

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

C.C., Appellant)	
)	
and)	Docket No. 22-1278
)	Issued: June 22, 2023
U.S. POSTAL SERVICE, POST OFFICE,)	
Detroit, MI, Employer)	
)	

Appearances:
Appellant, pro se,
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On August 29, 2022 appellant filed a timely appeal from a June 14, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the June 14, 2022 decision, OWCP received additional evidence. 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 her burden of proof to establish intermittent disability from work for the period March 12 through 25, 2022 causally related to her accepted February 20, 2021 employment injury.

FACTUAL HISTORY

On February 22, 2021 appellant, then a 31-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on February 20, 2021 she developed a contusion on her left thigh and upper left leg when she slipped and fell on a flight of stairs while in the performance of duty. She did not stop work. OWCP accepted the claim for a coccygeal contusion.

In a February 25, 2022 progress report, Dr. Peter Lasater, an orthopedic surgeon, diagnosed cervical radiculopathy and cervical pain. He related that appellant reported being injured at work approximately one year prior when she slipped on ice while ascending concrete steps, causing her to fall on her left shoulder and neck. Dr. Lasater noted that she continued to experience pain and discomfort over her left trapezius area which radiated to the lateral neck and occasionally down the left upper extremity, causing numbness and tingling to her left fingers. In a note of even date, he returned appellant to work on February 28, 2022 with restrictions of lifting no more than five pounds and carrying mail for up to five hours.

On March 10, 2022 appellant accepted an offer of a modified limited-duty assignment as a letter carrier with physical requirements of standing and setting up the route for one to two hours, walking and carrying mail for one to five hours, and driving for one hour.

In a March 21, 2022 note, Dr. Robert Levine, a Board-certified orthopedic surgeon, noted that appellant reported pain in her left shoulder and lower back due to her work injury and held her off work March 21 through 23, 2022.

On March 29, 2022 appellant filed a claim for wage-loss compensation (Form CA-7) for intermittent disability for the period March 12 through 25, 2022 and further provided a time analysis form (Form CA-7a) requesting a total of 34.18 hours of LWOP for “under medical care” on March 12 and 22, 2022; “no work available” March 14 through 17, 2022 and March 23 through 25, 2022; and “doctor visit/medical” on March 21, 2022.

In a development letter dated April 13, 2022, OWCP advised appellant of the deficiencies of her claim and advised her of the evidence necessary to establish her claim for intermittent disability for work during the period claimed. It afforded her 30 days to respond.

Thereafter, OWCP received a February 24, 2021 attending physician’s report (Form CA-20) from Mackenzie Jacks, a physician assistant, noting that appellant reported slipping and falling on icy stairs while at work. Ms. Jacks diagnosed contusions of the left arm and left leg and checked a box marked “Yes” to indicate her belief that the condition was caused or aggravated by an employment activity. She opined that appellant was totally disabled from work beginning February 20, 2021 and could resume regular work on February 26, 2021.

In an April 25, 2022 progress report, Dr. Jason Mulawa, Board-certified in pain medicine and anesthesiology, noted that appellant presented with persistent pain in her left shoulder and difficulty carrying her mailbag. He provided an impression of ongoing left-sided shoulder and neck pain.

An April 28, 2022 duty status report (Form CA-17) with an illegible signature noted a diagnosis of muscular strain and indicated that appellant could return to work on April 29, 2022 with restrictions.

In an April 29, 2022 progress report, Dr. Lasater noted an impression of a muscular strain of the left periscapular area.

In a May 6, 2022 note, Dr. Levine advised that appellant was unable to work from March 21 to 23, 2022. Dr. Mulawa, in a note of even date, diagnosed a rotator cuff sprain and shoulder pain, ordered physical therapy, and returned her to work on May 6, 2022.

On June 13, 2022 Spencer Poshadlo, a physician assistant, ordered a magnetic resonance imaging (MRI) scan. In a note of even date, he noted that appellant was disabled from work from June 8 to 15, 2022.

OWCP, by decision dated June 14, 2022, expanded the acceptance of appellant's claim to include a strain of unspecified muscle, fascia, and tendon at shoulder and upper arm level, left arm. By separate decision of even date, it denied appellant's claim for intermittent disability from work for the period March 12, to 25, 2022, finding that the medical evidence of record was insufficient to establish disability from work during the claimed period causally related to her accepted February 20, 2021 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.⁴ Under FECA the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁵ 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.⁶ 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.⁷

³ *Supra* note 1.

⁴ *See L.S.*, Docket No. 18-0264 (issued January 28, 2020); *B.O.*, Docket No. 19-0392 (issued July 12, 2019).

⁵ 20 C.F.R. § 10.5(f); *J.S.*, Docket No. 19-1035 (issued January 24, 2020).

⁶ *T.W.*, Docket No. 19-1286 (issued January 13, 2020).

⁷ *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

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 appellant, 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.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

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish intermittent disability from work for the period March 12 to 25, 2022 causally related to the accepted February 20, 2021 employment injury.

OWCP accepted appellant's claim for coccygeal contusion and strain of unspecified muscle, fascia, and tendon at shoulder and upper arm level, left arm. In March 21 and May 6, 2022 notes, Dr. Levine indicated that appellant was unable to work from March 21 to 23, 2022. However, he offered no rationalized medical opinion as to whether her accepted conditions were the cause of her disability. The Board has held that medical evidence that does not provide an opinion regarding whether a period of disability is due to an accepted employment condition is of no probative value and, thus, is insufficient to establish a claim.¹⁰ Consequently, Dr. Levine's notes are insufficient to establish that appellant was disabled from work from March 12 to 25, 2022 due to her accepted employment injury.¹¹

Appellant also submitted an April 29, 2022 progress report in which Dr. Lasater diagnosed cervical radiculopathy, cervical pain, and a muscular strain of the left periscapular area. Similarly, in an April 25, 2022 progress report and May 6, 2022 note, Dr. Mulawa diagnosed a rotator cuff sprain and ongoing left-sided shoulder and neck pain, and returned her to work on May 6, 2022. However, as neither Dr. Lasater nor Dr. Mulawa provided an opinion in their respective reports regarding whether appellant was disabled from work during the claimed period due to the accepted employment injury, this evidence is of no probative value.¹²

⁸ See *D.W.*, Docket No. 20-1363 (issued September 14, 2021); *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

⁹ See *M.J.*, Docket No. 19-1287 (issued January 13, 2020); *William A. Archer*, 55 ECAB 674 (2004).

¹⁰ See *S.D.*, Docket No. 20-1255 (issued February 3, 2021); *L.L.*, Docket No. 19-1794 (issued October 2, 2020); *C.R.*, Docket No. 19-1427 (issued January 3, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹¹ *Id.*

¹² See *T.S.*, Docket No. 20-1229 (issued August 6, 2021); *J.M.*, Docket No. 19-1169 (issued February 7, 2020); *A.L.*, Docket No. 19-0285 (issued September 24, 2019); *L.B.*, *supra* note 10; *D.K.*, *supra* note 10.

Additionally, appellant provided a June 13, 2022 note from Mr. Poshadlo, a physician assistant, finding him disabled for work for the period June 8 to 15, 2022. This evidence, however, is of no probative value to establish her disability claim because physician assistants are not considered physicians as defined under FECA.¹³

The remaining medical evidence of record includes an April 28, 2022 Form CA-17 with an illegible signature noting a diagnosis of muscular strain and indicating appellant could return to work on April 29, 2022 with restrictions. 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 as the author cannot be identified as a physician.¹⁴

As appellant has not submitted medical evidence sufficient to establish disability during the claimed period due to her accepted injury, the Board finds that she has not met her burden of proof.¹⁵

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 her burden of proof to establish disability from work for the period March 12 to 25, 2022 causally related to her accepted February 20, 2021 employment injury.

¹³ Section 8101(2) of FECA 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 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 *S.S.*, Docket No. 21-1140 (issued June 29, 2022) (physician assistants are not considered physicians under FECA and are not competent to provide medical opinions); *George H. Clark*, 56 ECAB 162 (2004) (physician assistants are not considered physicians under FECA).

¹⁴ *T.U.*, Docket No. 19-1636 (issued October 29, 2020); *R.L.*, Docket No. 20-0284 (issued June 30, 2020); *M.A.*, Docket No. 19-1551 (issued April 30, 2020); *T.O.*, Docket No. 19-1291 (issued December 11, 2019).

¹⁵ The Board notes that the employing establishment certified on the CA-7 dated April 5, 2022 that there were periods where no work was available for appellant. However, the record does not reflect that appellant was paid these monies that are due and owing.

ORDER

IT IS HEREBY ORDERED THAT the June 14, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 22, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board