

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

G.J., Appellant)	
)	
and)	Docket No. 22-0942
)	Issued: January 10, 2023
DEPARTMENT OF COMMERCE, U.S.)	
CENSUS BUREAU, Tacoma, WA, Employer)	
)	

Appearances: *Case Submitted on the Record*
*Alan J. Shapiro, Esq., for the appellant*¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 3, 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 Act² (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 issuance of the May 6, 2022 decision, appellant submitted additional evidence to OWCP. 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 for the period January 10 through February 6, 2021 causally related to his accepted October 26, 2020 employment injury.

FACTUAL HISTORY

On October 29, 2020 appellant, then a 61-year-old temporary work unit supervisor, filed a traumatic injury claim (Form CA-1) alleging that on October 26, 2020 he sustained a right knee injury when he fell while in the performance of duty. He stopped work on the date of injury. OWCP accepted appellant's claim for right knee contusion, right lower leg contusion, and injury of the tibial nerve at the lower level of right leg.

In a January 6, 2021 report, Dr. Mario Alinea, a physician Board-certified in occupational medicine, related appellant's history of injury and noted that appellant had pain in the patellar area, burning in the kneecap, and numbness in the posterior leg to the foot. Examination of the right knee revealed a limp, tenderness in tibial tubercle and patella, an equivocal McMurray test with snapping noted on flexion and extension, and limited range of motion (ROM) on flexion. Dr. Alinea diagnosed contusion of right knee and contusion of right lower extremity. In a duty status report (Form CA-17) of even date, he indicated that appellant was treated for a right knee condition. Dr. Alinea held appellant off work.

In a January 13, 2021 report, Dr. David Coons, an osteopath specializing in orthopedic surgery, indicated that appellant had undergone an electromyogram/nerve conduction velocity (EMG/NCV) study, which showed electrodiagnostic evidence of right lateral plantar neuropathy. He noted that the neurologist performing the study questioned the connection of this condition to the reported mechanism of injury. Examination of the right knee revealed pain over the medial joint space and complaints of paresthesias about the right ankle. Dr. Coons diagnosed persisting right knee pain, possibly meniscus pathology, and right lateral plantar neuropathy. He opined that the right lateral plantar neuropathy did not appear to be related to the injury and should be handled apart from appellant's claim. On a January 13, 2021 form report, Dr. Coons related that appellant was injured on October 26, 2020 and diagnosed right knee pain and right lateral plantar neuropathy. He indicated that appellant could return to work with restrictions from January 13 to March 15, 2021.

On January 27, 2021 appellant filed a claim for compensation (Form CA-7) for disability from work for the period January 10 through 23, 2021.

In a January 28, 2021 development letter, OWCP informed appellant that the evidence submitted was insufficient to establish disability from work for the period January 10 through 23, 2021. It advised him of the type of medical evidence required and afforded him 30 days to submit the requested evidence.

Appellant underwent a right knee magnetic resonance imaging (MRI) scan on February 2, 2021, which revealed severe right knee patellar chondromalacia and small joint effusion.

On February 16, 2021 appellant filed a Form CA-7 for disability from work for the period January 24 through February 6, 2021.

OWCP subsequently received a February 11, 2021 report, wherein Dr. Coons diagnosed a right leg injury and released appellant for work without restrictions.

In a February 17, 2021 Form CA-17, Dr. Hossein P. Sedigh, a Board-certified orthopedist, indicated that 300 pounds had collapsed onto appellant's right lower extremity. He released appellant for part-time work.

In a February 23, 2021 development letter, OWCP informed appellant of the deficiencies of his disability claim. It advised him of the type of medical evidence needed and afforded him 30 days to submit the necessary evidence.

Appellant subsequently submitted a January 7, 2021 EMG/NCV study, signed by Dr. Irfan Ansari, a Board-certified physiatrist, which demonstrated electrodiagnostic evidence of right lateral plantar neuropathy. Dr. Ansari related appellant's history of injury and noted that it was difficult to connect the lateral plantar neuropathy to the mechanism of injury in question.

In a February 11, 2021 report, Dr. Coons noted that an MRI scan showed patellofemoral joint degenerative changes and an EMG/NCV study showed lateral plantar neuropathy. He diagnosed chondromalacia of the patella of the right knee and right lateral plantar neuropathy. Dr. Coons noted that he could not relate the plantar neuropathy to appellant's injury, though appellant reported that it had not bothered him before the date of injury.

In a February 17, 2021 report, Dr. Sedigh related appellant's history of injury and indicated that he was seen because of abnormal EMG/NCV findings. Examination of the right foot and ankle demonstrated antalgic gait, abnormal and painful heel walking, calf muscle atrophy, and maximum tenderness in plantar heel. Dr. Sedigh diagnosed right plantar fasciitis.

On February 17, 2020 appellant underwent a right foot x-ray, which revealed no abnormalities.

Appellant continued to submit medical evidence dated March 1 through April 19, 2021 regarding his continued need for treatment for his right lower extremity conditions.

By decision dated April 27, 2021, OWCP denied appellant's claim for compensation for disability from work for the period January 10 through February 6, 2021. It found that he failed to submit sufficient probative medical evidence supporting his claim.

Appellant submitted additional medical evidence dated March 3, 2021 through January 27, 2022 documenting his ongoing treatment for right lower extremity conditions.

On March 18, 2022 appellant, through counsel, requested reconsideration of the April 27, 2021 decision.

In a December 28, 2021 report, Dr. Gregory E. Webb, a podiatrist, related appellant's history of injury and noted that appellant's paresthesias in the plantar foot worsened with ambulation. Examination revealed tenderness and weakness along the course of the posterior tibial

tendon, pain at the medial malleolus and distal to the medial malleolus to the insertion of the posterior tibial tendon on the navicular, and weakness and pain with plantarflexion and inversion of the right foot. Dr. Webb reviewed diagnostic studies and diagnosed right tarsal tunnel syndrome and traumatic right posterior tibial tendon tear.

By separate decision of even date, OWCP expanded its acceptance of his claim to include sprain of the right knee.

By decision dated May 6, 2022, OWCP denied modification of its April 27, 2021 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 injury.⁴ 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.⁵ 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.⁶

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.⁷ Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.⁸ 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.⁹ 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.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

⁴ *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *See L.F.*, Docket No. 19-0324 (issued January 2, 2020); *T.L.*, Docket No. 18-0934 (issued May 8, 2019); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

⁶ 20 C.F.R. § 10.5(f); *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *N.M.*, Docket No. 18-0939 (issued December 6, 2018); *R.C.*, 59 ECAB 546, 551 (2008).

⁷ 20 C.F.R. § 10.5(f).

⁸ *See L.W.*, Docket No. 17-1685 (issued October 9, 2018).

⁹ *See K.H.*, Docket No. 19-1635 (issued March 5, 2020).

¹⁰ *See D.R.*, Docket No. 18-0323 (issued October 2, 2018).

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.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 his burden of proof to establish disability from work for the period January 10 through February 6, 2021 causally related to his accepted October 26, 2020 employment injury.

In support of his disability claim, appellant submitted a January 6, 2021 Form CA-17 from Dr. Alinea indicating that appellant was treated for a right knee condition after his knee was hit. Dr. Alinea held appellant off work. In January 13, 2021 reports, Dr. Coons diagnosed persisting right knee pain and right lateral plantar neuropathy. He opined that the right lateral plantar neuropathy did not appear to be related to the injury and should be handled apart from appellant's claim. Dr. Coons also indicated that appellant could return to work with restrictions. However, neither Dr. Alinea nor Dr. Coons provided objective findings related to his accepted employment conditions that explained why he was disabled from work due to his accepted employment injury on any specific date.¹³ Evidence that does not address the specific dates of disability are of no probative value and are insufficient to establish the claim.¹⁴ These reports are therefore insufficient to establish appellant's disability claim.

In a January 6, 2021 report, Dr. Alinea related appellant's history of injury and diagnosed contusion of right knee and contusion of right lower extremity. However, he did not provide an opinion that appellant was disabled from work during the claimed period due to the accepted October 26, 2020 employment injury. As noted above, the Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.¹⁵ Thus, this evidence is insufficient to meet appellant's burden of proof.

¹¹ *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

¹² *J.B.*, Docket No. 19-0715 (issued September 12, 2019); *Fereidoon Kharabi*, *supra* note 8.

¹³ *E.B.*, Docket No. 19-1390 (issued May 7, 2020); *K.D.*, Docket No. 19-0628 (issued November 5, 2019); *A.T.*, Docket No. 19-0410 (issued August 13, 2019); *see Terry R. Hedman*, 38 ECAB 222 (1986).

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

¹⁵ *See id.*

Appellant also submitted medical evidence dated February 11, 2021 through January 27, 2022. As this evidence does not address the claimed period of disability, it is of no probative value and is insufficient to establish appellant's disability claim.¹⁶

The record also contains several diagnostic tests. However, the Board has held that diagnostic studies, standing alone, lack probative value, as they do not address whether the accepted employment injury resulted in appellant's period of disability on specific dates.¹⁷ Consequently, these medical findings are insufficient to establish appellant's disability claim.

As the medical evidence of record does not contain a rationalized opinion establishing causal relationship between appellant's claimed disability and the accepted October 26, 2020 employment injury, the Board finds that appellant has 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(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 for the period January 10 through February 6, 2021 causally related to his accepted October 26, 2020 employment injury.

¹⁶ *Id.*

¹⁷ *F.S.*, Docket No. 19-0205 (issued June 19, 2019).

ORDER

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

Issued: January 10, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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