

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

J.D., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Cumberland, RI, Employer)
-----)

**Docket No. 22-1374
Issued: June 14, 2023**

Appearances:
Appellant, pro se,
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
JANICE B. ASKIN, Judge

JURISDICTION

On September 16, 2022 appellant filed a timely appeal from an August 16, 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.

ISSUE

The issue is whether appellant has met his burden of proof to establish total disability from work for the period January 18 through July 8, 2022 causally related to his accepted December 2, 2021 employment injury.

FACTUAL HISTORY

On December 3, 2021 appellant, then a 34-year-old sales and services distribution associate, filed a traumatic injury claim (Form CA-1) alleging that on December 2, 2021 he injured

¹ 5 U.S.C. § 8101 *et seq.*

his right toe and experienced bruising, bleeding, and pain when he dropped a 70-pound box on his foot while in the performance of duty. He stopped work on December 2, 2021. OWCP accepted the claim for a crushing injury of the right second toe.

OWCP received December 16, 2021 and January 3, 2022 notes, wherein Dawn Peloquin, a nurse practitioner, held appellant off work until January 10, 2022.

In a January 6, 2022 report of work status (Form CA-3), the employing establishment indicated that appellant returned to work on December 15, 2021 and stopped work again on December 16, 2021.

A January 20, 2022 work excuse note from Dr. Edmund DosRemedios, a podiatric surgeon, noted that appellant was unable to perform normal work activities and held him off work until February 11, 2022.

In a letter dated January 21, 2022, the employing establishment requested clarification from Dr. DosRemedios regarding his January 20, 2022 note, in which he indicated that appellant was “unable to perform normal work activities.” The employing establishment included duty status (Form CA-17) and attending physician (Form CA-20) reports for his completion and requested his opinion on whether appellant could return to work in any capacity and, if so, whether any work restrictions would be required for safe job performance.

In progress notes dated January 20 and February 10, 2022, Dr. DosRemedios assessed neuropathy and a probable nerve injury to the right second toe. He noted that appellant reported that a box fell on his toe several weeks ago and he was too uncomfortable to work.

In a February 10, 2022 work excuse note, Dr. DosRemedios reiterated that appellant was unable to perform normal work activities and held him off work until April 14, 2022.²

Dr. DosRemedios, in March 10 and April 27, 2022 progress notes, reiterated his above assessments and noted that appellant related that he was too uncomfortable to work and his condition was “somewhat better.”

In an April 28, 2022 work excuse note, Dr. DosRemedios again indicated that appellant was unable to perform normal work activities and held him off work from April 14 through May 25, 2022.

On May 6, 2022 appellant filed a claim for compensation (Form CA-7) alleging disability from work for the period January 18 through May 6, 2022.

In a May 10, 2022 Form CA-20, Dr. DosRemedios diagnosed neuropathy and indicated that the injury occurred on December 2, 2021 when a box fell on appellant’s right toe. He noted findings of a probable nerve injury to the right second toe and checked a box marked “Yes” to indicate his belief that the conditions were caused or aggravated by an employment activity.

² Dr. DosRemedios provided three separate February 10, 2022 work excuse notes in which he held appellant off work through April 14, 2022.

Dr. DosRemedios recommended that appellant bear weight on his right foot as tolerated, held him off work, and noted a period of total disability from January 20 through May 26, 2022. In a Form CA-17 of even date, he reiterated his diagnosis and findings, held appellant off work, and noted that the injury occurred when he dropped a package on his toe. Dr. DosRemedios noted that he was unable to perform normal work duties and was disabled due to a toe injury.

In a development letter dated June 1, 2022, OWCP informed appellant of the deficiencies of his claim for compensation and advised him of the type of medical evidence needed to establish disability during the period claimed. It afforded him 30 days to respond.

Thereafter, appellant submitted May 25 and June 17, 2022 progress notes in which Dr. DosRemedios reiterated his assessments and noted that appellant reported being too uncomfortable to work. Appellant related that his condition was “much better” and about 85 percent improved.

On July 13, 2022 appellant filed a Form CA-7 alleging disability from work for the period May 7 through July 8, 2022.

In a July 18, 2022 work return note, Dr. DosRemedios indicated that appellant could return to normal work activities as of August 2, 2022.

By decision dated August 16, 2022, OWCP denied appellant’s claim for compensation for disability from work for the period January 18 through July 8, 2022, finding that the medical evidence of record was insufficient to establish disability from work for the claimed period causally related to his accepted December 2, 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

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

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 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 his burden of proof to establish total disability from work for the period January 18 through July 8, 2022 causally related to the accepted December 2, 2021 employment injury.

In CA-17 and CA-20 forms dated May 10, 2022, Dr. DosRemedios provided a diagnosis of neuropathy as a result of the accepted December 2, 2021 employment injury. He held appellant off work and noted that he was totally disabled from January 20 to May 26, 2022. These records do not explain, with rationale, how or why appellant was unable to perform his regular work during the claimed period of disability due to his accepted condition of a crushing injury of the right second toe. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given period of disability has an employment-related cause.¹⁰ Therefore, this evidence is insufficient to establish appellant's disability claim.

In work excuse notes dated January 10 through April 28, 2022, Dr. DosRemedios held appellant off work from January 20 to May 25, 2022 and noted that he was unable to perform normal work activities. Similarly, in progress notes dated January 20 through June 17, 2022, he assessed neuropathy and a probable nerve injury to the right second toe and noted that appellant reported being too uncomfortable to work. In a July 18, 2022 work return note, Dr. DosRemedios returned appellant to normal work activities on August 2, 2022. However, 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.¹¹ As such, this evidence is of no probative value with regard to the claimed period of disability.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.S.*, Docket No. 21-0763 (issued November 12, 2021); *A.G.*, Docket No. 21-0756 (issued October 18, 2021); *T.S.*, Docket No. 20-1229 (issued August 6, 2021).

¹¹ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018); see also *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

¹² See *supra* notes 10, 11; see also *Y.D.*, Docket No. 20-0097 (issued August 25, 2020); *J.T.*, Docket No. 19-1813 (issued April 14, 2020); *J.M.*, Docket No. 19-1169 (issued February 7, 2020); *A.L.*, Docket No. 19-0285 (issued September 24, 2019).

The remaining medical evidence of record includes December 16, 2021 and January 3, 2022 notes from Ms. Peloquin, a nurse practitioner. The Board has long held that certain healthcare providers such as nurse practitioners are not considered “physician[s]” as defined under FECA and thus their findings, reports and/or opinions, unless cosigned by a qualified physician, will not suffice for purposes of establishing entitlement to FECA benefits.¹³ Accordingly, Ms. Peloquin’s notes are insufficient to satisfy appellant’s burden of proof.¹⁴

As appellant has not submitted medical evidence sufficient to establish disability during the claimed period due to his accepted injury, the Board finds that he has not met his 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 his burden of proof to establish total disability from work for the period January 18 through July 8, 2022 causally related to his accepted December 2, 2021 employment injury.

¹³ Section 8101(2) of FECA provides that medical opinions can only be given by a qualified physician. This section defines a physician as 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); *H.K.*, Docket No. 19-0429 (issued September 18, 2019); *K.W.*, 59 ECAB 271, 279 (2007); *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 *J.D.*, Docket No. 21-0164 (issued June 15, 2021) (nurse practitioners are not physicians as defined under FECA).

¹⁴ *R.H.*, Docket No. 21-1382 (issued March 7, 2022); *S.E.*, Docket No. 21-0666 (issued December 28, 2021).

¹⁵ *K.A.*, Docket No. 17-1718 (issued February 12, 2018).

ORDER

IT IS HEREBY ORDERED THAT the August 16, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 14, 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