

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

S.W., Appellant)	
)	
and)	Docket No. 23-0407
)	Issued: November 27, 2023
U.S. POSTAL SERVICE, DETROIT 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 27, 2023 appellant filed a timely appeal from a January 3, 2023 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 January 3, 2023 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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish disability from work commencing October 8, 2022 causally related to her accepted August 23, 2022 employment injury.

FACTUAL HISTORY

On August 24, 2022 appellant, then a 61-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 23, 2022 she injured her left calf while in the performance duty. She noted that on that date she carried a package up a set of stairs, turned to walk down the stairs, and felt tightness and pain in her left leg and calf. Appellant stopped work on the date of the claimed injury. OWCP accepted the claim for strain of muscle or tendon of the left lower leg.

Beginning October 21, 2022, appellant filed a series of claims for compensation (Form CA-7) for disability from work commencing October 8, 2022.

In support of her claim, appellant submitted a medical report dated October 11, 2022 from Dr. Steven Glavas, an osteopathic family medicine physician, who noted that she complained of pain, discomfort, and tingling in her toes. He performed a physical examination of her left knee and lower leg and noted normal findings. Dr. Glavas diagnosed left knee strain. In a work note and duty status report (Form CA-17) of even date, he released appellant to return to full-duty work and discharged her from care.

In a development letter dated October 25, 2022, OWCP informed appellant that the evidence submitted was insufficient to establish disability from work commencing October 8, 2022, causally related to the accepted employment injury. It advised her of the type of additional evidence needed and afforded her 30 days to provide the necessary evidence.

OWCP thereafter received an October 21, 2022 medical report by Dr. Jeffrey D. Shapiro, a Board-certified orthopedic surgeon, who noted that appellant related that she injured her left knee while carrying a heavy package up the stairs on August 23, 2022. Dr. Shapiro performed a physical examination of the left knee and observed tenderness in the mid, posterior, and lateral joint lines, but otherwise full extension and no effusion, laxity, or crepitus. He obtained x-rays of the left knee and recommended a magnetic resonance imaging (MRI) scan.

A report of a November 2, 2022 MRI scan of the left knee demonstrated marrow edema at the fabella, mild soft tissue edema at the lateral head of the gastrocnemius possibly related to contusive changes, and a small area of chondral loss at the anterior aspect of the medial tibial plateau with associated subchondral reactive marrow changes. The report further indicated that the menisci and ligaments were intact.

In a follow-up report dated November 9, 2022, Dr. Shapiro reviewed the November 2, 2022 MRI scan findings and performed a physical examination. He diagnosed chondromalacia of the left knee and patella. In a work status note of even date, Dr. Shapiro diagnosed a chondral injury to the medial tibial plateau of the left knee and recommended that appellant remain out of work from November 9 through December 9, 2022.

OWCP also received a notice which indicated that appellant was scheduled for future physical therapy visits between November 10 and 23, 2022.

In a subsequent development letter dated November 23, 2022, OWCP advised appellant that the additional evidence submitted was insufficient to establish disability from work commencing October 8, 2022 causally related to the accepted employment injury. It advised her of the type of additional evidence needed and afforded her 30 days to respond.

Dr. Shapiro, in a medical report dated December 7, 2022, noted that appellant related constant achiness in the left knee which radiated into the lower leg. He performed a physical examination and diagnosed chondromalacia of the left patella, tear of left lateral meniscus, and pain in the left knee. Dr. Shapiro noted that appellant related that she did not believe that she could return to work due to her left knee pain. In a work excuse form of even date, he diagnosed chondromalacia patella and lateral meniscus tear of the left knee and recommended that she remain out of work from December 7, 2022 through December 1, 2023.

By decision dated January 3, 2023, OWCP denied appellant's claim for compensation, finding that she had not submitted sufficient medical evidence to establish disability from work commencing October 8, 2022, causally related to her accepted August 23, 2022 employment injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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.³ Under FECA, the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁴ Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.⁵ An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.⁶ When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for loss of wages.⁷

The medical evidence required to establish causal relationship between a claimed period of disability and an accepted employment injury is rationalized medical opinion evidence. The

³ *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ 20 C.F.R. § 10.5(f).

⁵ *See H.B.*, Docket No. 20-0587 (issued June 28, 2021); *L.W.*, Docket No. 17-1685 (issued October 9, 2018).

⁶ *See H.B., id.*; *K.H.*, Docket No. 19-1635 (issued March 5, 2020).

⁷ *See D.R.*, Docket No. 18-0323 (issued October 2, 2018).

opinion of the physician must be based on a complete factual and 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 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 established disability from work commencing October 8, 2022 causally related to her accepted August 23, 2022 employment injury.

In support of her claim, appellant submitted several reports and work excuse letters from Dr. Shapiro. In a report dated November 9, 2022, Dr. Shapiro reviewed the November 2, 2022 MRI scan findings and diagnosed chondromalacia of the left knee and patella. In a work status note of even date, he diagnosed a chondral injury to the medial tibial plateau of the left knee and recommended that appellant remain out of work from November 9 through December 9, 2022. Similarly, in a medical report dated December 7, 2022, Dr. Shapiro diagnosed chondromalacia of the left patella and tear of left lateral meniscus. In a work status note of even date, he recommended that appellant remain out of work from December 7, 2022 through December 1, 2023. Dr. Shapiro did not, however, address whether her accepted left lower leg strain disabled her from work commencing October 8, 2022. As the Board has held, medical evidence that does not offer an opinion regarding the cause of an employee's disability is of no probative value.¹⁰ These reports are, therefore, insufficient to establish the claim for wage-loss compensation.

In an October 21, 2022 medical report, Dr. Shapiro noted that appellant related that she injured her left knee on August 23, 2022 and he ordered an MRI scan. However, he did not directly address her ability to work during the specific dates of disability for which compensation is claimed.¹¹ This report was, therefore, also insufficient to establish the claim for wage-loss compensation.

In his October 11, 2022 medical report and Form CA-17, Dr. Glavas diagnosed a left knee strain and released appellant to return to full-duty work. As he negated causal relationship between

⁸ *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

⁹ *J.B.*, Docket No. 19-0715 (issued September 12, 2019); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

¹⁰ See *J.E.*, Docket No. 22-0683 (issued November 10, 2022); *M.H.*, Docket No. 20-1404 (issued July 14, 2021); *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 *Supra* note 9.

the claimed condition and the work injury of August 23, 2022, his report is insufficient to establish her claim.¹²

The remaining evidence of record consisted of a physical therapy scheduling notice and diagnostic studies. The Board has long held that certain healthcare providers such as physical therapists are not considered physicians as defined under FECA.¹³ Their medical findings, reports and/or opinions, unless cosigned by a qualified physician, will not suffice for purposes of establishing entitlement to FECA benefits.¹⁴ Further, the Board has held that diagnostic studies, standing alone, lack probative value, as they do not address whether the accepted employment injury resulted in appellant's period of disability on specific dates.¹⁵ Consequently, these reports are insufficient to meet her burden of proof.

As appellant has not submitted rationalized medical evidence establishing causal relationship between the claimed disability and the accepted employment injury, the Board finds that she has not met her burden of proof.¹⁶

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 commencing October 8, 2022 causally related to her accepted August 23, 2022 employment injury.

¹² *C.L.*, Docket No. 21-0729 (issued December 1, 2022); *see also K.R.*, Docket No. 19-0730 (issued June 5, 2020).

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); *S.P.*, Docket No. 23-0036 (issued July 10, 2023) (physical therapists are not considered physicians as defined under FECA); *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).

¹⁴ *K.A.*, Docket No. 18-0999 (issued October 4, 2019); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, *id.*

¹⁵ *F.S.*, Docket No. 19-0205 (issued June 19, 2019).

¹⁶ *M.N.*, Docket No. 18-0741 (issued April 2, 2020); *J.W.*, Docket No. 19-1688 (issued March 18, 2020).

ORDER

IT IS HEREBY ORDERED THAT the January 3, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 27, 2023
Washington, D.C.

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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