger injury would not cause carpal tunnel syndrome, but that there was a chance that this condition was provoked by the employment incident of a fall onto outstretched hands. Dr. Daly noted that the fall was a mechanism which could cause inflammation of the median nerve and produce carpal tunnel symptoms.

On March 26, 2021 Dr. Daly completed a work capacity evaluation (Form OWCP-5c) and indicated that appellant could perform light-duty work eight hours a day with weight-bearing as tolerated for his right upper extremity. He noted that appellant required breaks from heavy lifting.

In a note dated March 30, 2021, Dr. Daly opined that appellant was totally disabled from work until April 1, 2021. On April 1, 2021 he performed a physical examination and reported that he demonstrated diminished sensation of the right median nerve distribution and weakness of the right abductor pollicis brevis muscle. Dr. Daly recounted that appellant's EMG/NCV testing confirmed bilateral carpal tunnel syndrome, severe on the right and moderate on the left. He diagnosed bilateral carpal tunnel syndrome and noted the date of injury as November 14, 2020. In a separate note of even date, Dr. Daly advised that appellant could return to light-duty work, lifting no more than five pounds with his right upper extremity.

On April 5, 2021 Dr. Daly recounted that appellant's carpal tunnel syndrome symptoms began after the November 14, 2020 employment injury. He opined that it was reasonable to infer that these symptoms were provoked by the incident of falling on outstretched hands. Dr. Daly completed a duty status report (Form CA-17) of even date and indicated that appellant could return to work on April 1, 2021 with restriction of lifting and carrying no more than five pounds. He also completed an attending physician's report (Form CA-20) of even date indicating that appellant could return to work on April 1, 2021 with a weight-bearing restriction of five pounds for the right upper extremity. Dr. Daly also noted that there was a possibility that appellant would not recover full ROM of the right upper extremity.

On April 5, 2021 the employing establishment offered appellant a modified mail processing clerk position. Appellant resigned from the employing establishment on April 5, 2021.

By decision dated June 14, 2021, OWCP denied appellant's claim for disability from work for the period February 13 through March 26, 2021.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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 accepted employment injury.⁵ The term disability is defined as the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of the injury.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

To establish causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence.⁸ The opinion of the physician must be based on a complete factual and medical background, 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.⁹

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.¹⁰

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish disability from work for the period February 13 through March 26, 2021 causally related to his accepted November 14, 2020 employment injury.

OWCP accepted appellant's November 14, 2020 employment injury for sprain of the right wrist and hand. In support of his claims for compensation, appellant submitted reports from his attending physician, Dr. Daly. Although Dr. Daly opined that appellant developed employment-

⁴ *Id.*

⁵ *B.H.*, Docket No. 22-0383 (issued August 29, 2022); *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 20 C.F.R. § 10.5(f); *S.T.*, Docket No. 18-0412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

⁷ *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *D.G.*, Docket No. 18-0597 (issued October 3, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

⁸ *L.O.*, Docket No. 20-0170 (issued August 13, 2021); *S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

⁹ *V.A.*, Docket No. 19-1123 (issued October 29, 2019); *C.B.*, Docket No. 18-0633 (issued November 16, 2018).

¹⁰ *See S.G.*, Docket No. 18-1076 (issued April 11, 2019); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

related disability, he did not explain with sufficient rationale how or why appellant was unable to perform his regular work during the claimed period of disability due to the effects of his accepted conditions of sprain of the right wrist and hand. The Board has held that 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.¹¹ Therefore, this evidence is insufficient to establish appellant's disability claim.

In reports dated November 25, 2020 through January 20, 2021, Dr. Daly diagnosed right long finger sprain and right ring finger avulsion fracture. He noted that the work-related injury of fracture at the middle phalanx was a progressive condition that may eventually require surgical treatment and opined that appellant was totally disabled. Beginning February 25, 2021, Dr. Daly also attributed appellant's disability from work to the additional condition of bilateral carpal tunnel syndrome. He noted that a finger injury would not cause carpal tunnel syndrome, but that there was a chance that this condition was provoked by the employment incident of a fall onto outstretched hands. Dr. Daly opined that the fall was a mechanism which could cause inflammation of the median nerve and produce carpal tunnel symptoms. On April 5, 2021 he recounted that appellant's carpal tunnel syndrome symptoms started after the November 14, 2020 employment incident. Dr. Daly opined that it was reasonable to infer that these symptoms were provoked by the incident of falling on outstretched hands. Where an employee claims conditions not accepted or approved by OWCP were due to an employment injury, appellant bears the burden of proof to establish that the condition is causally related to the work injury.¹² A physician's opinion on causal relationship between a claimant's employment injury and additional conditions or disability is not conclusive simply because it is rendered by a physician. To be of probative value, the physician must provide rationale for the opinion reached. Where no such rationale is present, the medical opinion is of diminished probative value.¹³ For these reasons, the Board finds that Dr. Daly's reports are insufficient to establish the disability claim.

Appellant also submitted occupational therapy notes dated December 16, 2020 through February 16, 2021. They also do not constitute competent medical evidence because occupational therapists are not considered physician as defined under FECA.¹⁴ Consequently, their medical

¹¹ See *R.H.*, Docket No. 22-0140 (issued August 12, 2022); *W.S.*, Docket No. 21-0257 (issued February 22, 2022); *T.S.*, Docket No. 20-1229 (issued August 6, 2021); *S.K.*, Docket No. 19-0272 (issued July 21, 2020); *T.T.*, Docket No. 18-1054 (issued April 8, 2020); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

¹² *W.S., id.*; *G.H.*, Docket No. 18-0288 (issued June 8, 2018); *L.N.*, Docket No. 16-0137 (issued October 14, 2016); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

¹³ *W.S., id.*; *G.H., id.*; *L.N., id.*

¹⁴ 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 *J.R.*, Docket No. 19-0812 (issued September 29, 2020) (an occupational therapist is not considered a physician under FECA).

findings and/or opinions will not suffice for purposes of establishing entitlement to compensation benefits.¹⁵

The record also contains November 14, 2020 right hand x-rays and February 18, 2021 EMG/NCV testing. However, the Board has long held, however, that diagnostic studies, standing alone, lack probative value as they do not address whether the employment injury caused any of the diagnosed conditions or associated disability.¹⁶ For this reason, the diagnostic reports of record are insufficient to establish appellant's disability claim.

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.¹⁷

As the medical evidence of record is insufficient to establish disability from work during the claimed period due to the accepted employment conditions, the Board finds that he appellant not met his 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 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 for the period February 13 through March 26, 2021 causally related to his accepted November 14, 2020 employment injury.

¹⁵ *Id.*

¹⁶ *See W.S., supra* note 11.; *T.W.*, Docket No. 20-1669 (issued May 6, 2021); *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

¹⁷ *Supra* note 10.

ORDER

IT IS HEREBY ORDERED THAT the June 14, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 13, 2023
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board