

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 her burden of proof to establish disability from work commencing February 17, 2020 causally related to her accepted May 11, 2013 employment injury.

FACTUAL HISTORY

This case has previously been before the Board on a different issue.⁴ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On May 11, 2013 appellant, then a 51-year-old transportation security officer, filed a traumatic injury claim (Form CA-1) alleging that on May 11, 2013 she injured her left hand and wrist when she fell as she walked into the building while in the performance of duty. She stopped work on that date and was released to modified duty on May 28, 2013. By decision dated July 1, 2013, OWCP accepted the claim for left wrist sprain.⁵

On January 28, 2019 OWCP expanded the acceptance of appellant's claim to include sprain of other part of the left wrist and hand, left wrist ganglion, left wrist nondisplaced fracture of the hamate bone, left trigger thumb, left foot calcaneal spur, and left ankle sprain.

In a February 21, 2020 report, Dr. Steve Randall, a Board-certified physical medicine and rehabilitation physician, related that on May 11, 2013 appellant was performing her duties as a transportation security officer when she fell in the parking lot. He noted that she had medically retired due to her work-related injuries. Dr. Randall recounted that appellant continued to complain of left hand and wrist pain with occasional stiffness, dull, aching pain radiating into her right wrist and hand, and increased aching of her left ankle. He diagnosed left wrist sprain, left wrist fracture, left trigger thumb, left wrist post-traumatic osteoarthritis, consequential right wrist sprain and other specified disorders of the tendon, left foot calcaneal spur, left ankle sprain, and plantar fascial fibromatosis.

On March 5, 2020 appellant filed a claim for compensation (Form CA-7) for disability from work for the period February 17 through 28, 2020. On the reverse side of the claim form, a human resource specialist for the employing establishment, indicated that appellant was on

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that following the June 1, 2021 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.*

⁴ Docket No. 15-1372 (issued September 20, 2016).

⁵ Appellant was removed from her position of transportation security officer, effective February 25, 2015, because she was medically unqualified for the position.

limited-duty work for the period after the injury until her separation from employment. He also noted that appellant had accepted Office of Personnel Management (OPM) disability retirement.

In reports dated March 6 and 12, 2020, Dr. Randall indicated that appellant's bilateral wrist and left ankle pain had increased. He reviewed her history and provided examination findings. Dr. Randall diagnosed left wrist sprain, left wrist fracture, left trigger thumb, left wrist ganglion cyst, left wrist post-traumatic osteoarthritis, consequential right wrist sprain and other specified disorders of the tendon, left foot calcaneal spur, left ankle sprain, and plantar fascial fibromatosis.

In an April 6, 2020 work status note, Dr. Steven Brantley, a Board-certified orthopedic surgeon specializing in sports medicine, reported diagnoses of left foot osteoarthritis and neuropathy. He indicated that appellant could return to work with restrictions of no climbing, kneeling, crawling, bending, and stooping. Dr. Randall also requested that she be allowed to wear tennis shoes and change positions as needed.

In a development letter dated April 8, 2020, OWCP informed appellant of the deficiencies of her claim for compensation. It advised her of the type of medical evidence needed and afforded her 30 days to respond.

Appellant continued to submit Form CA-7 claims for wage-loss compensation.

On April 22, 2020 OWCP received additional information from the employing establishment, including information regarding appellant's pay status, pay rate, and election of benefits. The employing establishment also submitted a notice of personnel action (Form SF-50) dated March 25, 2015, which indicated that appellant was removed from federal employment, effective February 25, 2015, because she was medically unqualified for the transportation security officer position. OWCP also received a fitness-for-duty determination letter dated February 3, 2015, which detailed that appellant was not medically qualified for the transportation security officer position due to her left hand and wrist injury.

In an April 16, 2020 progress note, Dr. Randall indicated that appellant was evaluated for complaints of continued left wrist, left foot, and left ankle pain. He reviewed her history of injury and noted that she was recently treated by Dr. Brantley, who suspected that she had a pinched nerve in her left foot. Dr. Randall reported that appellant's examination findings were unchanged since her last visit. He diagnosed left wrist sprain, left wrist fracture, left trigger thumb, left wrist post-traumatic osteoarthritis, left wrist ganglioconsequential right wrist sprain and other specified disorders of the tendon, left foot calcaneal spur, left ankle sprain, and plantar fascial fibromatosis. Dr. Randall recommended that appellant continue with her current pain treatment plan and opined that she remained incapacitated and unable to perform her work-related duties. He clarified that, while Dr. Brantley released appellant to modified-duty work based on her current left foot and ankle condition, appellant's other injuries, specifically her left hand and wrist injuries, had not sufficiently recovered for her to return to work.

In a June 17, 2020 report, Dr. Richard Ruffin, a Board-certified orthopedic hand surgeon, indicated that appellant was evaluated for a left wrist injury. On physical examination of appellant's left upper extremity, he observed excellent motion and 30 percent decrease in grip strength. Dr. Ruffin assessed left wrist sprain with prior surgical treatment.

In a report dated July 22, 2020, Dr. Randall reviewed appellant's history, recounted her complaints of continued bilateral wrist and left ankle pain, and noted appellant's diagnoses.

In August 24 and September 28, 2020 reports, Kory Reed, a physician assistant, reviewed appellant's history and provided examination findings. He diagnosed left wrist sprain, left wrist fracture, left trigger thumb, left wrist post-traumatic osteoarthritis, left wrist ganglion, consequential right wrist sprain and other specified disorders of the tendon, left foot calcaneal spur, left ankle sprain, and plantar fascial fibromatosis.

By decision dated November 5, 2020, OWCP denied appellant's claim for wage-loss compensation for total disability from work commencing February 17, 2020.

On November 12, 2020 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

In a November 25, 2020 report, Dr. Randall indicated that appellant was treated for continued bilateral wrist and left foot and ankle pain. He noted that she was scheduled for an electromyography and nerve conduction velocity (EMG/NCV) study of the bilateral lower extremities because she was also experiencing pins, needles, tingling, and throbbing. Dr. Randall diagnosed left wrist sprain, left wrist fracture, left trigger thumb, left wrist post-traumatic osteoarthritis, left wrist ganglion, consequential right wrist sprain and other specified disorders of the tendon, left foot calcaneal spur, left ankle sprain, and plantar fascial fibromatosis.

A December 1, 2020 EMG/NCV study of the bilateral lower extremities revealed findings consistent with left tarsal tunnel syndrome and no evidence of left lumbosacral radiculopathy.

In a December 14, 2020 report and work status note, Dr. Brantley recounted appellant's complaints of worsening left ankle pain and other symptoms. He provided examination findings and indicated that EMG/NCV study results were consistent with tarsal tunnel syndrome. Dr. Brantley assessed left tarsal tunnel syndrome, plantar fasciitis of the foot, and ankle arthritis. He indicated that appellant had reached maximum medical improvement and could return to work with restrictions.

A hearing was held on March 18, 2021.

By decision dated June 1, 2021, OWCP's hearing representative affirmed the November 5, 2020 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ 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.⁷ The term disability is defined as the incapacity, because of an employment injury, to earn the wages the employee was

⁶ *Supra* note 2.

⁷ *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).

receiving at the time of the injury.⁸ 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.⁹

To establish causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence.¹⁰ 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.¹¹

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.¹²

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work commencing February 17, 2020 causally related to her accepted May 11, 2013 employment injury.

Appellant provided a series of reports from Dr. Randall dated February 21 through November 25, 2020. Dr. Randall accurately described the May 11, 2013 employment injury and noted appellant's complaints of increased left hand and wrist, left ankle, and right wrist pain. He diagnosed left wrist sprain, left wrist fracture, left trigger thumb, left wrist post-traumatic osteoarthritis, consequential right wrist sprain and other specified disorders of the tendon, left foot calcaneal spur, left ankle sprain, and plantar fascial fibromatosis. In an April 16, 2020 progress note, Dr. Randall opined that appellant remained incapacitated and was unable to perform her work-related duties. However, none of the reports specifically address the claimed period of disability or offered an opinion on the cause of appellant's disability from work.¹³ Accordingly,

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

⁹ *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).

¹⁰ *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).

¹¹ *V.A.*, Docket No. 19-1123 (issued October 29, 2019); *C.B.*, Docket No. 18-0633 (issued November 16, 2018).

¹² See *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹³ *T.T.*, Docket No. 22-0632 (issued November 16, 2022); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

these reports are of no probative value and are insufficient to establish appellant's claim for compensation.¹⁴

In work status notes dated April 6 and December 14, 2020, Dr. Brantley noted appellant's diagnosed left hand and foot conditions and indicated that appellant could return to work with restrictions. As these reports negate disability from work during the claimed period, it is of no probative value and is insufficient to establish the disability claim.¹⁵

In a June 17, 2020 report, Dr. Ruffin provided examination findings of appellant's left upper extremity and diagnosed left wrist sprain. He did not, however, provide an opinion on whether appellant was disabled from work during the claimed period due to her accepted employment injury. The Board has held that 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.¹⁶ Accordingly, his report is of no probative value and is insufficient to establish the claim.

Appellant submitted reports dated August 24 and September 28, 2020 from Mr. Reed, a physician assistant. These reports, however, are of no probative value because physician assistants are not considered physicians as defined under FECA.¹⁷ For this reason, the Board finds that these reports are insufficient to establish appellant's disability claim.

OWCP also received a December 1, 2020 EMG/NCV study report. However, the Board has held that reports of diagnostic studies, standing alone, are of limited probative value as they do not address whether the employment injury caused appellant to be disabled during the claimed period.¹⁸ Accordingly, this diagnostic study is insufficient to establish the claim.¹⁹

As the medical evidence of record is insufficient to establish disability from work commencing February 17, 2020 causally related to her accepted May 11, 2013 employment injury, the Board finds that appellant has not met her burden of proof.

¹⁴ See *M.M.*, Docket No. 18-0817 (issued May 17, 2019); *M.C.*, Docket No. 16-1238 (issued January 26, 2017). See also *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).

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

¹⁶ *L.S.*, Docket No. 19-1231 (issued March 30, 2021); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁷ Section 8102(2) of FECA provides as follows: (2) 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. § 8102(2); 20 C.F.R. § 10.5(t). See *supra* note 5 at *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 *C.R.*, Docket No. 22-0734 (issued March 3, 2023) (physician assistants are not considered "physician[s]" as defined under FECA); *George H. Clark*, 56 ECAB 162 (2004) (physician assistants are not physicians as defined under FECA).

¹⁸ See *A.D.*, Docket No. 21-0143 (issued November 15, 2021); *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

¹⁹ See *A.S.*, Docket No. 21-1263 (issued July 24, 2023).

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 commencing February 17, 2020 causally related to her accepted May 11, 2013 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the June 1, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 2, 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