

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

_____)	
R.P., Appellant)	
)	
and)	Docket No. 22-1349
)	Issued: June 12, 2023
U.S. POSTAL SERVICE, TAMPA POST)	
OFFICE, Tampa, FL, Employer)	
_____)	

Appearances:

Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 23, 2022 appellant, through counsel, filed a timely appeal from an August 26, 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 August 26, 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 her burden of proof to establish disability from work for the period July 22 through October 22, 2021 causally related to her accepted April 12, 2021 employment injury.

FACTUAL HISTORY

On May 3, 2021 appellant, then a 59-year-old general expeditor, filed a traumatic injury claim (Form CA-1) alleging that on April 12, 2021 a bulk mail container struck her head and back while in the performance of duty. She stopped work on that date. OWCP accepted appellant's claim for lumbar spine sprain and thoracic muscle strain.

On April 14, 2021 appellant was released to modified-duty work.

In a report dated July 21, 2021, Dr. David P. Kalin, Board-certified in family medicine, indicated that appellant was evaluated for complaints of lower back and bilateral knee pain. He described the April 12, 2021 employment injury and noted that her claim was accepted for lumbar and thoracic sprains. Dr. Kalin reviewed appellant's medical records and past medical history, including preexisting bilateral knee, lumbar, cervical, and thoracic conditions. He reported that on May 27, 2021 she sought treatment with Dr. Stephen R. Goll, an orthopedic surgeon, for complaints of progressive worsening low back symptoms. Dr. Kalin noted that appellant was on full-time, limited-duty work with restrictions on standing and walking for prolonged periods of time, kneeling, stooping, bending, and lifting greater than five pounds. He indicated that she now had more difficulty with bending, twisting, standing, and walking and felt like she was "becoming incompetent in her work due to physical decompensation."

Dr. Kalin provided diagnoses of lumbosacral musculoskeletal ligamentous strain and post-traumatic pain and swelling of both knees. He advised that appellant be "released from work for 6 weeks" and avoid overly repetitive or strenuous sudden motion of the neck, bending, twisting, prolonged standing, kneeling, walking, squatting, and any other activities, which may aggravate her underlying condition.

In a duty status report (Form CA-17) dated July 21, 2021, Dr. Kalin indicated that appellant should not work for six weeks.

On August 25, 2021 appellant filed claims for compensation (Form CA-7) for disability from work for the periods July 17 through 30, 2021 and July 31 through August 13, 2021.

In an August 25, 2021 development letter, OWCP informed appellant that it had received her claim for wage-loss compensation benefits for the period July 17 through 30, 2021. It requested that she provide medical evidence to establish that she was disabled from work during the claimed period and afforded her 30 days to submit the necessary evidence.

In a letter dated September 22, 2021, an employing establishment health and resource management specialist, indicated that appellant only stopped work on her date of injury. She provided a position description for general expeditor.

By decision dated September 27, 2021, OWCP denied appellant's claim for wage-loss compensation for the dates of July 17, 18, and 19, 2021.⁴

By decision dated September 28, 2021, OWCP denied appellant's claim for disability from work for the period July 21 through August 13, 2021, finding that the medical evidence of record was insufficient to establish disability from work during the claimed period due to her accepted April 12, 2021 employment injury.

Appellant submitted a report dated September 1, 2021 by Dr. Kalin who indicated that her symptoms remained more or less unchanged from her initial evaluation. Dr. Kalin reviewed her history and noted diagnosed conditions identical to his previous report. He indicated that appellant would only be able to return to sedentary, part-time, light-duty work.

On September 27, 2021 OWCP referred appellant, along with a statement of accepted facts (SOAF), the case record, and a series of questions to Dr. Richard C. Smith, a Board-certified orthopedic surgeon, for a second opinion evaluation regarding the status of her employment-related injuries. In an October 18, 2021 report, Dr. Smith described the April 12, 2021 employment injury and noted her current complaints of lower back and right leg pain. On physical examination of appellant's lumbar spine, he observed tenderness of the spinous process L4 and L5 and diminished flexion and extension on range of motion. Neurological examination revealed normal sensation bilaterally. Straight leg raise testing was negative. In response to OWCP's questions, Dr. Smith reported that appellant's accepted thoracic and lumbar strain conditions had resolved. He noted that she did not require any more treatment related to her employment injury, but indicated that she had preexisting and underlying conditions, including degenerative disc disease. Dr. Smith further reported that appellant would be able to resume her duties as a general expeditor, with respect to the reported employment injury. He completed a work capacity evaluation (Form OWCP-5c), which indicated that she could work her usual job without restrictions.

On October 5, 2021 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review regarding the September 28, 2021 decision.

On October 28, 2021 appellant filed an additional Form CA-7 for disability for the period August 14 through September 10, 2021.

In a November 1, 2021 development letter, OWCP informed appellant that it had received her claim for wage-loss compensation for the period August 14 through September 10, 2021. It requested that she provide medical evidence to establish that she was disabled from work during the claimed period and afforded her 30 days to submit the necessary evidence.

On November 4, 2021 appellant filed an additional Form CA-7 for disability for the period September 11 through October 22, 2021.

⁴ On October 5, 2021 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on January 4, 2022. By decision dated March 8, 2022, OWCP's hearing representative affirmed the September 27, 2021 decision.

In a November 8, 2021 development letter, OWCP informed appellant that it had received her claim for wage-loss compensation benefits for the period September 11 through October 22, 2021. It requested that she provide medical evidence to establish that she was disabled from work during the claimed period and afforded her 30 days to submit the necessary evidence.

Appellant submitted a November 3, 2021 report and accompanying Form CA-17 by Dr. Kalin. Dr. Kalin repeated the diagnosed conditions and indicated that she felt no significant improvement from the effects of the April 12, 2021 employment injury. He opined that appellant continued to be off work due to ongoing symptoms, recurrent pain, and inability to sit or stand for a short period of time.

Following a preliminary review, by decision dated November 19, 2021, an OWCP hearing representative reversed, in part, and remanded, in part, the September 28, 2021 decision. The hearing representative authorized wage-loss compensation for four hours on July 21, 2021 because appellant had attended a medical appointment. OWCP's hearing representative also remanded the case for further development of the wage-loss compensation claim for the period July 22 through August 13, 2021, finding that OWCP did not issue a proper development letter affording her 30 days to submit medical evidence supporting her disability from work during the entire claimed period.

In a December 1, 2021 development letter, OWCP informed appellant that it had received her claim for wage-loss compensation benefits for the period July 21 through August 13, 2021. It requested that she provide medical evidence to establish that she was disabled from work during the claimed period and afforded her 30 days to submit the necessary evidence.

By decision dated December 16, 2021, OWCP denied appellant's claim for disability for the period August 14 through October 22, 2021. It found that the medical evidence of record was insufficient to establish disability from work during the claimed period due to her accepted April 12, 2021 employment injury.

Appellant submitted a letter and examination report dated November 11, 2021 by Dr. David S. Rosen, a Board-certified neurosurgeon. Dr. Rosen described the April 12, 2021 employment injury and noted that she had stopped work as of July 2021 due to lower back and right hip pain. He noted physical examination findings of normal gait and pain with internal/external rotation of the right hip. Dr. Rosen diagnosed lumbar spondylosis, right hip pain, and lumbar stenosis.

On December 21, 2021 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review of OWCP's December 16, 2021 decision.

By *de novo* decision dated January 4, 2022, OWCP denied appellant's claim for disability from work for the period July 22 through August 13, 2021. It found that the medical evidence of record was insufficient to establish disability from work during the claimed period due to her accepted April 12, 2021 employment injury.

In a report dated January 5, 2022, Dr. Kalin indicated that appellant continued to be off work due to ongoing symptoms, recurrent pain, and inability to sit or stand for a short period of

time. He reported diagnosed conditions identical in his previous reports and recommended that she continue on a “no work” status.

On January 13, 2022 appellant, through counsel, requested a telephonic hearing before a representative of OWCP’s Branch of Hearings and Review of OWCP’s January 4, 2022 decision.

In an April 6, 2022 work status note, Dr. Kalin indicated that appellant was “continued on a no work status from [June 21, 2021 through July 9, 2022] due to pain from work-related injuries exacerbated by work duties.”

On April 11, 2022 a telephonic hearing was held to address appellant’s claim for wage-loss compensation for the period July 22 through October 22, 2021.

Appellant submitted a May 4, 2022 report by Dr. Kalin who reviewed her history. Dr. Kalin indicated that her condition remained unchanged from her last examination on January 5, 2022 and noted diagnosed conditions identical in his previous reports. He reported that appellant has been unable to work due to her continued musculoskeletal symptoms. Dr. Kalin opined that her April 12, 2021 employment injury had caused her condition to deteriorate significantly and was responsible for her inability to return to work.

By decision dated June 27, 2022, OWCP’s hearing representative affirmed the December 16, 2021 and January 4, 2022 decisions.

On August 11, 2022 appellant, through counsel, requested reconsideration of the June 27, 2022 decision.

In a report dated August 3, 2022, Dr. Kalin noted diagnosed conditions identical to those in his previous reports. He reported that appellant’s condition remained unchanged from the May 4, 2022 follow-up medical evaluation.

By decision dated August 26, 2022, OWCP denied modification of the June 27, 2022 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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.⁶ 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.⁷ For each period of disability claimed, the employee has the

⁵ *Supra* note 2.

⁶ *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).

⁷ 20 C.F.R. § 10.5(f); *S.T.*, Docket No. 18-0412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.⁸

To establish causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence.⁹ The opinion of the physician must be based on a complete factual and medical background, 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.¹⁰

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.¹¹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work for the period July 22 through October 22, 2021 causally related to her accepted April 12, 2021 employment injury.

On September 27, 2021 OWCP referred appellant, along with a SOAF, the case record, and a series of questions to Dr. Smith for a second opinion evaluation regarding the status of her employment-related injuries. In an October 18, 2021 report, Dr. Smith described the April 12, 2021 employment injury and noted her current complaints of lower back and right leg pain. On physical examination of appellant's lumbar spine, he observed tenderness of the spinous process L4 and L5 and diminished flexion and extension on range of motion. Neurological examination revealed normal sensation bilaterally. Straight leg raise testing was negative. In response to OWCP's questions, Dr. Smith reported that appellant's accepted thoracic and lumbar strain conditions had resolved. He noted that she did not require any more treatment related to her employment injury, but indicated that she had preexisting and underlying conditions, including degenerative disc disease. Dr. Smith further reported that appellant would be able to resume her duties as a general expeditor, with respect to the reported employment injury. He completed a Form OWCP-5c, which indicated that she could work her usual job without restrictions. The Board finds that Dr. Smith provided a well-rationalized opinion based on medical evidence regarding appellant's work capacity. Accordingly, OWCP properly accorded Dr. Smith's second opinion report the weight of the medical evidence in denying appellant's disability claim.

⁸ *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *D.G.*, Docket No. 18-0597 (issued October 3, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

⁹ *L.O.*, Docket No. 20-0170 (issued August 13, 2021); *S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

¹⁰ *V.A.*, Docket No. 19-1123 (issued October 29, 2019); *C.B.*, Docket No. 18-0633 (issued November 16, 2018).

¹¹ *See S.G.*, Docket No. 18-1076 (issued April 11, 2019); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

In support of her claim for compensation, appellant submitted a series of reports by Dr. Kalin dated July 21, 2021 through August 3, 2022. Dr. Kalin described the April 12, 2021 employment injury and reviewed her medical history. He provided examination findings and diagnosed several conditions, including lumbosacral musculoskeletal ligamentous strain and post-traumatic pain and swelling of the bilateral knees. Dr. Kalin noted that appellant was currently working in a full-time, limited-duty capacity, but she felt like she was becoming more incompetent in her work due to physical decompensation. He advised that she be “released from work for 6 weeks” and completed a Form CA-17 indicating that she should not work for six weeks. Dr. Kalin did not, however, provide any medical reasoning to support his opinion on disability nor did he attribute appellant’s disability to her accepted April 12, 2021 employment injury.¹² The Board has held that an opinion is of limited probative regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/period of disability has an employment-related cause.¹³ Consequently, these reports are insufficient to meet appellant’s burden of proof.¹⁴

In a September 1, 2021 report, Dr. Kalin indicated that appellant would be able to return to sedentary, part-time, light-duty work. As this report negates total disability from work during the claimed period, it is of no probative value and is insufficient to establish the disability claim.¹⁵

Dr. Kalin’s additional reports did not address the relevant issue of whether appellant was disabled from work for the period July 22 through October 22, 2021 due to her accepted April 12, 2021 employment injury.¹⁶ As the Board has held, 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.¹⁷

In reports dated November 11 and 13, 2021 reports, Dr. Rosen described the April 12, 2021 employment injury and noted that appellant had stopped work as of July 2021 due to lower back and right hip pain. However, he did not provide an opinion on causal relationship between her claimed disability and the accepted employment injury. Dr. Rosen’s opinion, therefore, is insufficient to establish appellant’s disability claim.¹⁸

¹² *M.A.*, Docket No. 20-0033 (issued May 11, 2020); *F.S.*, Docket No. 18-0098 (issued August 13, 2018); *P.W.*, Docket No. 17-0514 (issued June 9, 2017).

¹³ *A.H.*, Docket No. 22-0001 (issued July 29, 2022); *L.M.*, Docket No. 21-0063 (issued November 8, 2021); *T.T.*, Docket No. 18-1054 (issued April 8, 2020).

¹⁴ *E.F.*, Docket No. 20-1680 (issued November 20, 2021).

¹⁵ *S.H.*, Docket No. 21-0640 (issued February 2, 2023).

¹⁶ *See K.E.*, Docket No. 19-1922 (issued July 10, 2020); *F.S.*, *supra* note 12; *P.W.*, *supra* note 12.

¹⁷ *See F.S.*, Docket No. 23-0112 (issued April 26, 2023); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁸ *Id.*

As the medical evidence of record is insufficient to overcome the weight accorded to second opinion physician Dr. Smith, or to create a conflict in medical opinion, the Board finds that appellant has not met her burden of proof.¹⁹

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 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 July 22 through October 22, 2021 causally related to her accepted April 12, 2021 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the August 26, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 12, 2023
Washington, DC

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

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

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

¹⁹ *D.L.*, Docket No. 22-0161 (issued March 10, 2023).