United States Department of Labor
Employees' Compensation Appeals Board

W.J., Appellant	)	
	)	**Docket No. 21-0846**
and	)	**Issued: July 17, 2023**
U.S. POSTAL SERVICE, POST OFFICE, Palm Bay, FL, Employer	)	

Appearances:
Joanne Marie Wright, 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
JANICE B. ASKIN, Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On May 17, 2021 appellant, through his representative, filed a timely appeal from a March 31, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP).[2] Pursuant to the Federal Employees' Compensation Act[3] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

[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] The Board notes that following the March 31, 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.*

[3] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant had met his burden of proof to establish disability from work for the period November 2 through 10, 2018 causally related to his accepted February 23, 2012 employment injury.

FACTUAL HISTORY

On February 27, 2012 appellant, then a 50-year-old city letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on February 23, 2012 he injured his back when he stepped out of his delivery truck while in the performance of duty. He stopped work on February 27, 2012. Appellant returned to full-time, light-duty work on April 17, 2012. On June 26, 2012 OWCP accepted his claim for lumbar sprain. On September 13, 2012 it expanded the acceptance of appellant's claim to include intervertebral disc displacement without myelopathy at L3-4 and L5-S1. Appellant returned to full duty on February 16, 2013.

Appellant began performing light-duty work on May 10, 2018. On October 2, 2018 OWCP referred appellant, a statement of accepted facts (SOAF), and a list of questions to Dr. Omar David Hussamy, a Board-certified orthopedic surgeon, for a second opinion evaluation.

On October 15, 2018 appellant underwent a functional capacity evaluation (FCE), which demonstrated that he could not perform his date-of injury position. Rather, he was capable of light physical demand work, lifting up to 20 pounds.

In an October 18, 2018 report, Dr. Hussamy diagnosed lumbar strain, displacement of lumbar disc at L5-S1, and resolved displacement of lumbar disc at L3-4. He recommended a series of lumbar epidural steroid injections, and if this treatment was unsuccessful, surgical intervention. Dr. Hussamy found appellant partially disabled from work due to his accepted employment injury.

In notes dated October 29 and November 1, 2, and 7, 2018, Dr. Susan V. Ville, a chiropractor, provided authorized therapy for a prolapsed lumbar intervertebral disc.

On December 5, 2018 appellant filed a claim for compensation (Form CA-7) for total disability from work during the period November 2 through 30, 2018. The employing establishment completed a time analysis form and confirmed that appellant did not work on November 2, 6, 7, 8, 9, or 10, 2018 in accordance with his doctor's orders. It further confirmed that he attended therapy on November 14, 16, 19, 28, and 30, 2018.

In a December 11, 2018 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 respond.

On November 30, 2018 appellant accepted a modified city carrier position.

Appellant received treatment for lumbar radiculopathy from a physician assistant on November 2, 2018. A physician assistant completed a work status form on November 9, 2018.

By decision dated February 5, 2019, OWCP denied appellant's claim for compensation for total disability for the period November 2 through 10, 2018. It authorized compensation for medical treatment on November 14, 16, 19, 28, and 30, 2019 for a total of 16.25 hours.

On November 9, 2018 Dr. Ville provided chiropractic treatment.

On May 13, 2019 appellant requested reconsideration of the February 5, 2019 decision and submitted additional evidence.

By decision dated August 7, 2019, OWCP denied modification of its February 5, 2019 decision.

In a February 19, 2020 note, Dr. Regina Morris Solis, a Board-certified anesthesiologist, found continued low back pain and diagnosed lumbar radiculopathy, lumbar disc degeneration, and chronic pain syndrome. She opined that it was appropriate for appellant to have been off work from October 30 to November 10, 2018 "to allow for back pain relief, post treatment, to return to work."

Appellant continued to submit treatment notes from physician assistants.

On June 12, 2020 appellant requested reconsideration of the August 7, 2019 decision.

OWCP subsequently received a June 4, 2020 note, wherein Dr. Devin Kumar Datta, a Board-certified orthopedic surgeon, noted appellant's history of injury in 2012. Dr. Datta reviewed the diagnostic studies and found moderate multilevel disc degeneration of the lumbar spine. He diagnosed lumbar radiculopathy.

By decision dated July 15, 2020, OWCP denied modification of its August 7, 2019 decision.

On March 18, 2021 appellant requested reconsideration of OWCP's July 15, 2020 decision and submitted an August 17, 2020 note, wherein Dr. Solis diagnosed low back pain, sciatica, lumbosacral spondylosis without myelopathy, and degeneration of lumbar intervertebral disc. Dr. Solis repeated her conclusion that it was appropriate for appellant to have been off work from October 30 through November 10, 2018 due to multilevel disc protrusions impinging on nerve roots as seen on the February 8, 2019 MRI scan.

OWCP also received another treatment note from a physician assistant.

By decision dated March 31, 2021, OWCP denied modification of its July 15, 2020 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] has the burden of proof to establish the essential elements of his or her claim.[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] 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 the reliable, probative, and substantial medical evidence.[8]

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.[9]

The Board has interpreted section 8103, which requires payment of expenses incidental to the securing of medical services, as authorizing payment for loss of wages incurred while obtaining medical services.[10] An employee is entitled to disability compensation for any loss of wages incurred during the time he or she receives authorized treatment and for loss of wages for time spent incidental to such treatment. The rationale for this entitlement is that, during such required examinations and treatment and during the time incidental to undergoing such treatment, an employee did not receive his or her regular pay. For a routine medical appointment, a maximum of four hours of compensation for time lost to obtain medical treatment is usually allowed.[11]

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[4] *Supra* note 3.

[5] *C.T.*, Docket No. 20-0786 (issued August 20, 2021); *M.C.*, Docket No. 18-0919 (issued October 18, 2018); *B.K.*, Docket No. 18-0386 (issued September 14, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005); *see also Nathaniel Milton*, 37 ECAB 712 (1986).

[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] *K.C.*, Docket No. 17-1612 (issued October 16, 2018); *William A. Archer*, 55 ECAB 674 (2004).

[8] *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

[9] *M.A.*, Docket No. 20-0033 (issued May 11, 2020); *J.B.*, Docket No. 19-0715 (issued September 12, 2019).

[10] *J.E.*, Docket No. 19-1758 (issued March 16, 2021); *Y.H.*, Docket No. 17-1303 (issued March 13, 2018).

[11] For a routine medical appointment, a maximum of four hours of compensation for time lost to obtain medical treatment is usually allowed. *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Compensation Claims*, Chapter 2.901.19(c) (February 2013); *J.E.*, *id.*; *see also K.A.*, Docket No. 19-0679 (issued April 6, 2020); *William A. Archer*, 55 ECAB 674 (2004).

ANALYSIS

The Board finds that appellant has met his burden of proof to establish entitlement to wage-loss compensation for up to four hours of time lost for each medical appointment scheduled on November 2, 7, and 9, 2018.

Appellant has submitted evidence that he attended authorized treatment from Dr. Ville on November 2, 7, and 9, 2018 for his accepted condition of intervertebral disc displacement. He further sought authorized treatment from a physician assistant on November 2 and 9, 2018.

An employee is entitled to disability compensation for up to four hours of lost wages incurred during the time he or she receives authorized treatment and for loss of wages for time spent incidental to such treatment.[12] Here, the case record establishes that appellant underwent evaluation and treatment for complaints related to his intervertebral disc displacement on November 2, 7, and 9, 2018. The Board thus finds that this medical evidence is sufficient to establish that he is entitled to up to four hours of wage-loss compensation for each appointment on those dates.[13]

The Board further finds, however, that appellant has not met his burden of proof to establish entitlement to wage-loss compensation for total disability for the remaining claimed disability during the period November 2 through 10, 2018 causally related to his accepted February 23, 2012 employment injury.

On February 19, 2020 Dr. Solis diagnosed lumbar radiculopathy, lumbar disc degeneration, and chronic pain syndrome. She opined that it was appropriate for appellant to have been out of work from October 30 to November 10, 2018 to allow for back pain relief, post treatment. In an August 17, 2020 note, Dr. Solis again found that it was appropriate for appellant to have been out of work from October 30 through November 10, 2018. She asserted that he was unable to work due to multilevel disc protrusions as seen on the February 8, 2019 MRI scan which were impinging on nerve roots. However, Dr. Solis did not explain how the accepted employment injury of lumbar strain and intervertebral disc displacement without myelopathy at L3-4 and L5-S1 was competent to cause disability during the claimed periods. The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.[14] As such, these reports are insufficient to establish appellant's claim for compensation.

Appellant provided a series of reports from Dr. Ville, a chiropractor. Chiropractors, however, are only considered physicians for purposes of FECA if they diagnose spinal subluxation

[12] *Id*.

[13] *See J.E.*, Docket No. 19-1758 (issued March 16, 2021); *D.N.*, Docket No. 19-1344 (issued November 6, 2020).

[14] *L.O.*, Docket No. 20-0170 (issued August 13, 2021); *M.N.*, Docket No. 18-0741 (issued April 2, 2020); *L.G.*, Docket No. 19-0142 (issued August 8, 2019); *C.M.*, Docket No. 14-0088 (issued April 18, 2014).

based upon x-ray evidence.[15] Dr. Ville did not indicate that she obtained x-rays of the cervical spine. Therefore, her report is of no probative value and is insufficient to establish the claim for total disability.

Appellant also submitted a series of reports dated November 2 and 9, 2018 from physician assistants. However, the Board has held that medical reports signed solely by physician assistants lack probative value, as these providers are not considered physicians as defined under FECA and, therefore, are not competent to provide a medical opinion.[16]

The remaining medical evidence of record does not provide an opinion concerning appellant's claimed disability from November 2 through 10, 2018. Accordingly, it is of no probative value and is insufficient to establish appellant's claim.[17]

As the medical evidence of record is insufficient to establish the remaining claimed disability from work during the period November 2 through 10, 2018 causally related to his accepted February 23, 2012 employment injury, the Board finds that he 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 met his burden of proof to establish entitlement to wage-loss compensation for up to four hours of time lost for medical appointments on November 2, 7, and 9, 2018. The Board further finds he has not met his burden of proof to establish the remaining claimed disability from work during the period November 2 through 10, 2018 causally related to his accepted February 23, 2012 employment injury.

[15] Section 8101(2) of FECA provides that the term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulations by the Secretary. 5 U.S.C. § 8101(2); *T.F.*, Docket No. 21-0384 (issued August 25, 2021); *K.W.*, Docket No. 20-0230 (issued May 21, 2021); *J.D.*, Docket No. 19-1953 (issued January 11, 2021); *George E. Williams*, 44 ECAB 530 (1993).

[16] 5 U.S.C. § 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 20 C.F.R. § 10.5(t). *See also* 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).

[17] *M.V.*, Docket No. 20-0872 (issued January 27, 2021); *C.S.*, Docket No. 19-1279 (issued December 30, 2019); *S.W.*, Docket No. 17-0240 (issued July 25, 2017).

ORDER

IT IS HEREBY ORDERED THAT the March 31, 2021 decision of the Office of Workers' Compensation Programs is reversed in part and affirmed in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: July 17, 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