

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

N.O., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Merrifield, VA, Employer)
_____)

**Docket No. 22-0644
Issued: March 8, 2023**

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
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On March 28, 2022 appellant filed a timely appeal from an October 21, 2021 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

ISSUE

The issue is whether appellant has met his burden of proof to establish disability from work commencing May 17, 2021 causally related to his accepted February 18, 2021 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the October 21, 2021 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.*

FACTUAL HISTORY

On February 23, 2021 appellant, then a 33-year-old carrier technician, filed a traumatic injury claim (Form CA-1) alleging that on February 18, 2021 he developed left side lower back pain after slipping and falling in the performance of duty. He stopped work on February 19, 2021 and returned to work on February 20, 2021. OWCP initially accepted the claim for contusion of the lower back and pelvis, and lumbar ligament sprain. Appellant stopped work again on May 17, 2021.

On May 13, 2021 Dr. Christopher P. Ryan, a physician specializing in family medicine, completed a duty status report (Form CA-17), in which he noted that appellant had a lumbar herniated disc. He further noted that appellant could perform eight hours of sedentary work, and two hours each of walking and standing. Dr. Ryan also noted that appellant was restricted to 10 pounds of lifting.

In a disability note dated May 18, 2021, Dr. Ryan recommended that appellant take medical leave due to the lumbar herniated disc he sustained during the February 18, 2021 employment injury. He indicated that appellant would be seen again on June 14, 2021 for reassessment regarding his potential return to work.

OWCP received physical therapy notes covering the period May 20 through July 14, 2021.

Lauren Burford, a family nurse practitioner, submitted a progress report and a disability note dated June 14, 2021. In the progress report, she related that appellant's pain had not improved since his last visit, but had worsened with new intermittent shooting pains down his leg. Ms. Burford noted that appellant had been taking time off work and he had been resting. In the June 14, 2021 disability note, she recommended he take four weeks off from work due to the herniated lumbar disc he sustained from the February 18, 2021 work injury. Ms. Burford noted that appellant's potential return to work would be reassessed on July 12, 2021.

Appellant filed a claim for compensation (Form CA-7) for the period May 17 through June 11, 2021.

On July 13, 2021 OWCP expanded the acceptance of the claim to include lumbosacral intervertebral disc displacement.

In a development letter dated July 15, 2021, OWCP informed appellant of the deficiencies of his claim for wage-loss compensation. It advised him of the type of medical evidence needed and afforded him 30 days to submit the necessary evidence.

OWCP subsequently received a July 12, 2021 progress report and a disability note of even date from Ms. Burford. Ms. Burford recommended that appellant take four weeks off from work due to a herniated lumbar disc sustained from a February 18, 2021 employment injury.

On August 3, 2021 appellant filed a Form CA-7 claiming wage-loss compensation for the period June 12 through July 30, 2021.

Dr. Ryan, in an August 10, 2021 report, released appellant to return to light-duty work effective August 16, 2021 with a restriction of no lifting more than 25 pounds. He explained that on February 18, 2021 appellant sustained a back injury from slipping on ice and falling down the stairs while working. Appellant's x-rays were negative, but he had multilevel degenerative arthritis due to aging and L5-S1 disc bulge with small central disc protrusion causing moderate spinal canal stenosis and mild-to-moderate bilateral foraminal stenosis. Dr. Ryan reported a normal clinical examination, which was improving with physical therapy. He noted that appellant had depression, which impacted his pain level.

By decision dated August 24, 2021, OWCP denied appellant's claim for wage-loss compensation for disability from work commencing May 17, 2021. It explained that Dr. Ryan failed to explain how appellant's claimed disability was causally related to the accepted employment injury.

Dr. Ryan, in progress notes dated August 30, 2021, diagnosed recurrent major depressive disorder and chronic left-sided low back pain with left-sided sciatica.

On August 31, 2021 appellant filed a Form CA-7 claim for compensation for the period July 31 to August 13, 2021.

By decision dated October 21, 2021, OWCP denied modification of its August 24, 2021 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence.⁴ 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.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 the reliable, probative, and substantial medical 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 the physician must be based on a complete factual and

³ *Supra* note 1.

⁴ *See A.S.*, Docket No. 20-0406 (issued August 18, 2021); *B.K.*, Docket No. 18-0386 (issued September 14, 2018); *see also Amelia S. Jefferson*, 57 ECAB 183 (2005); *Nathaniel Milton*, 37 ECAB 712 (1986).

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

⁶ *See A.S.*, *supra* note 4; *D.G.*, Docket No. 18-0597 (issued October 3, 2018); *Amelia S. Jefferson*, *supra* note 4.

⁷ *A.S.*, *id.*; *Amelia S. Jefferson*, *id.*; *William A. Archer*, 55 ECAB 674 (2004).

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 specific employment factors identified by the claimant.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 disability from work for the period commencing May 17, 2021 causally related to his accepted employment injury.

During the alleged time period in question, appellant submitted reports from Dr. Ryan. In a disability note dated May 18, 2021, Dr. Ryan recommended appellant take time off from work due to the herniated lumbar disc which he sustained during the February 18, 2021 work injury. While he recommended that appellant take time off work, he did not provide any medical reasoning to support his opinion regarding appellant's disability.¹⁰ Dr. Ryan did not provide any objective findings which would explain why appellant was totally disabled as of May 17, 2021, and unable to perform the work he had performed since February 20, 2021. The Board has held that findings on examination are needed to support a physician's opinion that an employee is disabled for work, along with medical rationale explaining why work cannot be performed.¹¹

Dr. Ryan, in an August 10, 2021 report, related that appellant had sustained a back injury on February 18, 2021 and he released appellant to return to light-duty work on August 16, 2021. In this report, he explained that appellant's x-rays were negative, but that appellant had multilevel degenerative arthritis due to aging, and L5-S1 disc bulge with small central disc protrusion causing moderate spinal canal stenosis and mild-to-moderate bilateral foraminal stenosis. Dr. Ryan also reported a normal clinical examination, but noted that appellant had depression which impacted his pain level. While he released appellant to return to light-duty work on August 16, 2021, he again did not address whether appellant was totally disabled from work during the claimed period. The Board has held that medical evidence that does not address the specific dates of disability

⁸ *T.L.*, Docket No. 20-0978 (issued August 2, 2021); *V.A.*, Docket No. 19-1123 (issued October 29, 2019).

⁹ *C.T.*, Docket No. 20-0786 (issued August 20, 2021); *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *William A. Archer*, *supra* note 7; *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹⁰ *M.D.*, Docket No. 21-1270 (issued March 21, 2022); *M.A.*, Docket No. 20-0033 (issued May 11, 2020); *F.S.*, Docket No. 18-0098 (issued August 13, 2018); *P.W.*, Docket No. 17-0154 (issued June 9, 2017).

¹¹ *T.S.*, Docket Nos. 20-1177, 20-1296 (issued May 28, 2021); *Dean E. Pierce*, 40 ECAB 1249 (1989).

claimed is of limited probative value.¹² For these reasons, the Board finds that Dr. Ryan’s reports are insufficient to establish appellant’s disability claim.

Appellant also provided notes from Ms. Burford, a family nurse practitioner, and reports from a physical therapist. Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered “physician[s]” as defined under FECA.¹³ Consequently, their medical findings and/or opinions are of no probative value, and will not suffice for purposes of establishing entitlement to compensation benefits.¹⁴

As the medical evidence is insufficient to establish employment-related disability for the period commencing May 17, 2021 causally related to his accepted conditions, the Board finds that he 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 for the period commencing May 17, 2021 causally related to his accepted employment injury.

¹² See *D.P.*, Docket No. 22-0184 (issued June 7, 2022); *T.S.*, Docket No 20-1229 (issued August 6, 2021); *J.M.*, Docket No. 19-1169 (issued February 7, 2020); *A.L.*, 19-0285 (issued September 24, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹³ Section 8101(2) under FECA defines “physician” as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by the applicable 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 2.805.3(a) (January 2013); *T.G.*, Docket No. 20-0121 (issued May 17, 2022); *B.H.*, Docket No. 20-0268 (issued August 11, 2021); *R.L.*, Docket No. 19-0440 (issued July 8, 2019); see *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006).

¹⁴ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the October 21, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 8, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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