

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

_____)	
J.R., Appellant)	
)	
and)	Docket No. 23-0215
)	Issued: July 28, 2023
U.S. POSTAL SERVICE, LOS ANGELES)	
INTERNATIONAL SERVICE CENTER,)	
Los Angeles, CA, Employer)	
_____)	

Appearances:
Appellant, pro se
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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 23, 2022 appellant filed a timely appeal from June 30, July 25, and October 26, 2022 merit decisions of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

¹ The Board notes that, following the October 26, 2022 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.*

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish disability from work commencing February 9, 2022 causally related to his accepted employment injury.

FACTUAL HISTORY

On March 15, 2022 appellant, then a 38-year-old mail handler assistant, filed a traumatic injury claim (Form CA-1) alleging that on February 9, 2022 he was hit from behind by an all-purpose carrier causing him to fall to the ground injuring his right shoulder, back, legs, and the bottom of his feet while in the performance of duty. OWCP accepted the claim for bilateral Achilles tendinitis.

In a note dated February 9, 2022, Johnny Greene, a physician assistant, diagnosed contusions of the lower back, pelvis, and bilateral lower legs. Appellant also sought treatment on February 9, 2022 with Dr. Jasvinder Bawa, a physician Board-certified in emergency medicine. An unsigned after-visit summary indicated that Dr. Bawa diagnosed blunt trauma, acute low back pain, acute right shoulder pain, and contusion of the left ankle.

On February 25 and March 16, 2022 Dr. Chizelle D. Rush, a Board-certified family practitioner, opined that appellant was disabled until he was able to work/walk without pain.

In notes dated March 1, 2022, Dr. Victoria B. Shin, an osteopath Board-certified in family medicine, recommended that appellant remain off work until March 13, 2022 due to his injury. She reported his February 9, 2022 employment injury in which his legs were hit by a crate. Dr. Shin found that appellant was unable to walk for more than three minutes, had pain with walking, and that he felt unable to safely complete his work duties. She diagnosed Achilles tendinitis of both lower extremities and referred him for physical therapy.

On March 6, 2022 Samantha Sweeney, a physician assistant, diagnosed contusion of the lower back and pelvis, and contusions of the lower legs. She discharged appellant from care, effective that date.

In a report dated March 22, 2022, Dr. Shin listed appellant's date of injury as February 9, 2022 and diagnosed bilateral Achilles tendinitis. She described the employment incident and opined that it caused the diagnosed condition.

Steven Hardy, a physical therapist, completed a note on March 28, 2022 and found that appellant was not capable of returning to strenuous work.

On April 19, 2022 appellant filed a claim for compensation (Form CA-7) for disability from work from February 9 through April 19, 2022.

In an April 22, 2022 development letter, OWCP informed appellant of the deficiencies of his claim for compensation. It advised him of the type of medical evidence needed to establish his claim and afforded him 30 days to respond.

On May 22, 2022 the employing establishment provided appellant with a light-duty job offer working up to four hours a day in the bad order/rewrap area with no heavy lifting over 15 pounds.

In a May 23, 2022 note, Dr. Shin found that appellant was unable to work due to his February 9, 2022 employment injury through August 23, 2022.

On May 24, 2022 appellant filed a Form CA-7 requesting wage-loss compensation for disability from work for the period February 9 through May 24, 2022.

In a May 27, 2022 development letter, OWCP informed appellant of the deficiencies of his May 24, 2022 claim for compensation. It advised him of the type of medical evidence needed to establish his claim and afforded him 30 days to respond.

On June 21, 2022 OWCP requested that Dr. Shin provide a report addressing appellant's current work restrictions and whether he could perform the duties of the light-duty job offer provided by the employing establishment.

By decision dated June 30, 2022, OWCP denied appellant's April 19, 2022 claim for compensation, finding that the medical evidence of record was insufficient to establish disability from work for the period February 9 through April 19, 2022, causally related to the accepted employment injury.

By decision dated July 25, 2022, OWCP denied appellant's May 24, 2022 claim for compensation, finding that the medical evidence of record was insufficient to establish disability from work for the period April 20 through May 20, 2022, causally related to the accepted employment injury.

In an August 8, 2022 note, Dr. Shin opined that appellant could return to work on November 8, 2022.

On August 9, 2022 appellant filed a Form CA-7 requesting wage-loss compensation for disability from work for the period February 9 through August 9, 2022.

In a report dated August 9, 2022, Dr. Shin recounted appellant's February 9, 2022 employment injury of bilateral Achilles tendinitis. She found that he continued to experience right Achilles tendinitis and that he was unable to perform the duties of a mail handler assistant or modified duties. Dr. Shin recommended regular physical therapy, activity modification, and clinical monitoring with medical visits.

In an August 23, 2022 development letter, OWCP informed appellant of the deficiencies of his August 9, 2022 claim for compensation. It advised him of the type of medical evidence needed to establish his claim and afforded him 30 days to respond.

On September 1, 2022 OWCP requested that Dr. Shin provide a report addressing appellant's current work restrictions and whether he could perform the duties of the light-duty job offer provided by the employing establishment.

On October 24, 2022 appellant filed a Form CA-7 requesting wage-loss compensation for disability from work for the period February 9 through October 24, 2022.

By decision dated October 26, 2022, OWCP denied appellant's August 9, 2022 claim for compensation, finding that the medical evidence of record was insufficient to establish disability from work, commencing May 21, 2022, causally related to the accepted employment injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 an incapacity because of an employment injury, to earn the wages that the employee was receiving at the time of the injury.⁷ 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.⁸

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.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

³ *Id.*

⁴ 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).

⁵ *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).

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

⁷ *Id.* at § 10.5(f); see *J.T.*, Docket No. 19-1813 (issued April 14, 2020); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

⁸ *J.T., id.*; *Merle J. Marceau*, 53 ECAB 197 (2001).

⁹ *T.T.*, Docket No. 18-1054 (issued April 8, 2020).

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 commencing February 9, 2022 causally related to his accepted employment injury.

In reports dated March 1 through August 9, 2022, Dr. Shin listed appellant's date of injury as February 9, 2022 and diagnosed bilateral Achilles tendinitis. She described the employment incident and opined that this incident caused the diagnosed condition. Dr. Shin recommended that appellant remain off work due to his injury. Although she provided an opinion that he was disabled from work during the claimed period, she did not sufficiently explain with rationale how his accepted conditions resulted in the claimed disability. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain sufficient medical rationale explaining causal relationship between the claimed disability and the accepted employment injury.¹¹ Therefore, Dr. Shin's medical reports are insufficient to establish appellant's disability claim.

Dr. Rush completed reports on February 25 and March 16, 2022 and opined that appellant was disabled from performing his regular work duties. However, she did not address the claimed disability due to the accepted employment injury. The Board has held that medical evidence that fails to provide an opinion that an employee was disabled from work during the claimed period of disability due to the accepted employment injury is of no probative value.¹² For this reason, Dr. Rush's reports are insufficient to establish appellant's disability claim.

OWCP also received evidence from physician assistants. Certain healthcare providers such as physician assistants and physical therapists are not considered physicians as defined under FECA.¹³ Consequently, these reports will not suffice for purposes of establishing entitlement to FECA benefits.¹⁴ Accordingly, this evidence is also insufficient to establish appellant's disability claim.

¹⁰ *D.P.*, *supra* note 5; *Sandra D. Pruitt*, 57 ECAB 126 (2005).

¹¹ *See H.A.*, Docket No. 20-1555 (issued December 22, 2022); *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 *H.A.*, *id.*; *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹³ Section 8101(2) 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). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *M.F.*, Docket No. 19-1573 (issued March 16, 2020) (physician assistants are not considered physicians as defined by FECA); *N.B.*, Docket No. 19-0221 (issued July 15, 2019) (reports from physician assistants have no probative value in establishing a claim as they are not considered physicians as defined under FECA); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (finding that lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA).

¹⁴ *Id.*

OWCP received unsigned treatment records dated February 9, 2022. However, the Board has held that reports that are unsigned or bear an illegible signature lack proper identification and cannot be considered probative medical evidence.¹⁵

As the medical evidence of record is insufficient to establish employment-related disability during the claimed period due to the accepted 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 commencing February 9, 2022 causally related to his accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the October 26, July 25, and June 30, 2022 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 28, 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

¹⁵ *J.E.*, Docket No. 22-0683 (issued November 10, 2022); *M.A.*, Docket No. 19-1551 (issued April 30, 2020); *Merton J. Sills*, 39 ECAB 572, 575 (1988).