

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

ISSUE

The issue is whether appellant has met his burden of proof to establish disability from work commencing July 8, 2019 causally related to his April 28, 2019 employment injury.

FACTUAL HISTORY

On April 28, 2019 appellant, then a 58-year-old customs and border patrol officer, filed a traumatic injury claim (Form CA-1) alleging that on that date he slipped when pulling a postal container and injured his back, left foot, and ankle while in the performance of duty. He did not immediately stop work.

On July 10, 2019 Dr. Gus Katsigiorgis, a Board-certified orthopedist, treated appellant for persistent low back and left ankle pain. He diagnosed left ankle derangement, lumbar derangement, left knee tendinitis compensatory to antalgic gait, sprain of other ligament of the left ankle, sprain of ligaments of lumbar spine, and sprain of other parts of the left knee. In a July 10, 2019 work excuse note, Dr. Katsigiorgis advised that appellant was totally disabled. In an attending physician's report (Form CA-20) dated July 11, 2019, he indicated that the diagnosed conditions were caused or aggravated by the described employment incident and noted that appellant was disabled. On August 28, 2019 Dr. Katsigiorgis released appellant to light-duty modified work on September 1, 2019 with the restriction of no heavy lifting.

In a Form CA-20 dated July 30, 2019, Dr. Kanwarpaul Grewal, a Board-certified orthopedist, referenced his July 1, 2019 report. He examined appellant on August 12, 2019 and provided a history of the April 28, 2019 employment incident noting that appellant had a twisting injury to the left leg leading to a fall. Dr. Grewal opined that the left knee is likely strained from that injury since the pain persisted since that time. He diagnosed acute lumbar strain improving, thoracic disc herniation with radiculopathy, and left knee pain.

On September 4, 2019 the employing establishment offered appellant a temporary limited-duty position, eight hours a day, with the same pay as his current salary. The position was subject to the restrictions set forth by appellant's treating physician.

In a report dated September 14, 2019, Dr. Manoj Sadhnani, a podiatrist, treated appellant for an injury to his left foot and left ankle/heel sustained at work on April 8, 2019. He noted that a magnetic resonance imaging (MRI) scan demonstrated tearing of the left heel Achilles tendon and prominent bone spur on the posterior left heel. Dr. Sadhnani diagnosed strain of left

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the August 12, 2021 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedures* 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.*

Achilles tendon and calcaneal spur, left foot and recommended surgical debridement of frail tendon, repair of Achilles tendon, and excision of spur and bony prominence left heel.

OWCP received additional evidence. Dr. Katsigiorgis continued to treat appellant through August 28, 2019 for persistent low back, left ankle, and left knee pain. He diagnosed sprain of the ligaments of the lumbar spine, sprain of other ligament of the left ankle, and sprain of other specified parts of the left knee. Dr. Katsigiorgis advised that appellant could resume light-duty work.

In reports dated January 15, June 10, and July 15, 2020, Dr. Grewal treated appellant in follow-up for his work injury and related continued lower back pain that occasionally radiates down the right leg. Appellant reported having left knee surgery on November 1, 2019 and left Achilles surgery on December 11, 2019. He diagnosed improving acute lumbar strain, improving thoracic disc herniation with radiculopathy, left knee pain, and Achilles pain. Dr. Grewal noted that appellant was stable for light-duty work. In a report dated February 24, 2020, he noted that appellant was postoperative left knee arthroscopy and left Achilles tendon debridement and had limited mobility. In an addendum report dated July 21, 2020, Dr. Grewal advised that, due to compressive disc herniation in the thoracic spine, chronic pain management needs with injections, and potential surgery, appellant was not an ideal candidate for police or correction work. He opined that appellant's injury was causally related to the fall on April 28, 2019 and as a result appellant has developed significant limitations secondary to his work-related injury.

In an April 20, 2020 report, Dr. Craig S. Radnay, a Board-certified orthopedist, noted treating appellant since February 15, 2017 for left posterior ankle pain. He diagnosed left Achilles insertional tendinopathy with gastrocnemius contracture. Dr. Radnay treated appellant again on September 25, 2019 for left Achilles tendon pain and left knee pain. Appellant reported pulling something heavy at work and he slipped and fell. Dr. Radnay reviewed an MRI scan of the left ankle dated May 15, 2019 and opined that appellant's recent work injury exacerbated his preexisting condition. He recommended a left Achilles tendon debridement, repair with resection of Haglund's deformity, and gastrocnemius recession and bursectomy. Dr. Radnay indicated that the Achilles tendinopathy pain occurred secondary to appellant's work as a police officer, the recent fall in April 2019, and after a cart that rolled over his posterior left ankle at work causing him to fall. He reviewed an MRI scan of the left knee from October 2, 2019, which demonstrated a medial meniscus tear along the inferior articular surface with a flap tear of the body and posterior horn from the inferior articular surface. Dr. Radnay indicated that since appellant's injury on April 28, 2019 he remained very tender with limited mobility. On October 29, 2019 he performed a left knee arthroscopic partial medial meniscectomy with arthroscopic partial synovectomy, arthroscopic excision of the medial plica, arthroscopic debridement, chondroplasty of the medial femoral condyle, medial tibial plateau, and femoral trochlea. On December 11, 2019 Dr. Radnay performed a left Achilles tendon debridement with repair of chronic Achilles insertional tendinopathy with left Achilles gastrocnemius recession and a left calcaneus exostectomy and saucerization. Appellant developed a deep vein thrombosis after surgery. Dr. Radnay treated appellant on January 29 and March 11, 2020 and noted that he transitioned into a weight-bearing shoe, but experienced neuritis symptoms consistent with decreased sensation along the sural nerve.

By decision dated October 15, 2020, OWCP accepted appellant's claim for lumbar sprain, lumbar strain, thoracic strain, left ankle sprain, left knee sprain, and left Achilles strain.

However, OWCP found that the evidence of record was insufficient to establish that the remaining orthopedic conditions including thoracic disc herniation with radiculopathy, compressive disc herniation of the thoracic spine, left Achilles insertional tendinopathy, left knee tear, left foot calcaneal spur, left ankle internal derangement, lumbar derangement, and left knee tendinitis were caused by the April 28, 2019 work injury.

On October 23 and 26, 2020 appellant filed claims for compensation (Form CA-7) for disability from work commencing July 8, 2019

In a development letter dated November 9, 2020, OWCP informed appellant of the deficiencies of his claims for compensation. It advised him of the type of factual and medical evidence required and afforded him 30 days to submit the requested information.

OWCP received an MRI scan of the left ankle dated May 15, 2019, an MRI scan of the thoracic spine dated June 25, 2019, reports and work excuse notes from Dr. Grewal dated June 5, June 10, July 1, and August 12, 2019, and reports from Dr. Katsigiorgis dated July 10 and August 28, 2019, all previously of record.

During the pendency of the appeal before the Board, on March 22, 2021, appellant filed additional Form CA-7 claims for disability from work for the period commencing July 8, 2019. He submitted accompanying Form CA-7a's.

In a development letter dated April 21, 2021, OWCP requested that appellant submit additional factual and medical evidence, including a report from his physician explaining how his accepted condition had worsened such that he was unable to work beginning July 8, 2019. It afforded him 30 days to submit the requested information.

By decision dated August 12, 2021, OWCP denied appellant's claim for disability from work commencing July 8, 2019 causally related to his accepted April 28, 2019 employment injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim including the fact that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁴

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.⁵ Disability is, thus, not

⁴ A.R., Docket No. 20-0583 (issued May 21, 2021); S.W., Docket No. 18-1529 (issued April 19, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994).

⁵ 20 C.F.R. § 10.5(f); see *J.M.*, Docket No. 18-0763 (issued April 29, 2020); *Bobbie F. Cowart*, 55 ECAB 746 (2004).

synonymous with physical impairment, which may or may not result in an incapacity to earn wages.⁶ 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.⁷ 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.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 claim, 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.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 commencing July 8, 2019 causally related to his accepted April 28, 2019 employment injury.

On July 10, 2019 Dr. Katsigiorgis diagnosed left ankle derangement, lumbar derangement, left knee tendinitis compensatory to antalgic gait, sprain of other ligament of the left ankle, sprain of ligaments of lumbar spine, and sprain of other parts of the left knee. In a July 10, 2019 work excuse note, he advised that appellant remained totally disabled. In a Form CA-20 dated July 11, 2019, Dr. Katsigiorgis affirmed that the diagnosed conditions were caused or aggravated by the described employment incident and noted that appellant was disabled. However, Dr. Katsigiorgis did not provide a rationalized medical opinion explaining why appellant was disabled from his light-duty work due to his accepted employment injury. The Board has held that a report is of limited probative value regarding causal relationship if it does

⁶ *D.W.*, Docket No. 20-1363 (issued September 14, 2021); *L.W.*, Docket No. 17-1685 (issued October 9, 2018).

⁷ *See M.W.*, Docket No. 20-0722 (issued April 26, 2021); *D.G.*, Docket No. 18-0597 (issued October 3, 2018).

⁸ *See A.R.*, *supra* note 4; *D.R.*, Docket No. 18-0323 (issued October 2, 2018).

⁹ *K.H.*, Docket No. 19-1635 (issued March 5, 2020); *V.A.*, Docket No. 19-1123 (issued October 29, 2019).

¹⁰ *K.A.*, Docket No. 19-1564 (issued June 3, 2020); *J.B.*, Docket No. 19-0715 (issued September 12, 2019); *William A. Archer*, 55 ECAB 674 (2004).

not contain medical rationale explaining how the claimed disability was related to employment factors.¹¹ Thus, this evidence is also insufficient to establish the disability claim.

In reports dated August 28, 2019, Dr. Katsigiorgis related that appellant could return to light-duty work. Similarly, reports from Dr. Grewal dated January 15, June 10, and July 15, 2020, diagnosed improving acute lumbar strain, improving thoracic disc herniation with radiculopathy, left knee pain, and Achilles pain and noted that appellant was stable for light-duty work. The Board has held that medical evidence that negates causal relationship is of no probative value.¹² Therefore, this evidence is insufficient to establish appellant's disability claim.

On August 12, 2019 Dr. Grewal provided a history of the April 28, 2019 work injury and diagnosed acute lumbar strain improving, thoracic disc herniation with radiculopathy, and left knee pain. A Form CA-20 dated July 30, 2019 from Dr. Grewal referenced his July 1, 2019 report but did not address disability. On February 24, 2020 Dr. Grewal noted that appellant was postoperative left knee arthroscopy and left Achilles tendon debridement and had limited mobility. In an addendum dated July 21, 2020, he opined that appellant's injury was causally related to the fall on April 28, 2019 and as a result he has developed significant limitations secondary to his work-related injury and was not an ideal candidate for police or correction work. Similarly, on September 14, 2019, Dr. Sadhnani diagnosed strain of left Achilles tendon and calcaneal spur, left foot and recommended surgical debridement of frail tendon, repair of Achilles tendon, and excision of spur and bony prominence left heel. Likewise, on April 20, 2020, Dr. Radnay diagnosed left Achilles insertional tendinopathy with gastrocnemius contracture. He indicated that since appellant's injury on April 28, 2019 appellant remained very tender with limited mobility. On October 29, 2019 and December 11, 2019 Dr. Radnay performed surgery and in reports dated January 29 and March 11, 2020, he noted that appellant transitioned into a weight-bearing shoe, but experienced neuritis symptoms. However, Drs. Grewal, Sadhnani, and Radnay did not address the specific period of disability at issue or provide a rationalized medical opinion as to why appellant was disabled from his light-duty work due to his accepted employment injury.¹³ Thus, this evidence is also insufficient to establish the disability claim.

As the medical evidence of record is insufficient to establish employment-related disability from work commencing July 8, 2019 causally related to the accepted April 28, 2019 employment injury, the Board finds that appellant has not met his burden of proof to establish his claim.

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.

¹¹ See *Y.D.*, Docket No. 16-1896 (issued February 10, 2017) (finding that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining causal relationship between the accepted employment injury and a diagnosed condition/disability).

¹² *T.W.*, Docket No. 19-0677 (issued August 16, 2019).

¹³ *Supra* note 10.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish disability from work commencing July 8, 2019 causally related to his April 28, 2019 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the August 12, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 16, 2023
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board